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

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 850

RIN 3206–AL34

Retirement Systems Modernization

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to authorize alternative provisions for processing retirement and health and life insurance applications, notices, elections, and records under the agency's Retirement Systems Modernization (RSM) initiative. These regulations authorize exceptions to certain regulatory provisions governing the processing of benefits under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS), as well as the Federal Employees' Group Life Insurance (FEGLI), the Federal Employees Health Benefits (FEHB) and Retired Federal Employee Health Benefits (RFEHB) Programs.

DATES: The regulations are effective January 28, 2008.

FOR FURTHER INFORMATION CONTACT: James Giuseppe, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

Overview of Retirement Systems Modernization

On August 17, 2007, the Office of Personnel Management (OPM) published proposed regulations (72 FR 46178) to amend title 5, Code of Federal Regulations, by establishing a new part 850. The new part authorizes certain changes to current regulations governing the Civil Service Retirement System (CSRS), the Federal Employees' Retirement System (FERS), and the Federal Employees' Group Life Insurance (FEGLI), the Federal Employees Health Benefits (FEHB) and Retired Federal Employees Health Benefits (RFEHB) Programs. The changes are needed to implement the new retirement and insurance processing system created by OPM's Retirement Systems Modernization (RSM) initiative.

The 30-day comment period for the proposed regulations ended on September 17, 2007. OPM received comments from five Federal agencies, one labor organization, and one individual.

General Comments

Two comments stated that many individuals have only limited access to the Internet. These commenters expressed concern that RSM would require individuals to submit retirement applications, elections, and other forms electronically, and that OPM would not accept such submissions in paper form. We understand that when RSM is implemented, some individuals will continue to submit paper applications and forms because they will not have access to a computer or the Internet, or because they are unfamiliar with computers or are not confident of their ability to use a computer. As we stated in the supplementary information published with the proposed rule, the current paper-based system "will continue to operate concurrently for some time with respect to at least some aspects of retirement and insurance processing for some individuals." Section 850.101(b) of the regulations states that the regulations authorize (but do not require) "exceptions" to the existing regulatory provisions. Section 850.201(a)(1) provides that applications and other submissions "may instead" be submitted in another form designated by the Director. This language pertaining to exceptions to established procedures is deliberately permissive, not mandatory. In other words, the current provisions of the regulations do nothing to preclude paper-based processes from continuing to function; therefore, applications and other submissions that are submitted in paper form will continue to be accepted under the relevant provisions of existing regulations outside of part 850. Part 850 merely allows electronic submissions to OPM in addition to paper submissions.

One commenter suggested that the regulations are being issued because "the convenience of OPM is the priority" rather than the needs of employees and retirees. In fact, the thrust of RSM is to afford greater convenience to Federal annuitants and employees contemplating retirement by improving OPM processes. RSM is a customer-focused initiative. RSM will also improve the quality and timeliness of services to individuals and will offer on-demand Web-based tools for employees to plan early for their retirement and for annuitants to make health and life insurance elections. We believe that RSM will improve both OPM business processes and services to our customers.

Electronic Signatures

Several comments were received on the electronic signature provisions of the regulations. Many of these comments indicate a misunderstanding of the provisions of proposed § 850.106. As discussed in the supplementary information published with the proposed rule, new § 850.106 will allow the electronic retirement and insurance processing system implemented by RSM to be compliant with the Government Paperwork Elimination Act (GPEA), Pub. L. 105–277, Title XVII, and OMB Memorandum M–00–10, 65 FR 25508 (May 2, 2000)—OMB's final procedures and guidance for implementing the GPEA. OMB Memorandum M–00–10 describes, using examples of currently known technology, a range of acceptable methods of effecting electronic signatures, and describes the requirements an agency is to follow before selecting an appropriate method of electronic signature for a particular transaction. We are going through the process of determining which method of electronic signature will be acceptable for the various transactions permitted under the electronic retirement and insurance processing system. The Director will issue an implementing directive under § 850.104 when methods of effecting electronic signatures are assessed and selected.

We are aware that whatever method of electronic signature is ultimately selected for a transaction, it must permit the authentication of individuals' identities using the electronic retirement and insurance processing system while ensuring the privacy of their transaction. We are also aware that the method selected must be a

technology that will be readily available and accessible to individuals using the system. Although a technology may offer high levels of authentication and privacy, it may not be widely available, affordable, or accessible, and would then be unsuitable for selection.

One commenter expressed concern that some of the electronic signature technologies described in the regulations could prevent users from readily accessing the electronic retirement and insurance processing system, or would inconvenience users who lack access to proper hardware or software. As stated above, we will select methods of effecting electronic signatures that offer the appropriate level of authentication and privacy and that will be widely available and user-friendly. In addition, employees, annuitants, survivors, and other individuals who file claims or make other submissions to OPM will still have the option of making their submissions using the paper-based processes under the existing rules.

Two comments addressed the issue of whether OPM would accept an electronic signature if it meets one of the "acceptable methods" listed under new § 850.106(c), or whether OPM will establish a "standard method" of electronic signature. This issue was discussed in the supplementary information published with the proposed rule. We must emphasize that none of the methods listed under § 850.106(c) has yet been approved by the Director, and no one method listed in § 850.106(c) is the only acceptable standard for effecting an electronic signature. Section 850.106(c) provides a list of electronic signature methods from which the Director may choose an acceptable method of an electronic signature for a particular transaction. The list is not exclusive; if a new technology is developed in the future and is found to be generally acceptable, the Director could decide to adopt that technology for certain transactions. As described in OMB Memorandum M–00–10, the selection of an electronic signature method is a transaction-based decision—an agency should select an appropriate method of effecting an electronic signature for each particular kind of transaction. For example, the Director could decide, based in part on the risks and costs involved, to select one method of electronic signature for retirement applications and a different method for a life insurance designation-of-beneficiary form. Alternatively, the Director might decide that one method of electronic signature is appropriate for a range of distinct but similar transactions, or that several methods are acceptable for a single type of transaction. The purpose of the regulation is to give the Director flexibility to choose acceptable methods of electronic signatures. The Director will issue an implementing directive when a method or methods of electronic signature is selected for transactions submitted to the electronic retirement and insurance processing system.

Submission of the Retirement Application

Two commenters expressed concern that § 850.201 of the proposed regulations indicated that an employee may submit her retirement application to OPM instead of the servicing agency, thus bypassing the servicing agency. The electronic retirement and insurance processing system will allow employees to initiate the retirement process directly; however, agencies and servicing agencies will receive notification that the employee has commenced the retirement process. Under new § 850.105, agencies will continue to be responsible for counseling individuals regarding rights and benefits under CSRS, FERS, FEGLI, FEHB, and RFEHB, and for performing all appropriate actions necessary to separate individuals for retirement.

Subpart D—Submission of Law Enforcement, Firefighter, and Nuclear Materials Courier Retirement Coverage Notices

Background

In the past, OPM made Civil Service Retirement System (CSRS) law enforcement officer and firefighter retirement coverage determinations. OPM used its authority over these retirement coverage determinations to ensure that the statutory requirements for coverage were appropriately applied and to monitor the costs of the program.

As part of its efforts to decentralize personnel functions and to place the decision-making responsibility in agencies that have the greatest interest in such determinations, OPM delegated Federal Employees' Retirement System (FERS) law enforcement officer and firefighter retirement coverage decision-making authority to agency heads with the inception of FERS in 1987. (See 52 FR 2068 (January 16, 1987) and 5 CFR part 842, subpart H.) Under this delegated authority, agencies ensure that the statutory requirements for FERS law enforcement officer or firefighter coverage are met. In addition, this delegation was considered appropriate given the cost structure of FERS. FERS retirement benefit costs are fully funded by employee and agency contributions. Because the full cost of FERS retirement benefits is paid for by employee and agency contributions, with the primary financial burden on the agency, the agency must account for the costs of law enforcement officer and firefighter benefits. CSRS law enforcement officer and firefighter coverage decision-making authority was extended to agencies in 1993. Specifically, OPM delegated CSRS law enforcement officer and firefighter decision-making authority to agency heads in interim regulations issued on December 7, 1993. (See 58 FR 64367 (December 7, 1993); 5 CFR part 831, subpart I.) The authority over nuclear materials courier retirement coverage decisions was delegated to the Secretary of Energy when enhanced retirement benefits were extended to nuclear materials couriers. (See 65 FR 2521 (January 18, 2000); 5 CFR part 831, subpart H, and 5 CFR part 842, subpart I.)

Under the existing regulations, OPM retains oversight authority to review agency head approvals of law enforcement officer, firefighter, and nuclear materials courier decisions. When we issued the FERS final rules for law enforcement officers, firefighters and air traffic controllers, we explained the reason for OPM oversight: "OPM's oversight role is an inherent part of its underlying statutory authority to make these determinations and its continuing responsibility to determine whether continued delegation of this authority is appropriate" (57 FR 32687).

In the years since we delegated law enforcement officer and firefighter decision-making authority to agencies, there have been occasional problems with agency compliance with the recordkeeping and notice provisions of the oversight regulations. Each agency is required by regulation to maintain records of law enforcement and firefighter retirement coverage approvals made by the agency head, and must send a notice to OPM whenever a position is approved for law enforcement and firefighter retirement coverage. On one occasion, an agency requested that we provide copies of all law enforcement notices that the agency had sent to OPM since 1987 because the agency could not locate its records. Recently, OPM noticed that an agency had submitted a notice of law enforcement officer coverage for a position that had been established more than 22 years before. When OPM asked for clarification of the approval under its oversight authority, the agency responded that it had neglected to approve or send OPM the required notice for the position because agency staff "did not realize that LEO approval

was necessary." Occasionally, OPM has had to exercise oversight by reviewing an agency law enforcement officer or firefighter retirement coverage decision, or by intervening in an appeal to the U.S. Merit Systems Protection Board of an agency law enforcement officer or firefighter retirement coverage decision.

In addition, under current procedures, when an employee who has law enforcement officer or firefighter service applies for retirement, the agency must send a letter containing information on the employee's law enforcement officer or firefighter service history to OPM with the employee's retirement application. OPM uses this letter and other information to determine whether the employee is eligible for law enforcement officer or firefighter retirement and an enhanced annuity computation. Under this procedure, if an agency has erroneously allowed law enforcement officer or firefighter retirement coverage or service credit, the error may not be discovered until OPM receives the employee's retirement application and determines that the employee is not entitled to retire under the law enforcement officer or firefighter retirement provisions, or determines that the employee has insufficient law enforcement officer or firefighter service for the higher law enforcement officer or firefighter annuity computation. These errors may result in an erroneous separation, and, thus, may be costly to an agency and traumatic for an employee.

The new electronic retirement and insurance processing system will provide employees, annuitants, and survivors with access to their retirement and insurance information in a manner that was not previously available to them. Data elements will now be available on a pay-period or daily basis rather than an annual basis. Web-based tools will be available on demand for Federal employees to plan early for retirement.

Obviously, the electronic retirement and insurance processing system must have information that is not only timely but also accurate so that users of the system can make retirement, health benefits, and life insurance decisions appropriate to their individual situations. Employees with law enforcement officer, firefighter, or nuclear materials courier service must be able to accurately determine the status of their law enforcement officer, firefighter, or nuclear materials courier retirement coverage and service credit at any time, so that they can make informed retirement decisions. Therefore, the electronic retirement and insurance processing system must have sufficient information to automatically determine the status of an employee's law enforcement officer, firefighter, or nuclear materials courier coverage and the amount of such service the employee has performed.

Comments on Subpart D

After the proposed rule was published, OPM sent a request for comments on subpart D to agencies and shared service centers. Four comments from agencies addressed subpart D of the regulation. One comment stated that the proposed rule provided insufficient information concerning how agency notices to OPM of agency law enforcement officer, firefighter, and nuclear materials courier retirement coverage decisions could be provided electronically, and what information OPM would require. Another comment stated that subpart D does not provide enough information to estimate the changes agencies will have to make to submit notices through the Enterprise Human Resources Integration (EHRI). This comment also suggested that it might be more appropriate to scan the requested documents into the Electronic Official Personnel Record Folder (e-OPF) rather than submit them through EHRI.

We anticipated that, under subpart D, the submission of notices and background files through EHRI would not be difficult. In general, based on the volume of notices we have received in the past, agencies do not submit a large number of law enforcement officer, firefighter, and nuclear materials courier notices. Based on our experience, we anticipated that the electronic submission of notices would require only periodic transmission of data, and would not be as demanding as the transmission of pay period data required by the regular EHRI feed. Further, using the e-OPF to store the required data would present new problems because the e-OPF data would be difficult to integrate into RSM systems and new system applications would be required to extract the data from the e-OPF.

However, as a result of the comments we received, we have decided to change subpart D to eliminate the requirement that agencies submit notices of law enforcement officer, firefighter, or nuclear materials courier retirement coverage approvals electronically through EHRI to the RSM processing system. We have decided that we will begin to gather agency notices of law enforcement officer, firefighter, or nuclear materials courier retirement coverage approvals and associated background files in an electronic form, through a more straightforward process. At some point in the future, we intend to transition to the electronic submission of these notices and associated background files through EHRI. In the meantime, we will require that the information described in subpart D be submitted, but we are changing the regulations to permit the Director to issue implementing directives concerning the process for submitting the information. We expect that these implementing directives will allow the agencies to continue to submit notices in paper form, but will require that a spreadsheet containing the required notice data elements be e-mailed to OPM along with a file containing scans of the background documents.

Another commenter stated that the agency did not store a position description number, which was requested in the proposed rule, for its law enforcement and firefighter positions; instead, the agency stores an "Individual Position and Master Record number." The requirement is that agencies submit a position description number, *or some other unique identifying number.* An "Individual Position and Master Record number" would constitute such a unique identifying number, and thus would suffice for the positions contained in the notice. We require this number to enable us to identify particular position approvals. This identifier is also required in the EHRI recurring pay period data feeds to RSM. Accordingly, we are not revising this requirement.

A comment from another agency stated that it did not "list position description numbers, only places of employment and whether the position is [a law enforcement officer] or [non-law enforcement officer] position." Presumably, this comment refers to employees of the agency who fall within the definition of "law enforcement officer" under 5 U.S.C. § 8331(20) or 5 U.S.C. 8401(17)(D) because their duties require frequent and direct contact with individuals in detention suspected or convicted of offenses against the criminal laws of the United States, or other laws. Law enforcement officer retirement coverage for such individuals is not strictly based on the position the individual occupies; rather it is based on the individual's frequent and direct contact with detainees.

We are aware of the retirement coverage issues related to correctional officers and prison support staff. However, the fact that a position is located in a prison and meets the statutory requirements for law enforcement officer retirement coverage should not prevent the agency from

assigning a position description number to a position description. In addition, the agency that submitted this comment has provided position description numbers for detention positions to us in its written notices for many years.

Comments Beyond the Scope of the Regulations

A number of comments we received addressed issues concerning the RSM design process, the implementation of RSM processes, the process of bringing an agency and its employees within RSM, and other issues that are operational in nature and, therefore, are beyond the scope of the regulations. We have not addressed those comments but rather have submitted them to OPM's Managing Director for Retirement Systems Modernization for his consideration. The following is a list of some of the comments that, although important, are beyond the scope of these regulations:

- One union expressed disappointment concerning the perceived lack of involvement of OPM employees in developing RSM.
- One commenter questioned what quality control measures exist to insure data quality and accuracy, and what measures for records destruction are in place.
- Two commenters asked what redundancy OPM will have in place in the event of disaster, and whether OPM will back up data.
- One agency expressed concern over the number of historical data elements required by RSM.
- One commenter asked how RSM would accommodate disability retirement applications, how agencies would certify service records, and whether an employee's current health benefits and life insurance benefits history would be transferred to the new system.
- One commenter expressed concern that the RSM implementation schedule and the February 2008 RSM rollout date are too ambitious and that OPM is not providing much time to agencies to prepare for implementation.

Again, these issues are beyond the scope of the regulations and have been referred to OPM's Managing Director for Retirement Systems Modernization.

Definition of "Agency" and Other Editorial Changes

We have made an editorial change in § 850.302 to clarify the reference to a department or agency and added a definition of "agency" in § 850.103. We have also corrected a typographical error in § 850.202(b)(2) by correcting the reference to § 841.610(b)(1) to § 842.610(b)(1).

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal employees, former Federal employees, Members of Congress, annuitants, survivors, and applicants under the Civil Service Retirement System and the Federal Employees' Retirement System whose retirement and insurance records are maintained by the new retirement processing system created by OPM's Retirement Systems Modernization initiative.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

Information collection(s) as defined by the Paperwork Reduction Act and associated with this rule will not be effective until approved by OMB. The information collection(s) will include the processes and information collected from Federal retirees and their survivors described in this rule. A separate Federal Register Notice that details the information collection(s) will be posted for public comment at a later date.

List of Subjects in 5 CFR Part 850

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, 5 CFR part 850 is added to read as follows:

PART 850—RETIREMENT SYSTEMS MODERNIZATION

Subpart A—General Provisions

Sec.

Subpart B—Applications for Benefits; Elections

Subpart C—Records

Subpart D—Submission of Law Enforcement, Firefighter, and Nuclear Materials Courier Retirement Coverage Notices

Authority: 5 U.S.C. 8347; 5 U.S.C. 8461; 5 U.S.C. 8716; 5 U.S.C. 8913; section 9 of Pub. L. 86–724, 74 Stat. 849, 851–52 (September 8, 1960) as amended by section 102 of Reorganization Plan No. 2 of 1978, 92 Stat. 3781, 3783 (February 23, 1978).

Subpart A—General Provisions

§ 850.101 Purpose and scope.

(a) The purpose of this part is to enable changes needed for implementation of the new retirement and insurance processing system created by the Office of Personnel Management's (OPM's) Retirement Systems Modernization (RSM) initiative. RSM is OPM's strategic initiative to improve the quality and timeliness of services to employees and annuitants covered by the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) by using contemporary, automated business processes and supporting technology. The RSM initiative is designed to transform the retirement process, as well as the processing of annuitant insurance elections of Federal Employees' Group Life Insurance (FEGLI), Federal Employees Health Benefits Program (FEHB), and Retired Federal Employees Health Benefits Program (RFEHB) coverage, by employing more efficient and effective business systems to respond to increased customer demand for higher levels of customer service and online self-service tools.

(b) The provisions of this part authorize exceptions from regulatory provisions that would otherwise apply to CSRS and FERS annuities and FEGLI, FEHB and RFEHB benefits processed by or at the direction of OPM under the RSM initiative. Those regulatory provisions that would otherwise apply were established for a paper-based retirement and insurance benefits processing system that may eventually be phased out but which will continue to operate concurrently with RSM for some time, until RSM is fully implemented. During the phased transition to RSM processing, certain regulations that were not designed with RSM in mind, and which are incompatible with RSM business

processes, must be set aside with respect to aspects of retirement and insurance processing accomplished under RSM. The regulations set forth in this part make the transition to RSM processes possible.

(c) The provisions of this part do not affect retirement and insurance eligibility and annuity computation provisions. The provisions for capturing retirement and insurance data in an electronic format, however, may support, in some instances, more precise calculations of annuity and insurance benefits than were possible using paper records.

§ 850.102 Applicability.

(a) The provisions of parts 831, 835, 837 through 839, 841 through 847, 870, 890, and 891 of this chapter remain in effect, as applicable, except to the extent that they are inconsistent with one or more provisions of this part or implementing directives prescribed by the Director under § 850.104.

(b) The provisions of this part do not supersede or alter any functions performed by a private insurance company or carrier with which OPM has entered into a contract, or with which OPM may enter into a contract in the future, under chapter 87 or 89 of title 5, United States Code, or under any other provision of law or regulation.

§ 850.103 Definitions.

In this part—

Agency means an Executive agency as defined in section 105 of title 5, United States Code; a legislative branch agency; a judicial branch agency; the U.S. Postal Service; the Postal Regulatory Commission; and the District of Columbia government.

Biometrics refers to the technology that converts a unique characteristic of an individual into a digital form, which is then interpreted by a computer and compared with a digital exemplar copy of the characteristic stored in the computer. Among the unique characteristics of an individual that can be converted into a digital form are voice patterns, fingerprints, and the blood vessel patterns present on the retina of one or both eyes.

Cryptographic control method means an approach to authenticating identity or the authenticity of an electronic document through the use of a cipher (i.e., a pair of algorithms) which performs encryption and decryption.

CSRS means the Civil Service Retirement System established under subchapter III of chapter 83 of title 5, United States Code.

Digital signature is an electronic signature generated by means of an algorithm that ensures that the identity of the signatory and the integrity of the data can be verified. A value, referred to as the "private key," is generated to produce the signature, and another value, known as the "public key," which is linked to, but not the same as, the private key, is used to verify the signature.

Digitized signature means a graphical image of a handwritten signature, usually created using a special computer input device, such as a digital pen and pad, which contains unique biometric data associated with the creation of each stroke of the signature, such as duration of stroke or pen pressure. A digitized signature can be verified by a comparison with the characteristics and biometric data of a known or exemplar signature image.

Director means the Director of the Office of Personnel Management.

Electronic communication refers to any information conveyed through electronic means and includes electronic forms, applications, elections, and requests submitted by email or any other electronic message.

Electronic Official Personnel Record Folder (e-OPF) means the electronic Official Personnel Folder application that will replace the current paper personnel folder across the Government.

Electronic retirement and insurance processing system means the new retirement and insurance processing system created by OPM's Retirement Systems Modernization (RSM) initiative.

Employee means an individual, other than a Member of Congress, who is covered by CSRS or FERS.

Enterprise Human Resources Integration (EHRI) means the comprehensive electronic personnel record-keeping and analysis system that supports human resources management across the Federal Government.

FEGLI means the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code.

FEHB means the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

FERS means the Federal Employees' Retirement System established under chapter 84 of title 5, United States Code.

Member means a Member of Congress as defined by section 2106 of title 5, United States Code, who is covered by CSRS or FERS.

Non-cryptographic method is an approach to authenticating identity that relies solely on an identification and authentication mechanism that must be linked to a specific software platform for each application.

Personal identification number (PIN) or *password* means a non-cryptographic method of authenticating the identity of a user of an electronic application, involving the use of an identifier known only to the user and to the electronic system, which checks the identifier against data in a database to authenticate the user's identity.

Public/private key (asymmetric) cryptography is a method of creating a unique mark, known as a digital signature, on an electronic document or file. This method involves the use of two computer-generated, mathematically-linked keys: a private signing key that is kept private and a public validation key that is available to the public.

RFEHB means the Retired Federal Employees Health Benefits Program established under Pub. L. 86–724, 74 Stat. 849, 851–52 (September 8, 1960), as amended.

Shared service centers are processing centers delivering a broad array of administrative services to multiple agencies.

Shared symmetric key cryptography means a method of authentication in which a single key is used to sign and verify an electronic document. The single key (also known as a "private key") is known only by the user and the recipient or recipients of the electronic document.

Smart card means a plastic card, typically the size of a credit card, containing an embedded integrated circuit or "chip" that can generate, store, or process data. A smart card can be used to facilitate various authentication technologies that may be embedded on the same card.

§ 850.104 Implementing directives.

The Director must prescribe, in the form he or she deems appropriate, such detailed procedures as the Director determines to be necessary to carry out the purpose of this part.

§ 850.105 Agency responsibility.

Agencies employing individuals whose retirement records or processing are affected by this part are responsible for counseling those individuals regarding their rights and benefits under CSRS, FERS, FEGLI, FEHB, or RFEHB.

§ 850.106 Electronic signatures.

(a) Subject to any provisions prescribed by the Director under § 850.104—

(1) An electronic communication may be deemed to satisfy any statutory or regulatory requirement under CSRS,

FERS, FEGLI, FEHB or RFEHB for a written election, notice, application, consent, request, or specific form format;

(2) An electronic signature of an electronic communication may be deemed to satisfy any statutory or regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB that an individual submit a signed writing to OPM;

(3) An electronic signature of a witness to an electronic signature may be deemed to satisfy any statutory or regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB for a signature to be witnessed; and

(4) Any statutory or regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB that a signature be notarized may be satisfied if the electronic signature of the person authorized to sign is attached to or logically associated with all other information and records required to be included by the applicable statute or regulation.

(b) For purposes of this section, an electronic signature is a method of signing an electronic communication, including an application, claim, or notice, designation of beneficiary, or assignment that—

(1) Identifies and authenticates a particular person as the source of the electronic communication; and

(2) Indicates such person's approval of the information contained in the electronic communication.

(c) The Director will issue directives under § 850.104 that identify the acceptable methods of effecting electronic signatures for particular purposes under this part. Acceptable methods of creating an electronic signature may include—

(1) Non-cryptographic methods, including—

(i) Personal Identification Number (PIN) or password;

(ii) Smart card;

(iii) Digitized signature; or

(iv) Biometrics, such as fingerprints, retinal patterns, and voice recognition;

(2) Cryptographic control methods, including—

(i) Shared symmetric key cryptography;

(ii) Public/private key (asymmetric) cryptography, also known as digital signatures;

(3) Any combination of methods described in paragraphs (c)(1) and (c)(2) of this section; or

(4) Such other means as the Director may find appropriate.

Subpart B—Applications for Benefits; Elections

§ 850.201 Applications for benefits.

(a)(1) Applications and related submissions that otherwise would be required by this chapter to be made in writing may instead be submitted in such form as the Director prescribes under § 850.104.

(2) Subject to any directives prescribed by the Director under § 850.104, applications and related submissions that are otherwise required to be made to an individual's employing agency (other than by statute) may instead be submitted to the electronic retirement and insurance processing system or to OPM.

(b) Data provided under subpart C of this part are the basis for adjudicating claims for CSRS and FERS retirement benefits, and will support the administration of FEGLI, FEHB and RFEHB coverage for annuitants, under this part.

(c) For the purposes of this subpart, "OPM notice" means the notice informing the retiree or other individual of the annuity computation rate and of the elections made by the retiree or other such individual eligible to make such an election and informing him or her of the time limit under § 850.202 or 850.203 for any election, revocation or change of election.

§ 850.202 Survivor elections.

(a) A survivor election under subsection (j) or (k) of section 8339, or under section 8416, 8417, or 8420 of title 5, United States Code, which is otherwise required to be in writing may be effected in such form as the Director prescribes under § 850.104.

(b)(1) Except as provided in §§ 831.622(b)(1), 831.631, 831.632, 842.610(b)(1), 842.611, and 842.612 of this chapter, an individual making a survivor election at the time of retirement may not revoke or change that election later than 35 days after the date of the OPM notice to the individual of the amount of annuity to which he or she is entitled.

(2) A retiree may change a survivor election under § 831.622(b)(1) or § 842.610(b)(1) of this chapter no later than 18 months after the commencing date of the annuity to which he or she is entitled.

§ 850.203 Other elections.

(a) Any other election may be effected in such form as the Director prescribes under § 850.104. Such elections include but are not limited to—

(1) Elections of coverage under CSRS, FERS, FEGLI, FEHB or RFEHB by individuals entitled to elect such coverage;

(2) Applications for service credit and applications to make deposit; and

(3) Elections regarding the withholding of State income tax from annuity payments.

(b) Any election, which, if it were not processed under this part, would have a deadline described in reference to the first regular monthly payment or the date of final adjudication, may not be made later than 35 days after the date of the OPM notice to the individual concerned of the amount of annuity to which he or she is entitled.

Subpart C—Records

§ 850.301 Electronic records; other acceptable records.

(a) Acceptable electronic records for processing by the electronic retirement and insurance processing system include—

(1) Electronic employee data submitted by an agency or other entity through EHRI and stored within the new retirement and insurance processing system;

(2) Electronic Official Personnel Folder (e-OPF) data; and

(3) Documents, including hardcopy versions of the Individual Retirement Record (SF 2806 or SF 3100), or data obtained from such documents, that are converted to an electronic or digital form by means of image scanning or other forms of electronic or digital conversion.

(b) Documents that are not converted to an electronic or digital form will continue to be acceptable records for processing by the retirement and insurance processing system.

(c) OPM is required to retain documents after they have been converted to electronic records in accordance with title 44, United States Code.

§ 850.302 Record maintenance.

(a) The retirement and insurance processing system does not affect the responsibilities of an agency with respect to employees or Members of Congress subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, for the initiation and maintenance of records, evidence, or other information described in this title.

(b) Agencies are responsible for correcting errors in data provided to OPM under § 850.301.

§ 850.303 Return of personal documents.

An individual who submits personal documents to OPM in support of a claim for retirement or insurance benefits may

have such documents returned to the individual if he or she requests the return of the documents when submitting the documents. If OPM receives a request for return of such documents at a later time, OPM may provide the individual with a copy of the document that is derived from electronic records.

Subpart D—Submission of Law Enforcement, Firefighter, and Nuclear Materials Courier Retirement Coverage Notices

§ 850.401 Electronic notice of coverage determination.

(a) An agency or other entity that submits electronic employee records directly or through a shared service center to the electronic retirement and insurance processing system must include in the notice of law enforcement officer, firefighter, or nuclear materials retirement coverage, required by § 831.811(a), 831.911(a), 842.808(a), or 842.910(a) of this chapter, the position description number, or other unique alphanumeric identifier, of the position for which law enforcement officer, firefighter, or nuclear materials courier retirement coverage has been approved.

(b) The Director will issue directives under § 850.104 that identify the acceptable methods for an agency or other entity to submit to OPM electronic files of both the notice required by § 831.811(a), 831.911(a), 842.808(a), or 842.910(a) of this chapter, and the coverage determination files and background material required under § 831.811(b), 831.911(b), 842.808(b), or 842.910(b) of this chapter, associated with the positions included in the notice.

[FR Doc. E7–25153 Filed 12–27–07; 8:45 am]

BILLING CODE 6325–38–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste

CFR Correction

In Title 10 of the Code of Federal Regulations, Parts 51 to 199, revised as of January 1, 2007, on page 395, in § 72.214, Certificate of Compliance 1005 is reinstated to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1005
SAR Submitted by: Transnuclear, Inc.
SAR Title: TN-24 Dry Storage Cask Topical Report.
Docket Number: 72-1005.
Certification Expiration Date: November 4, 2013.
Model Number: TN-24.

* * * * *

[FR Doc. 07–55524 Filed 12–27–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

General Rulemaking Procedures

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 1 to 59, revised as of January 1, 2007, on page 27, reinstate § 11.71 to read as follows:

§ 11.71 What information must I include in my petition for rulemaking?

(a) You must include the following information in your petition for rulemaking:

(1) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address.

(2) An explanation of your proposed action and its purpose.

(3) The language you propose for a new or amended rule, or the language you would remove from a current rule.

(4) An explanation of why your proposed action would be in the public interest.

(5) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(6) Any specific facts or circumstances that support or demonstrate the need for the action you propose.

(b) In the process of considering your petition, we may ask that you provide information or data available to you about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(3) The recordkeeping and reporting burdens of your proposed action and whom the burdens would affect.

(4) The effect of your proposed action on the quality of the natural and social environments.

[FR Doc. 07–55525 Filed 12–27–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 27

[Docket No. SW017; Special Condition No. 27–017–SC]

Special Condition: Bell Helicopter Textron Canada Limited Model 429 Helicopters, High Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for the Bell Helicopter Model 429 helicopters. These helicopters will have novel or unusual design features associated with installing electrical and electronic systems that perform critical functions, including an Electronic Flight Instrument System (EFIS) and a Full Authority Digital Engine Control (FADEC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical control functions, or provide critical displays, from the effects of high-intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is December 11, 2007. Comments must be received on or before February 11, 2008.

ADDRESSES: Send comments on this special condition in duplicate to: Federal Aviation Administration, Rotorcraft Directorate, Attention: Rules Docket (ASW–111) Docket No. SW017, Fort Worth, Texas 76193–0111, or deliver them in duplicate to the Rotorcraft Directorate at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Docket No. SW017. You may inspect comments in the Docket that is maintained in Room 448 in the Rotorcraft Directorate offices at 2601 Meacham Blvd., Fort Worth, Texas, on weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Electrical Flight Systems

Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards, 2601 Meacham Blvd., Fort Worth, Texas 76193–0110; telephone (817) 222–5120, FAX (817) 222–5961.

SUPPLEMENTARY INFORMATION: We have determined that notice and opportunity for prior public comment are unnecessary since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. Therefore, we determined that good cause exists for making this special condition effective upon issuance.

Comments Invited

You are invited to submit written data, views, or arguments. Your communications should include the regulatory docket or special condition number and be sent in duplicate to the address stated above. We will consider all communications received on or before the closing date and may change the special condition in light of the comments received. Interested persons may examine the Docket. We will file a report summarizing each substantive public contact with FAA personnel concerning this special condition in the docket. If you wish us to acknowledge receipt of your comments, you must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. SW017." We will date stamp the postcard and mail it to you.

Background

On September 13, 2004, Bell Helicopter submitted an application for a Type Certificate for the Model 429 helicopter. The Model 429 helicopter is a new design based on the existing drive train of the Bell Model 427 helicopter and a new fuselage. The Model 429 is a twin-engine, 4-bladed main and tail rotor helicopter with a maximum gross weight of 7,000 pounds, capable of carrying up to nine passengers plus a pilot. The helicopter will be designed for dual and single pilot instrument flight rules (IFR) and Category A operations.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bell Helicopter must show that the Model 429 helicopter meets the applicable provisions of the regulations as listed below:

14 CFR part 27, Amendment 27–0 through Amendment 27–40 dated May 9, 2001.

Sections of 14 CFR part 29, Amendment 29–14 dated September 1, 1977, as listed in 14 CFR part 27 Appendix B for instrument flight rules (IFR).

Sections of 14 CFR part 29 Amendment 29–0 through Amendment 29–47 dated May 9, 2001, as listed in 14 CFR part 27 Appendix C for Category A.

14 CFR part 36 Appendix H, Amendment 36–25, including FAA stage 3 noise limits for helicopters.

Any special conditions, exemptions, and equivalent safety findings deemed necessary.

In addition, the certification basis includes certain special conditions and equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Bell Helicopter Model 429 helicopters must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

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

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

Novel or Unusual Design Features

The Bell Helicopter Model 429 helicopter will incorporate the following novel or unusual design features: Electrical, electronic, or combination of electrical electronic (electrical/electronic) systems that perform critical control functions or provide critical displays, such as electronic flight instruments that will be providing displays critical to the continued safe flight and landing of the helicopter during operation in Instrument Meteorological Conditions (IMC), and Full Authority Digital Engine Control (FADEC) that will be performing engine control functions that are critical to the continued safe flight and landing of the helicopter during visual flight rules (VFR) and IFR operations.

Discussion

The Bell Helicopter Model 429 helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems, such as electronic flight instruments and FADEC. After the design is finalized, Bell Helicopter will provide the FAA with a preliminary hazard analysis that will identify any other critical functions, required for safe flight and landing, that are performed by the electrical/electronic systems.

Recent advances in technology have led to the application in aircraft designs of advanced electrical/electronic systems that perform critical control functions or provide critical displays. These advanced systems respond to the transient effects of induced electrical current and voltage caused by HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of 14 CFR 27.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions; (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) adverse service experience of military aircraft using these technologies; and (4) an increase in the number and power of radio frequency

emitters and the expected increase in the future.

On July 30, 2007, we issued a final HIRL rule (72 FR 44016, August 6, 2007). This rule provides standards to protect aircraft electrical and electronic systems from HIRFs. It was effective September 5, 2007. However, that rule included provisions that provide relief from the new testing requirements for equipment previously certificated under HIRF special conditions issued in accordance with 14 CFR 21.16. To obtain this relief the applicant must be able to show that—

(1) The system has previously been shown to comply with special conditions for HIRF, prescribed under § 21.16, issued before December 1, 2007;

(2) The HIRF immunity characteristics of the system have not changed since compliance with the special conditions was demonstrated; and

(3) The data used to demonstrate compliance with the HIRF special conditions is provided.

The Bell 429 installations are eligible for this relief provided in 14 CFR 29.1317(d) of the final HIRF rule. However, to meet their HIRF requirements they must comply with this Special Condition, which is based on similar, historical HIRF protections requirements.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models' similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

This special condition will require aircraft installed systems that perform critical control functions or provide critical displays to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests. Control system failures and malfunctions can more directly and abruptly contribute to a catastrophic event than display system failures and malfunctions. Therefore, it is considered appropriate to require more rigorous HIRF verification methods for critical control systems than for critical display systems.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment. We have determined that the test environment defined in Table 1 is acceptable for critical control functions in helicopters. The test environment defined in Table 2 is acceptable for critical display systems in helicopters.

The applicant may also demonstrate, by a laboratory test, that the electrical/electronic systems that perform critical control functions or provide critical displays can withstand a peak electromagnetic field strength in a frequency range of 10 kHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) is appropriate for critical display systems. A level of 200 v/m is appropriate for critical control functions. Laboratory test levels are defined according to RTCA/DO–160D Section 20 Category W (100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As defined in DO–160D Section 20, the test levels are defined as the peak of the root means squared (rms) envelope. As a minimum, the modulations required for RTCA/DO–160D Section 20 Categories W and Y will be used. Other modulations should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 kHz sine wave with 80 percent depth of modulation in the frequency range from 10 kHz to 400 MHz, and 1 kHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection. A system may perform both critical and non-critical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions, including control and display.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable, but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—ROTORCRAFT CRITICAL CONTROL FUNCTIONS FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10 kHz–100 kHz	150	150
100 kHz–500 kHz	200	200
500 kHz–2 MHz	200	200
2 MHz–30 MHz	200	200
30 MHz–70 MHz	200	200
70 MHz–100 MHz	200	200
100 MHz–200 MHz	200	200
200 MHz–400 MHz	200	200
400 MHz–700 MHz	730	200
700 MHz–1 GHz	1400	240
1 GHz–2 GHz	5000	250
2 GHz–4 GHz	6000	490
4 GHz–6 GHz	7200	400
6 GHz–8 GHz	1100	170
8 GHz–12 GHz	5000	330
12 GHz–18 GHz	2000	330
18 GHz–40 GHz	1000	420

TABLE 2.—ROTORCRAFT CRITICAL DISPLAY FUNCTIONS FIELD STRENGTH VOLTS/METER

Frequency	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	200
2 GHz–4 GHz	3000	200

TABLE 2.—ROTORCRAFT CRITICAL DISPLAY FUNCTIONS FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
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

Applicability

As previously discussed, this special condition is applicable to the Bell Helicopter Model 429 helicopter. Should Bell Helicopter apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model series of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

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

List of Subjects in 14 CFR Parts 21 and 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for Bell Helicopter Model 429 helicopters.

Protection for Electrical and Electronic Systems from High Intensity Radiated Fields

1. Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

2. For the purpose of this special condition, critical functions are defined as those functions, whose failure would contribute to, or cause, an unsafe condition that would prevent the continued safe flight and landing of the aircraft.

Issued in Fort Worth, Texas, on December 11, 2007.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–25143 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM365 Special Conditions No. 25–357–SC]

Special Conditions: Boeing Model 787–8 Airplane; Systems and Data Networks Security–Protection of Airplane Systems and Data Networks from Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 787–8 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. The architecture of the Boeing Model 787–8 computer systems and networks may allow access to external systems and networks, such as wireless airline operations and maintenance systems, satellite communications, electronic mail, the Internet, etc. On-board wired and wireless devices may also have access to parts of the airplane's digital systems that provide flight critical functions. These new connectivity capabilities may result in security vulnerabilities to the airplane's critical systems. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection and security of airplane systems and data networks against unauthorized access. These 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 standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: *Effective Date:* January 28, 2008.

FOR FURTHER INFORMATION CONTACT: Will Struck, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2764; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2003, Boeing applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

Type Certification Basis

Under provisions of 14 Code of Federal Regulations (CFR) 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as "the 787") meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except §§ 25.809(a) and 25.812, which will remain at Amendment 25–115. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 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 or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The digital systems architecture for the 787 consists of several networks connected by electronics and embedded software. This proposed network architecture is used for a diverse set of functions, including the following.

1. Flight-safety-related control and navigation and required systems (Aircraft Control Domain).
2. Airline business and administrative support (Airline Information Domain).
3. Passenger entertainment, information, and Internet services (Passenger Information and Entertainment Domain).

The proposed architecture of the 787 is different from that of existing production (and retrofitted) airplanes. It may allow connection to and access from external sources and airline operator networks to the previously isolated Aircraft Control Domain and Airline Information Domain. Types of connections and access from external sources may include wireless systems, satellite communications, electronic mail, the Internet, etc. The Aircraft Control Domain and the Airline Information Domain perform functions required for the safe operation of the airplane.

Capability is proposed for providing electronic transmission of field-loadable software applications and databases to the aircraft. These would subsequently be loaded into systems within the Aircraft Control Domain and Airline Information Domain. Also, it may be proposed that on-board wired and wireless devices have access to the Aircraft Control Domain and Airline Information Domain. These new connectivity capabilities and features of the proposed design may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane. Existing regulations and guidance material did not anticipate this type of system architecture or Internet and wireless electronic access to aircraft systems that provide flight critical functions. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities that could be caused by unauthorized external access to aircraft data buses and servers. Therefore, special conditions are proposed to ensure the security, integrity, and availability of the critical systems within the Aircraft Control Domain and the Airline Information Domain by establishing requirements for:

1. Protection of Aircraft Control Domain and Airline Information Domain systems, hardware, software, and databases from unauthorized access.
2. Protection of field-loadable software (FLS) applications and databases that are electronically transmitted from external sources to the on-aircraft networks and storage devices, and used within the Aircraft Control Domain and Airline Information Domain.
3. Test and evaluation of security protection means and change control procedures of aircraft systems, hardware, software, and databases, especially for critical systems and those areas that could affect safety of flight.

Discussion Of Comments

Notice of Proposed Special Conditions No. 25–07–02–SC for the 787 was published in the **Federal Register** on April 16, 2007 (72 FR 18923). Several comments were received from Airbus.

- *AIRBUS General Comment 1:* In Airbus's opinion these special conditions leave too much room for interpretation, and related guidance and acceptable means of compliance should be developed in an advisory circular (AC) for use by future applicants.

FAA Response: We agree that guidance is necessary. Detailed guidelines and criteria have been developed for this aircraft certification program, specific to this airplane's network architecture and design, providing initial guidance on an acceptable means of compliance for the 787. Additionally, the FAA intends to participate in an industry committee chartered with developing acceptable means of compliance to address aircraft network security issues, and hopes to endorse the results of the work of that committee by issuing an AC. Until such time as guidance is developed for a general means of compliance for network security protection, these special conditions and the agreed-to guidance are imposed on this specific network architecture and design. We have made no changes to these special conditions as a result of this comment.

- *AIRBUS Comment (a):* Airbus said that the meaning of "shall ensure system security protection * * * from unauthorized external access" in the first sentence is not accurate enough. Airbus commented that this could be interpreted as a zero allowance and demonstrating compliance with such a requirement all through the aircraft's life cycle is quite impossible since security threats evolve very rapidly. The commenter maintained that the only possible solution to such a requirement would be no link and no communication at all between the aircraft and the outside world. Airbus asked, "if some residual vulnerabilities are allowed, which criteria have to be used to assess their acceptability?"

FAA Response: The applicant is responsible for the design of the airplane network and systems architecture and for ensuring that potential security vulnerabilities of providing external access to airplane networks and systems are mitigated to an appropriate level of assurance, depending on the potential risk to the airplane and occupant safety. This responsibility is similar to that entailed in the current system safety assessment process of 14 CFR 25.1309. (See also AC 25.1309–1A and the ARAC-recommended Arsenal version of this AC, at *http://www.faa.gov/regulations_policies/rulemaking/committees/arac/media/tae/TAE_SDA_T2.pdf* and SAE ARP 4754). These special conditions do not prescribe a specific level of assurance because assurance levels are dependent on the aircraft network architecture, specific external access points allowed, potential threats and vulnerabilities of each access, and various means of mitigating those vulnerabilities, whether by aircraft and network design features, monitoring features, operational procedures, maintenance procedures, and/or combinations thereof. Detailed compliance guidelines and criteria, specific to the 787 network architecture and design, have been developed to provide initial guidance for an acceptable means of compliance for this aircraft model. Residual vulnerabilities may have to be assessed on a case-by-case basis to ascertain whether sufficient and acceptable mitigation is provided. As mentioned earlier, the FAA intends to participate in an industry forum chartered with determining appropriate criteria and acceptable means of compliance, and hopes to endorse that guidance with an AC. We have made no changes to these special conditions as a result of this comment.

- *AIRBUS Comment (b):* Airbus commented that external access can be interpreted in two ways: external to the aircraft, or external to the Aircraft Control Domain and Airline Information Domain. It said that the Passenger Information and Entertainment Domain (PIED) may be considered external and,

if it is, this special condition is redundant to Proposed Special Condition 25–07–01–SC.

FAA Response: Since these special conditions are applicable to the 787 aircraft, the interpretation of "external" means external to the 787 aircraft. Although the PIED is external to the other domains mentioned, it is "internal" to the aircraft. Special Condition 25–07–01–SC was developed to address interfaces between the PIED and the Aircraft Control and Airline Information Domains, and is therefore not redundant. We have made a minor change to these special conditions as a result of this comment. We have reworded the special conditions, changing the words "unauthorized external access" to "access by unauthorized sources external to the airplane" in order to clarify this point.

• *AIRBUS Comment (c):* Airbus commented that the term "unauthorized external access" is too vague and could be interpreted in too restrictive a way, resulting in too few threats being considered. The commenter asked whether unauthorized external access encompasses physical access or unauthorized access by an authorized user and/or an unauthorized user. The commenter asked whether physical tampering has to be considered. Airbus suggested that any threats external to the aircraft be considered, and that we refer as well to the list of threats in the National Airspace System Communication System Safety Hazard Analysis and Security Threat Analysis.

FAA Response: The applicant is responsible for the aircraft network architecture and design, and for implementing security protection mechanisms and controls. Examples include:

- defining authorized versus unauthorized users,
- user authentication,
- defining the scope of authorized users' access to various components connected to the airplane networks,
- ensuring correct software loads are stored on appropriately secured servers, are loaded into the correct systems, are compatible with other loads, etc.; and
- defining the maintenance requirements for ensuring continued operational safety of the aircraft.

Operators and maintainers are responsible for performing maintenance procedures in compliance with those requirements. For maintenance tasks, however, it may be appropriate to provide some level of security protection for mechanics to ensure they are authorized for specific tasks within certain domains or systems of the aircraft for performing repairs or loading software updates, which would typically require "physical access." With current wireless technology, actual physical access may not be necessary to perform some maintenance functions. The applicant is responsible for developing a design which complies with these special conditions and other applicable regulations. The design may include specific technology and architecture features as well as operator requirements, operational procedures and security measures, and maintenance procedures and requirements to ensure an appropriate implementation that can be properly used and maintained to ensure safe operations and continued operational safety. Applicants should define all external accesses and the scope of their aircraft network security protections. Use of the threats listed in the above-mentioned document may be appropriate for these purposes. We have made no changes to these special conditions as a result of this comment.

• *AIRBUS Comment (d):* Airbus said that the external environment needs to be characterized in order to determine which threats the Aircraft Control Domain and Airline Information Domain must be protected from. Questions to be answered include who can and cannot access; who is and is not trusted; and what threat source profile must be considered. The commenter asked whether only new communication media (like internet protocol (IP) communications) would be considered not trusted, or whether all communications, including existing communications for which no security requirements have been applied up to now, would be considered not trusted. Airbus gave ACARS (the Aeronautical Radio Incorporated Communication Addressing and Reporting System) as an example of existing communications that currently have no security requirements.

FAA Response: Each access (or communication) from an external source and its potential vulnerabilities to threats should be evaluated. The security mitigation should provide protection to an appropriate level, whether by design, monitoring, operational procedures, or other means. The security solution could certainly consider access rights and scope, trusted versus not trusted sources and data, how reliable incoming communication data may be, and other factors, depending on the intended use and potential for presenting a security risk. We have made no changes to these special conditions as a result of this comment.

• *AIRBUS Comment (e):* Airbus said that the characterization of the external environment must be extended to the maintenance organization, because the security objectives of these special conditions must consider maintenance activity. Proposed condition 1 requires minimizing the likelihood of reductions in safety margins or airplane functional capabilities, "* * * including those possibly caused by maintenance activity". Airbus said that the trust level for the maintenance organization, to be defined, may significantly impact the design of the on-board security protections and the compliance demonstration.

FAA Response: The proposed special conditions include the potential for security risks from maintenance activities. Applicants should develop a design and maintenance procedures which facilitate routine maintenance of the aircraft, networks and systems, and equipment. The design and maintenance procedures should also provide capabilities for ensuring that security features and updates can be maintained by the operators and maintenance personnel, to ensure continued airworthiness and operational safety of the aircraft for its service life. These are methods of compliance issues, and therefore we have made no changes to these special conditions as a result of this comment.

• *AIRBUS Comment (f):* Airbus referred to wording in the second sentence of the proposed special condition : "* * * to minimize the likelihood of occurrence of each of the following conditions: * * * " Airbus noted that the definition of likelihood of occurrence and the criteria for fulfilling the security objectives are missing. The commenter asked, "when is an identified risk considered mitigated?" Airbus also noted that the 3 conditions at the end of the special conditions are quite similar to the description of safety severity effects for a "Failure Condition classified Major" per AC 25.1309–1A (or AC/AMJ No: 25.1309). Airbus maintained that, as a result, this description can be interpreted as an allowable qualitative likelihood of occurrence corresponding to "remote" and an allowable quantitative probability corresponding to less than 10E–5. Airbus said that such a classification, if interpreted in this way, may be irrelevant in some cases, because consequences may be more severe, and only a security threat analysis process can conclude which safety effect is acceptable. The commenter said that recognizing this process as an acceptable means of compliance (through an AC) could

remove any dispute about how to assess the severity and likelihood of occurrence of a threat over which the applicant has no control.

FAA Response: We agree that a "security threat analysis process" (or other acceptable means) should be conducted to determine the threats, vulnerabilities, and risks of each airplane network access from an external source to determine appropriate security mitigation protection and procedures for the aircraft, its operations, and maintenance. The aircraft and system safety assessments (as described in AC 25.1309) should certainly consider the impact of security vulnerabilities on aircraft safety and the capabilities of the aircraft's systems to satisfy reliability and integrity requirements. Detailed guidelines and criteria, specific to the 787 network architecture and design, have been developed for this aircraft and provide some initial guidance for an acceptable means of compliance. The FAA also intends to participate in industry efforts to develop additional guidance on the scope of security assessments and a general means of addressing aircraft network security concerns. We hope to endorse the industry-developed guidance, when it has been completed, with an advisory circular. We have made some minor changes to these special conditions as a result of this comment to clarify the scope for security threat analysis.

- *AIRBUS proposed text revision:* Airbus proposed the following revised wording for these special conditions.

The applicant shall ensure that security threats external to the aircraft (including those possibly caused by maintenance activity) are assessed and risk mitigation strategies are implemented to protect the Aircraft Control Domain and Airline Information Services Domain from adverse impacts reducing the aircraft safety.

FAA Response: Airbus's comments and proposal have merit but the proposal does not address all of the FAA concerns. We have, however, adopted several aspects of the commenter's proposal into these final special conditions. We have made these wording changes for clarification, but the meaning and intent of these special conditions remain the same as originally proposed.

Applicability

As discussed above, these special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the 787. It 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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 787–8 airplane.

The applicant shall ensure system security protection for the Aircraft Control Domain and Airline Information Domain from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity. The applicant shall ensure that security threats are identified and assessed, and that risk mitigation strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

Issued in Renton, Washington, on December 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25075 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM385; Special Conditions No. 25–364–SC]

Special Conditions: Boeing Model 757 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 757 Series Airplanes. These airplanes, as modified by Triad International Maintenance Company (TIMCO), will have a novel or unusual design feature(s) associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective Date: The effective date of these special conditions is December 18, 2007.

FOR FURTHER INFORMATION CONTACT: Dan Jacquet, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; telephone (425) 227–2676; facsimile (425) 227–1232; electronic mail *daniel.jacquet@faa.gov.*

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Seats with Non-Traditional, Large, Non-Metallic Panels

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure a level playing field for the aviation industry.

Background

On July 31, 2007, Triad International Maintenance Company (TIMCO), 623 Radar Road, Greensboro, North Carolina 27410, applied for a supplemental type certificate for installing seats that include non-traditional, large, non-metallic panels in a Boeing Model 757 series airplane. The Boeing Model 757 series airplanes, currently approved under Type Certificate No. A2NM, are swept-wing, conventional tail, twin-engine, turbofan-powered, single aisle, medium-sized transport category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A2NM do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then recently adopted standards for flammability of seat

cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat release and smoke emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14 Code of Federal Regulations (CFR), part 25, Appendix F, parts IV and V, heat release and smoke emission requirements.

Type Certification Basis

Under the provisions of 14 CFR 21.101, TIMCO must show that the Boeing Model 757 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A2NM are as follows:

- For Model 757–200 airplanes—part 25, as amended by Amendment 25–1 through Amendment 25–45. In addition, an equivalent safety finding exists with respect to § 25.853(c), Compartment interiors.
- For Model 757–300 airplanes—part 25, as amended by Amendment 25–1 through Amendment 25–85 with the exception listed: Section 25.853(d)(3), Compartment interiors, at Amendment 25–72.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25) do not contain adequate or appropriate safety standards for the Boeing Model 757 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 757 series airplanes 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.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 757 series airplanes will incorporate the following novel or unusual design features: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. In order to provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas and associated furniture. Examples of traditional exempted parts of the seat include: arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds.

Clarification of "Exposed"

"Exposed" is considered to include panels that are directly exposed to the passenger cabin in the traditional sense, and panels that are enveloped, such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (*i.e.*, § 25.853 entitled "Compartment interiors" as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and there were only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat release and smoke requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985) and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded "because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats."

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: "It is not possible

to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made."

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, *Guidance for Flammability Testing of Seat/Console Installations*, October 17, 1997 (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large, non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large surface area panels must comply with heat release and smoke emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat release and smoke emissions requirements. We have determined that special conditions would be promulgated to apply the standards defined in § 25.853(d) to seats with large, non-metallic panels in their design.

Discussion of Comments

Notice of proposed special conditions No. 25–07–17-SC, pertaining to Boeing Model 757 series airplanes, was published in the **Federal Register** on November 27, 2007. No comments were received and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 757 series airplanes. It is not our intent, however, to require seats with large, non-metallic panels to meet § 25.853, Appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Because the heat release and smoke testing requirements of § 25.853 per Appendix F, parts IV and V, are not part of the type certification basis of the Model 757, these special conditions are only applicable if the Model 757 series airplanes are in 14 CFR part 121 operations. Section 121.312 requires compliance with the heat release and smoke testing requirements of § 25.853, for certain airplanes, irrespective of the type certification bases of those airplanes. For Model 757 series airplanes, these are the airplanes that would be affected by these special conditions. Should TIMCO apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Effective Upon Issuance

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 delivery date for the Boeing Model 757 series airplane modified by TIMCO 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 one model series of airplanes. It is not a rule of general applicability and it affects only the applicant who 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 type certification basis for Boeing Model 757 series airplanes modified by TIMCO.

1. Except as provided in paragraph 3 of these special conditions, compliance with Title 14 CFR part 25, Appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition Number 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (*e.g.*, outboard seat place 1 square foot, middle 1 square foot, and inboard 2.5 square feet).

3. Seats do not have to meet the test requirements of Title 14 CFR part 25, Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and

c. Airplanes exempted from § 25.853, Amendment 25–61 or later.

Issued in Renton, Washington, on December 18, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25077 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28352; Directorate Identifier 2007–NM–037–AD; Amendment 39–15309; AD 2007–26–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, 747–300, 747–400, 747–400D, and 747–400F Series Airplanes Equipped with General Electric CF6–80C2 Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–200B, 747–300, 747–400, 747–400D, and 747–400F series airplanes. This AD requires repetitive inspections of the left- and right-hand flipper door assemblies of the engine

core cowls for migrated pins and damaged flipper doors, and corrective actions if necessary. Modification of the hinge assemblies terminates the repetitive inspections. This AD results from two reports of missing flipper doors for the engine core cowls. We are issuing this AD to detect and correct migrated hinge pins and damaged flipper doors, which could allow the flipper door to fall off, resulting in the potential for an engine fire to propagate into the flammable leakage zone of the strut and for the amount of fire extinguishing agent reaching the fire to be diluted, and subsequent uncontained fire in the engine strut.

DATES: This AD becomes effective February 1, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 1, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–200B, 747–300, 747–400, 747–400D, and 747–400F series airplanes. That NPRM was published in the **Federal Register** on June 5, 2007 (72 FR 31001). That NPRM proposed to require repetitive inspections of the left- and right-hand flipper door assemblies of the engine core cowls for migrated pins and damaged flipper doors, and corrective actions if necessary. That NPRM specified that the modification of the hinge assemblies would terminate the repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request to Clarify the Requirements Specified in Paragraph (f) of the NPRM

Boeing requests that we revise paragraph (f) of the NPRM to clarify that the modification specified in Boeing Special Attention Service Bulletin 747–71–2310, dated October 13, 2005, is necessary only if hinge pins have migrated or flipper doors are damaged or missing. Boeing states that the instruction to do all applicable corrective actions could be interpreted to mean that the proposed modification is required, regardless of the inspection findings.

We agree that modification is necessary only when hinge pins have migrated or the flipper doors are damaged or missing. Both Boeing Special Attention Service Bulletin 747–71–2310, and Rohr Service Bulletin TBC/80C2–NAC–71–035, dated October 10, 2005, clearly state that modification is necessary only when hinge pins have migrated or the flipper doors are damaged or missing. We have made no change to the AD in this regard.

Request to Clarify the Requirements Specified in Paragraph (g) of the NPRM

Boeing requests that we revise paragraph (g) of the NPRM to clarify that accomplishing Rohr Service Bulletin TBC/80C2–NAC–71–035, as instructed in Boeing Special Attention Service Bulletin 747–71–2310, does not necessarily result in modification of the core cowl. Boeing points out that, if the hinge pin is properly installed, modification in accordance with Rohr Service Bulletin TBC/80C2–NAC–71–035 is not necessary.

We agree with Boeing's comment. The actions specified in Rohr Service Bulletin TBC/80C2-NAC–71–035 do not require modification if the hinge pin has not migrated and is properly peened. We have changed paragraph (g) of this AD to say that accomplishment of the Rohr service bulletin terminates the repetitive inspection requirements (for non-discrepant hinge pins) of paragraph (f) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received from the single commenter, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 297 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of flipper door assemblies, per inspection cycle.	1	$80	$0	$80, per inspection cycle.	42	$3,360, per inspection cycle.
Modification of hinge assemblies, if accomplished.	1	80	0	80	Up to 42	Up to $3,360.

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 AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

(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) 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–26–07 Boeing: Amendment 39–15309. Docket No. FAA–2007–28352; Directorate Identifier 2007–NM–037–AD.

Effective Date

(a) This AD becomes effective February 1, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–200B, 747–300, 747–400, 747–400D, and 747–400F series airplanes, certificated in any category, equipped with General Electric CF6–80C2 engines.

Unsafe Condition

(d) This AD results from two reports of missing flipper doors for the engine core cowl. We are issuing this AD to detect and correct migrated hinge pins and damaged flipper doors, which could allow the flipper door to fall off, resulting in the potential for an engine fire to propagate into the flammable leakage zone of the strut and for the amount of fire extinguishing agent reaching the fire to be diluted, and subsequent uncontained fire in the engine strut.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection of the Flipper Door Assemblies

(f) Within 24 months after the effective date of this AD: Do a general visual inspection for migrated hinge pins and damaged flipper doors of the left- and right-hand flipper door assemblies of the engine core cowls, and do all applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2310, dated October 13, 2005. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 18 months for that flipper door assembly, until doing the actions specified in paragraph (g) of this AD.

Note 1: Boeing Special Attention Service Bulletin 747–71–2310, dated October 13, 2005, refers to Rohr Service Bulletin TBC/80C2–NAC–71–035, dated October 10, 2005, as an additional source of service information for accomplishing the actions specified in paragraph (f) of this AD.

Terminating Action for Repetitive Inspections

(g) Accomplishing the inspection and applicable modification of a hinge assembly of a flipper door assembly of the engine core cowl in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2310, dated October 13, 2005; or Rohr Service Bulletin TBC/80C2–NAC–71–035, dated October 10, 2005; terminates the repetitive inspection requirements of this AD for that hinge assembly.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, a hinge assembly, part number 224–2335–69, for the flipper door of the engine core cowl unless it has been modified in accordance with the requirements of paragraph (g) of this AD.

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 747–71–2310, dated October 13, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on December 11, 2007.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24520 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 772

Definitions of Terms

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2007, on page 577, in § 772.1, in the second column, the second definition of *Production* is removed.

[FR Doc. 07–55526 Filed 12–27–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 312, 314, 601, 610, 801, 807, 809, 812, and 814

[Docket No. 2006N–0466]

Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations to permit FDA Center Directors to grant exceptions or alternatives to certain regulatory labeling requirements applicable to human drugs, biological products, or

medical devices that are or will be included in the Strategic National Stockpile (SNS). Under this rule, the appropriate FDA Center Director may grant an exception or alternative to such labeling requirements if he or she determines that compliance with the requirements could adversely affect the safety, effectiveness, or availability of specified lots, batches, or other units of human drugs, biological products, or medical devices that are or will be included in the SNS, including not only those that are approved, licensed, or cleared for marketing, but also those that are investigational. A grant of an exception or alternative under these regulations will include any safeguards or conditions deemed appropriate by the FDA Center Director to ensure that the labeling of such products includes information for the safe and effective use of the products given their anticipated circumstances of use. This rule will facilitate the safety, effectiveness, and availability of appropriate medical countermeasures in the event of a public health emergency.

DATES: The interim final rule is effective on December 28, 2007. Submit written or electronic comments on the interim final rule by March 27, 2008. Submit written or electronic comments regarding the information collection by January 28, 2008 to the Office of Management and Budget (OMB) (see **ADDRESSES**).

ADDRESSES: You may submit comments, identified by Docket No. 2006N–0466, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the "Request for Comments" heading of 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.

Information Collection Provisions: Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs; OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: *For information concerning human biological products*: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

For information concerning human drug products: Brad G. Leissa, Center for Drug Evaluation and Research, Food and Drug Administration, Mail Stop 1603, 10903 New Hampshire Ave., White Oak Complex, Building 21, Room 1624, Silver Spring, MD 20993, 301–796–2190.

For information concerning medical devices: Casper E. Uldriks, Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., rm. 229, Rockville, MD 20850, 301–276–0106.

SUPPLEMENTARY INFORMATION:

I. Introduction

This interim final rule applies to human drugs, biological products, and medical devices (hereinafter referred to collectively as medical products) that are or will be held in the SNS, including those SNS assets that are held at the manufacturer's facility or elsewhere on behalf of the SNS (e.g., vendor managed inventory that is distributed, held, and managed by manufacturers or commercial distributors for the SNS) and prepositioned locations (e.g., CHEMPACKs that are distributed, held, and managed by hospitals and other facilities for the SNS).

An act of terrorism or a natural disaster event may result in the need for rapid access to large quantities of medical products. Under the Public Health Service Act (PHS Act), the Department of Health and Human Services (HHS) stockpiles medical products that are essential to the health security of the Nation. (See PHS Act section 319F–2, 42 U.S.C. 247d–6b)). This collection of medical products , known as the SNS, is to "provide for the emergency health security of the United States, including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency." The SNS is maintained by the Assistant Secretary for Preparedness and Response (ASPR), exercising this responsibility and authority of the Secretary, in collaboration with the Director of the Centers for Disease Control and Prevention (CDC), and in coordination with the Department of Homeland Security. Examples of situations that may necessitate the deployment of such products from the SNS are:

- Acts of terrorism using chemical, biological, radiological, or nuclear agents;
- Mass trauma; or
- Natural disasters such as hurricanes, pandemics, or earthquakes.

The SNS is also designed to augment similar stockpiles of medical supplies held by State and local public health agencies for use in the event of a national emergency.

II. Background

It may be appropriate for certain medical products that are or will be held in the SNS to be labeled in a manner that would not comply with certain FDA labeling regulations, given their anticipated circumstances of use in an emergency. However, noncompliance with these labeling requirements could render such products misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the FFD&C Act or the act) (21 U.S.C. 352).

Under this rule, the appropriate FDA Center Director may grant an exception or alternative to certain FDA labeling requirements if compliance with the requirements could adversely affect the safety, effectiveness, or availability of products that are or will be in the SNS. An exception or alternative granted

under this rule may include conditions or safeguards so that the labeling for such products includes appropriate information necessary for the safe and effective use of the product given the product's anticipated circumstances of use.

Issues relating to the labeling of products that are or will be in the SNS exist now and will likely continue to develop. Such labeling issues may arise as a result of many different factors, including the indicated use, the storage location, the necessary storage conditions for a particular product, or the unique distribution mechanisms that may be used in an emergency. The provisions of this rule apply only to medical products that are or will be included in the SNS.

The medical products that may be stockpiled in the SNS include not only those that are approved, licensed, or cleared for marketing, but also those that are investigational.[1] When HHS procures investigational medical products for the SNS (i.e., products for which investigational new drug (IND) applications or investigational device exemptions (IDE) are in effect), it anticipates that these products may eventually become licensed, approved, or cleared for marketing by FDA while the products remain stockpiled. Labels on investigational products, however, including those in the SNS, ordinarily would not contain all elements required on licensed, approved, or cleared product labels.

For example, certain information may not be available until after approval of the product. For licensed biological products, § 610.60 (21 CFR 610.60) requires the container label to include, among other things, the expiration date of the product and license number of the manufacturer. Similarly, § 201.17 (21 CFR 201.17), which applies to drugs, sets forth requirements regarding placement of an expiration date, when required, on the immediate container. This information may not be available for an investigational product and thus could not be placed on container labels if the investigational product was added to the SNS. (See section III.D of this document for a discussion of conditions or safeguards that may be imposed in connection with an alternative or exception granted under this rule to ensure that labeling includes information necessary for safe and effective use of the product.)

[1]Medical products stockpiled in the SNS may also include products that will ultimately be used in an emergency under section 564 of the FFD&C act (21 U.S.C. 360bbb-3) (regarding Emergency Use Authorizations).

Similarly, for medical devices that are restricted to use by prescription, § 801.109 (21 CFR 801.109) requires that the device label, other than for surgical instruments, bear a statement restricting sale of the device by order of a healthcare practitioner licensed by the law of the State in which he practices (§ 801.109(b)(1)). Whether a particular investigational device will be limited to sale by prescription may not be known before approval or clearance and, thus, this statement could not be placed on the investigational device's label if the product was still investigational when the device was added to the SNS. Additionally, the label of approved or cleared in vitro diagnostic products (IVDs) must contain information, such as warnings for users and storage instructions, that may not be finalized until product approval or clearance and could not be placed on the label if the investigational products were added to the SNS (see § 809.10).

Prior to the implementation of this rule, when such investigational products were ultimately approved for marketing, the products would have been subject to relabeling, a potentially time-consuming, costly, and labor-intensive process given that the SNS can contain large numbers of these products. The SNS does not have manufacturing facilities or equipment necessary to relabel products that the SNS stores. Therefore, it is not feasible for SNS personnel to relabel products that are physically located in SNS storage sites. Prior to the implementation of this rule, the products would have needed to be returned to the manufacturers or sent to relabelers in order to be relabeled. Requiring relabeling of such investigational medical products after approval, licensure, or clearance could adversely affect the safety, effectiveness, or availability of these medical products in a number of ways. For example, shipping certain products from the SNS storage sites to the manufacturer or a relabeler for relabeling could subject them to unacceptable temperature deviations and create opportunities for product mishandling, such as mixing of different batches of the same product. Relabeling is especially difficult for certain products that must be stored at extremely low temperatures. In some instances, relabeling could cause the product to be unavailable for dispensing, delay deployment of the product for use, or could result in reduced product quality (e.g., potency or stability) and the loss of critical products. Security issues may also affect availability, as there is the potential for sabotage and diversion if a product were shipped back to the manufacturer or to a relabeler.

For these reasons, as explained in the following section of this document, this rule allows FDA Center Directors to grant exceptions or alternatives to certain labeling requirements not explicitly required by statute for medical products that are or will be included in the SNS.

III. Provisions of the Interim Final Rule

A. Applicability of a Request for an Exception or Alternative

Under §§ 201.26, 610.68, 801.128, and 809.11 (21 CFR 201.26, 610.68, 801.128, and 809.11), the appropriate FDA Center Director may grant a request for an exception or alternative to certain regulatory provisions pertaining to the labeling of human drugs, biological products, and medical devices that currently are or will be included in the SNS if certain criteria are met. Any grant of an exception or alternative will only apply to the specified lots, batches, or other units of medical products in the request. We request comments on whether the scope of the rule should be amended to extend to medical products in other Federal, State, and local stockpiles, and if so, to which stockpile(s) the rule should apply.

The appropriate FDA Center Director will only review requests for exceptions or alternatives to the labeling provisions specified in this rule. The rule is not intended to provide a mechanism for waiving applicable requirements of sections 502 and 503 (21 U.S.C. 353) of the FFD&C Act and/or section 351 of the PHS Act. For example, under this new rule, an SNS official (or a manufacturer with an SNS official's written concurrence) may submit to FDA a request for an exception or alternative to a regulatory provision identified in this rule, such as where an expiration date may be placed under § 201.17, but not to the requirements under the PHS Act that the package (not necessarily the container) of a biological product be plainly marked with the product's expiration date (section 351(a)(1)(B)(iii) of the PHS Act (42 U.S.C. 262(a)(1)(B)(iii))). To the extent that a request for an exception or alternative to labeling requirements under this rule implicates other regulations not specified in this rule (e.g., regulations in 21 CFR part 211, Current Good Manufacturing Practice for Finished Pharmaceuticals) or involves statutory requirements, FDA will limit its consideration of the exception or alternative request to the labeling provisions specified in this rule. The remaining portions of such a request or

other requests (i.e., those that do not involve the labeling provisions specified in this rule) will be reviewed under other applicable waiver provisions, if any.

We note that FDA's authority to grant an exception or alternative to the regulatory provisions specified in the rule is distinct from the agency's authority to exercise enforcement discretion (i.e., decide not to take or recommend enforcement action) with respect to statutory and regulatory requirements, including those involving product labeling (see Heckler v. Chaney, 470 U.S. 821 (1985)).

In granting an exception or alternative under this rule, the appropriate FDA Center Director will consider whether compliance with the labeling requirements specified in this rule could adversely affect the safety, effectiveness, or availability of medical products that are or will be included in the SNS. As previously explained in this document, relabeling these medical products in compliance with certain FDA labeling regulations could adversely affect the safety, effectiveness, or availability of the products in some circumstances. In those instances, the appropriate FDA Center Director may grant an exception or alternative to the labeling requirements specified in this rule. On the other hand, there may be some products for which full or partial relabeling in compliance with the labeling requirements specified by this rule will not adversely affect the safety, effectiveness, or availability of the products. In such cases, an exception or alternative to the labeling requirements specified in this rule would not be warranted.

On a case-by-case basis, the appropriate FDA Center Director may also determine when an exception or alternative is granted that certain safeguards and conditions are appropriate, such as additional labeling on the SNS products, so that the labeling of such products would include information needed for safe and effective use under the anticipated circumstances of use.

B. Who May Submit a Request

A request for an exception or alternative to the labeling requirements specified in this rule may be submitted by an SNS official, or by any entity that manufactures (including labeling, packing, repackaging, or relabeling), distributes, or stores the medical products subject to the request. Requests from entities other than the SNS must be submitted with an SNS official's written concurrence. We believe that many of the requests under this rule will be submitted by manufacturers, with concurrence of SNS officials, prior to or at the time a specified lot, batch, or other unit of product is procured by the SNS, or when an investigational product held in the SNS has been approved, licensed, or cleared. We anticipate that SNS officials will also submit requests.

The appropriate FDA Center Director may also grant an exception or alternative to the labeling provisions specified in this rule at his or her own initiative.

C. Request Criteria

Except when initiated by an FDA Center Director, a request for an exception or alternative to the labeling requirements specified in this rule will be in writing and must contain:

- An identification of the specific lot, batch, or other unit of product, which are or will be in the SNS, that would be subject to the exception or alternative;
- An identification of the specific labeling provisions under this rule that are the subject of the request;
- An explanation of why compliance with the specified labeling provisions could adversely affect the safety, effectiveness, or availability of the product subject to the request;
- A description of any proposed safeguards or conditions to be implemented so that the labeling of the product includes appropriate information necessary for the safe and effective use of the product given the anticipated circumstances of use;
- Copies of the proposed labeling of the specified lots, batches, or other units of product that will be subject to the exception or alternative; and
- Any other information requested by the appropriate FDA Center Director.

D. Granting of the Request

When the appropriate FDA Center Director grants or denies a request for an exception or alternative to the labeling requirements specified in this rule, the FDA Center Director will convey this decision in writing. In the written decision, the FDA Center Director may also impose appropriate conditions or safeguards so that the labeling of the product includes appropriate information necessary for the safe and effective use of the product given the anticipated circumstances of use. Such safeguards or conditions need not be limited to those proposed in the request, nor do they need to include all conditions or safeguards proposed in the request. Conditions could include, for example, a requirement of additional labeling on the SNS product, such as including the statement "For Strategic National Stockpile Use Only" on the label or elsewhere within the product's labeling. Such conditions could also address how or where any packaging or labeling changes would be conducted, or with what personnel. For example, the manufacturer may be required to take additional steps to ensure that products licensed, approved, or cleared while in the SNS bear information in their outer package labeling that was not available when such products entered the SNS as investigational products.

After the request is granted, the manufacturer may need to report to FDA any resulting changes to the New Drug Application (NDA), Biologics License Application (BLA), Premarket Approval Application (PMA), or Premarket Notification (510(k)) in effect, if any. The submission and grant of a request for an exception or alternative to the labeling requirements specified in this rule may be used to satisfy certain reporting obligations relating to changes to product applications under § 314.70 (21 CFR 314.70) (human drugs), § 601.12 (21 CFR 601.12) (biological drugs), § 814.39 (21 CFR 814.39) (medical devices subject to premarket approval), or § 807.81 (21 CFR 807.81) (medical devices subject to premarket notification submission (510(k) clearance) requirements). Specifically, because the information affecting the premarket application will already be reviewed and approved as part of the request for an exception or alternative, manufacturers of medical products to which annual or periodic reporting requirements apply must describe such changes in their annual (or periodic) reports but are not required to submit supplement(s) to an approved application describing this information. This will reduce regulatory burden on industry by reducing duplication of regulatory submissions. Supplements under 21 CFR 814.39 and periodic reports under § 814.84 are not required for medical devices with 510(k) clearance, however. For these devices, the Center Director may determine that the submission and grant of a written request for an exception or alternative under this rule satisfies the 510(k) submission requirements in § 807.81(a)(3).

E. Labeling Provisions Subject to Exception or Alternative

We are listing in §§ 201.26(f) (human drug products), 610.68(f) (biological products), 801.128(f) (medical devices), and 809.11(f) (in vitro diagnostic products) those labeling provisions for which the appropriate FDA Center Director may grant an exception or alternative. As indicated in section III.A

of this document, requests for exceptions or alternatives to other requirements of FDA's labeling regulations (such as bar code label requirements), or to other general regulations or statutory provisions, will be handled under any waiver provisions that may be applicable to those statutory or regulatory requirements. Additionally, FDA may exercise enforcement discretion with respect to the labeling requirements specified in this rule or other regulatory and statutory requirements.

1. Human Drug Products (§ 201.26(f))

For human drug products, including biological drugs, the following requirements pertaining to labeling in part 201, subpart A (21 CFR part 201, subpart A) and § 312.6 (21 CFR 312.6) may be the subject of an exception or alternative under this rule, except to the extent that they are explicitly required by statute:

- Identification of persons other than the manufacturer, packer, or distributor (§ 201.1(h)(1));
- Appearance of a person's name without qualification on the label (§ 201.1(h)(2));
- Appropriate qualifying phrases for the identity of the distributor or packer (§ 201.1(h)(5) and (h)(6));
- Criteria for the statement of the place of business (§ 201.1(i));
- Placement of the ingredient information required by section 502(e) of the FFD&C Act (§ 201.10(a));
- Criteria for the statement of the percentage of an ingredient in a drug (§ 201.10(d)(2));
- Declaration that an ingredient is a derivative or a preparation of a substance specifically named in section 502(e) of the FFD&C Act when the established name does not indicate such (§ 201.10(f));
- Criteria for the frequency of use and use in the running text of the established name in association with the proprietary name or designation for the drug or any ingredient thereof in the label or labeling of a prescription drug (§ 201.10(g)(1));
- The placement of the quantitative ingredient information when the established name does not correspond to the proprietary name or designation and the prescription drug contains two or more active ingredients (§ 201.10(h)(1));
- The location of the expiration date (§ 201.17);
- The information provided by the lot number (§ 201.18);
- Use of the term "infant" (§ 201.19);
- Declaration of the presence of FD&C Yellow No. 5 and FD&C Yellow No. 6 in certain drugs for human use (§ 201.20);
- Declaration of the presence of phenylalanine as a component of aspartame in over-the-counter and prescription drugs for human use (§ 201.21);
- Required warning statements for prescription drugs containing sulfites (§ 201.22);
- Labeling statements for systemic antibacterial drug products (§ 201.24); and
- The prescribed statement for investigational new drugs limiting them to investigational use (§ 312.6(a)).

2. Biological Drug Products (§ 610.68(f))

In addition to the labeling requirements for investigational new drugs in § 312.6, certain labeling requirements for biological products in 21 CFR part 610 subpart G, except to the extent that they are explicitly required by statute, may also be the subject of an exception or alternative under this rule:

- The information required on the product's container label (§ 610.60);[2]
- Certain information on the package label, specifically: Lot number, information on the preservative, number of containers, recommended storage temperature, certain instructions for use, recommended individual dose, route of administration, known sensitizing substances, type and amount of added antibiotics, inactive ingredients, adjuvant, source of product, identity of microorganisms used in manufacture, and minimum potency (§ 610.61(c) and (e) through (r));
- Requirements relating to the position and prominence of the proper name on the package label as well as requirements relating to size and type of characters (21 CFR 610.62);
- The placement on the container and package label of the name, address, and license information of each manufacturer participating in the manufacture of a biological product, if two or more manufacturers participate in manufacturing (21 CFR 610.63);
- The name and address of the distributor, and the required identifying phrases on the label (21 CFR 610.64); and
- Label requirements relating to products for export (21 CFR 610.65)

3. Medical Devices (§ 801.128(f))

For medical devices, the appropriate FDA Center Director may grant a request for an exception or alternative to certain labeling requirements in parts 801 and 812 (21 CFR parts 801 and 812), except to the extent that they are explicitly required by statute:

- Criteria for the statement of the place of business (§ 801.1(d));
- Labeling information on the principal display panel of over-the-counter devices in package form, i.e., the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale (§ 801.60);
- Requirements related to an accurate statement of principal intended action and format of a statement of identity for an over-the-counter device in package form (§ 801.61);
- Requirements related to the declaration of net quantity of contents on the label of an over-the-counter device in package form (§ 801.62);
- Warning statement for over-the-counter devices containing or manufactured with chlorofluorocarbons and other class I ozone-depleting substances (§ 801.63);
- Labeling requirements for prescription devices (§ 801.109);
- Labeling requirements for specific devices including dentures and hearing aids (part 801, subpart H);
- The prescribed statement for investigational devices limiting the device to investigational use (§ 812.5(a)); and
- The prescribed statement for investigational devices used solely on research animals limiting the device to investigational use in laboratory animals (§ 812.5(c)).

4. In Vitro Diagnostic Products (§ 809.11(f))

The appropriate FDA Center Director may grant a request for an exception or alternative to the following requirements pertaining to IVDs in parts 809 (21 CFR part 809) and 812, except to the extent that they are explicitly required by statute.

- Certain label information for IVDs, i.e., the proprietary name; the intended use or uses of the product; for a reagent, the declaration of the established name, if any, the quantity, proportion, and concentration of each reactive ingredient, and the source and activity if derived from a biological material; statement of warnings or precautions; for a reagent, appropriate storage instructions adequate to protect the stability of the product; for a reagent, a means by which the user may be ensured that the product meets appropriate standards of identity, strength, quality and purity at the time of use; and a lot or control number (§ 809.10(a)(1) through (a)(6) and (a)(9));

[2] This is distinct from the requirements for a product's package label under § 610.61 (21 CFR 610.61).

- Labeling accompanying each IVD, including reagents and instruments, i.e., such information as proprietary name, intended use or uses, summary and explanation of the test, a statement of warnings or precautions for users, information regarding specimen collection and preparation for analysis, outline of recommended procedures, information regarding results, limitation of the procedure, expected values, specific performance characteristics, and bibliography (§ 809.10(b));
- The prescribed statements for investigational IVDs that are not subject to part 812 (§ 809.10(c)(2));
- The label of general purpose laboratory reagents, i.e., the proprietary name; the quantity, proportion, or concentration of the reagent ingredient; and for a reagent derived from biological material, the source and measure of activity; statement of purity and quality of the reagent; statement of warnings or precautions; appropriate storage instructions adequate to protect the stability of the product; and a lot or control number (§ 809.10(d)(1)(i) through (d)(1)(v) and (d)(1)(viii));
- Labeling of general purpose laboratory equipment, i.e., description of the product, its composition, and physical characteristics if necessary for use (§ 809.10(d)(2)); and
- Labeling for analyte specific reagents, i.e., the proprietary name; the quantity, proportion, or concentration of the reagent ingredient; and for a reagent derived from biological material, the source and measure of activity; statement of purity and quality of the reagent; statement of warnings or precautions for users; date of manufacture and appropriate storage instructions adequate to protect the stability of the product; a lot or control number; prescribed statements regarding analytical and performance characteristics specific to class I, II, and III analyte specific reagents (§ 809.10(e)(1)(i) through (e)(1)(vi) and (e)(1)(ix) through (e)(1)(xi)).

IV. Legal Authority

In this interim final rule, FDA is amending regulations pertaining to the content and format of medical product labeling. The provisions of this rule will allow FDA to grant exceptions or alternatives to certain of those labeling requirements. The labeling regulations to which exceptions or alternatives will be permitted were issued by FDA under authority of the FFD&C Act and the PHS Act to mandate particular ways that firms must satisfy the broad requirements and prohibitions in those statutes, such as the prohibition on false and misleading drug and device labeling. As described in section II of this document, FDA has determined that circumstances may arise in which compliance with those regulatory mandates could adversely affect the safety, effectiveness, or availability of certain medical products that are or will be included in the SNS. Moreover, due to the unique nature of the SNS, those products could deviate from particular mandates of existing labeling regulations without violating the broad statutory requirements and prohibitions in the FFD&C Act and the PHS Act. For those reasons, FDA is exercising its authority to regulate labeling by modifying the existing regulations in a way that will allow exceptions or alternatives for medical products that are or will be included in the SNS.

FDA has various sources of authority to issue labeling regulations. For example, under section 502(a) of the FFD&C Act, a drug (including biological products) or device is misbranded if its labeling is false or misleading in any particular. In determining whether a product's labeling is misleading, FDA may consider not only representations or suggestions made in the labeling, but also whether the labeling fails to reveal material facts in light of those representations or suggestions or with respect to consequences which may result from the use of the product under customary or usual conditions of use (section 201(n) of the FFD&C Act (21 U.S.C. 321(n))). By authority delegated under section 701(a) of the FFD&C Act (21 U.S.C. 371(a)), FDA is authorized to issue regulations for the efficient enforcement of the FFD&C Act. Existing FDA regulations mandating specific labeling content and format for drugs and devices satisfy those general statutory standards. For example, many labeling regulations are designed to ensure that nothing in the labeling is false or misleading in any particular, to ensure that the labeling reveals all material facts in light of the representations or suggestions in the labeling, and to ensure that FDA may efficiently enforce those statutory requirements as well as other requirements of the FFD&C Act and the PHS Act.

Because biological products are also drugs as defined within the FFD&C Act, the authority discussed previously extends to regulations prescribing content and format requirements for biological product labeling. There is, however, additional legal authority in the PHS Act for this rule's requirements with respect to biological products generally. For example, section 351(a)(1)(A) of the PHS Act provides that no person may introduce or deliver for introduction into interstate commerce any biological product unless a biologics license is in effect for the product. By authority delegated under section 351(a)(2)(A) of the PHS Act, FDA is required to establish, by regulation, requirements for the approval, suspension, and revocation of biologics licenses.

Because the SNS is intended "to provide for the emergency health security of the United States * * * in the event of a bioterrorist attack or other public health emergency,"[3] the SNS may contain products that would otherwise not be available for widespread distribution. For example, the ASPR (exercising the Secretary's authority), in collaboration with the Director of the CDC and in coordination with the Department of Homeland Security, may determine that it is appropriate to include certain investigational medical products in the SNS. As described in section II of this document, some of these products require storage at extremely low temperatures and cannot be temporarily removed from storage for relabeling without compromising their integrity. Moreover, shipping products from SNS storage sites to relabelers or back to manufacturers for relabeling could increase the potential for sabotage and diversion, as well as increase exposure to conditions affecting product quality, such as temperature deviations. As a result, removing these investigational products from storage for relabeling at the time of approval and then returning them to storage could undermine their safety, effectiveness, or availability and, in some cases, would be impracticable. Compliance with the FDA regulations that would require such relabeling could discourage SNS procurement of these products and thereby limit available countermeasures in the event of a bioterrorist attack or other public health emergency.

To address this concern, FDA is creating a mechanism to allow exceptions or alternatives to the labeling regulations specified in this rule to help ensure the safety, effectiveness, and availability of medical products that are or will be included in the SNS. FDA has concluded that exceptions or alternatives granted under this rule will not render products misbranded due to the additional safeguards and conditions that may be required when an exception or alternative is granted, as well as the unique storage, deployment, and distribution considerations

[3] Section 3 of the Project BioShield Act of 2004 (section 319F–2 of the PHS Act (42 U.S.C. 247d–6b)).

essential to the SNS. As explained in section III.D of this document, a grant of an exception or alternative under this rule may include additional safeguards or conditions so that the labeling of products subject to the exception or alternative includes information needed for safe and effective use under the anticipated circumstances of use. Moreover, products intended for use in certain public health emergencies are likely to be administered to large numbers of people within confined geographic areas, such as in the case of a natural disaster. These SNS products may therefore be packaged in large quantities to facilitate rapid distribution on extremely short notice. Consequently, their packaging and distribution may differ from that of non-SNS products. Moreover, HHS may establish special mechanisms to provide product information, collect adverse event information, and track the product's distribution.

This rule does not create exemptions from express statutory requirements or prohibitions regarding medical product labeling. The FFD&C Act and the PHS Act set forth certain types of information that must appear in the labeling for medical products. For example, section 351(a)(1)(B) of the PHS Act provides that each package of a biological product must be marked with the proper name of the biological product; the name, address, and applicable license number of the manufacturer of the biological product; and the expiration date of the biological product. Drugs (including biological products) and medical devices in package form must bear labels containing the name and place of business of the manufacturer, packer, or distributor (section 502(b)(1) of the FFD&C Act). This interim final rule does not permit exceptions or alternatives to any of those requirements. In addition, the FFD&C Act and the PHS Act both prohibit false labeling (section 502(a) of the FFD&C Act); section 351(b) of the PHS Act). This interim final rule does not allow false information to appear in medical product labeling.

As noted previously, this rule does not limit FDA's ability to exercise enforcement discretion with respect to statutory and regulatory requirements, including those involving medical product labeling (*see Heckler* v. *Chaney*, 470 U.S. 821 (1985)).

To the extent that a State requires labeling that directly conflicts with, is different from, or is in addition, to any exceptions or alternatives granted under this rule, the State-required labeling would be subject to implied conflict preemption and, in some cases, express preemption. FDA restated its longstanding views on preemption in the preamble to the recently promulgated final rule entitled "Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products" (see 71 FR 3922 at 3933 through 3936 and 3967 through 3969; January 24, 2006), and that discussion reflects the agency's current position on this issue.

Under the principles of implied conflict preemption, courts have found State law preempted where it is impossible to comply with both Federal and State law or where the State law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *See English* v. *General Electric Co.*, 496 U.S. 72, 79 (1990); *Florida Lime & Avocado Growers, Inc.*, 373 U.S. 132, 142–143 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). Consistent with this case law, section 4(a) of Executive Order 13132 states that "[a]gencies shall construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute."

As explained previously, this interim final rule will facilitate the safety, effectiveness, and availability of appropriate medical countermeasures in the event of a public health emergency. Because Congress authorized the SNS to "provide for the emergency health security of the United States * * * in the event of a bioterrorist attack or other public health emergency," products held in the SNS should be ready for deployment at all times. In an emergency, it is critical that State requirements regarding the content and format of labeling do not interfere with the safety, effectiveness, or availability of SNS products. FDA believes that State-required labeling requirements different from or in addition to FDA requirements would "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." See Hines, 312 U.S. at 67. Moreover, these State requirements would "conflict with the exercise of Federal authority under [PHS Act section 319F–2, 42 U.S.C. 247d–6b]." See Executive Order 13132.

Additionally, under section 751 of the FFD&C Act (21 U.S.C. 379r), State or local requirements that are different from or in addition to exceptions or alternatives granted under this rule, and relate to the regulation of nonprescription drugs, are expressly preempted. Similarly, in accordance with section 521 of the FFD&C Act (21 U.S.C. 360k), State or local requirements that are different from, or in addition to, exceptions or alternatives granted under this rule with respect to approved medical devices are expressly preempted. See the Federalism section in this document for additional discussion of preemption in the context of this interim final rule.

V. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest, the agency may issue a rule without providing notice and public comment. FDA has determined that there is good cause under 5 U.S.C. 553(b)(3)(B) and 21 CFR 10.40(d) to publish this regulation as an interim final rule. An emergency requiring deployment of medical products in the SNS could happen at any time. Without this rule, the safety, effectiveness, or availability of medical products held in the SNS could be adversely affected because of relabeling requirements. An interim final rule ensures that a legal mechanism is immediately available for addressing labeling issues associated with medical products in the SNS without compromising their safety, effectiveness, or availability for use in an emergency. Products held in the SNS should be ready for deployment at all times.

FDA invites public comment on this interim final rule. The comment period on this interim final rule will be 90 days. The agency will consider modifications to this interim final rule based on comments made during the comment period. 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.

FDA will address comments received and confirm or amend this interim final rule in a final rule.

VI. Analysis of Impacts

FDA has examined the impacts of the interim final rule under Executive Order 12866, 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 a 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 of the deregulatory nature of this rule and the minimal costs associated with applying for an exception or alternative under this rule, the agency 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 proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $127 million, using the most current (2006) 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.

A. Need for the Interim Final Rule

FDA is issuing this interim final rule to allow for exceptions or alternatives to specified labeling requirements for certain medical products that are or will be in the SNS. As explained in other sections of this preamble, compliance with these labeling requirements in some circumstances could adversely affect or compromise the safety, effectiveness or availability of these products. Exceptions or alternatives to certain labeling requirements will provide the flexibility needed to help ensure that FDA-regulated medical products that are or will be in the SNS are not deemed misbranded and are available in an emergency situation.

B. Scope of the Interim Final Rule

This interim final rule applies to medical products that are or will be stockpiled by the SNS. It allows entities that manufacture (including labeling, packing, relabeling, or repackaging), distribute, or store affected SNS products to request an exception or alternative to specified regulatory labeling requirements for human drugs, biological products, and medical devices to prevent misbranding of those products in the SNS. Any grant of such a request by an FDA Center Director would apply to specified lots, batches, or other units of medical product identified in the request. When reviewing requests, the FDA Center Director will consider whether complying with the specified labeling regulations could adversely affect the safety, effectiveness, or availability of stockpiled products and may impose appropriate safeguards and conditions so that the labeling of products subject to the request would include information needed for safe and effective use under the anticipated circumstances of use. Alternatively, at his or her own initiative, an FDA Center Director may grant an exception or alternative to the specified labeling provisions without receiving a written request. Allowing the agency the ability to act on its own initiative could help avoid misbranding of products that are or will be in the SNS.

C. Costs of the Interim Final Rule

This rule would allow SNS officials and entities that manufacture (including labeling, packing, relabeling, or repackaging), distribute, or store medical products in the SNS to request exceptions from certain labeling requirements in FDA regulations. An exception or alternative from specified labeling requirements for FDA-regulated medical products can also be initiated by the appropriate FDA Center Director. The interim final rule would impose compliance costs on industry when entities prepare and submit requests for exceptions or alternatives to labeling requirements to avoid misbranding of their products that are or will be in the SNS. However, granting exceptions or alternatives to labeling requirements would provide the government with the flexibility needed to more efficiently manage medical products in the SNS without risking the availability of medical products for emergency use (see section VI.D of this document, Benefits of the Interim Final Rule).

FDA estimates that requests for exceptions would cost from $380 to $1,130 for each request. Regulatory Affairs personnel may spend from 8 to 24 hours per request preparing the information that would be required in an application for an exception or alternative under this rule. According to Bureau of Labor Statistics data, the fully loaded hourly wage for management and professional employees working in goods-producing industries was $47.25 in 2004 (U.S. Department of Labor, Bureau of Labor Statistics, "Employer Cost Employee Compensation—December 2004," *Bureau of Labor Statistics News*, USDL 05–432, March 16, 2005).

D. Benefits of the Interim Final Rule

Although the agency has no data to quantify the benefits, this interim final rule provides flexibility in labeling requirements for FDA-regulated medical products in the SNS. If an exception or alternative is granted, affected medical products in the SNS would not be misbranded and would not be rendered unavailable for emergency use due to relabeling operations. Exceptions or alternatives may be granted on a case-by-case basis at the initiative of the appropriate FDA Center Director or after receipt of a written request from an entity that manufactures, distributes, or stores products in the SNS. To illustrate the potential benefits of this rule we describe costs that could be avoided by granting an exception or alternative to certain labeling requirements upon written request of a manufacturer.

In some cases, granting an exception to labeling requirements may save direct relabeling costs. For example, to change information on a carton or container label, a firm might spend $300 in material costs for new artwork, $600 to $1,000 in labor costs to prepare the new artwork and about 10 cents to print each new carton or container label. Besides the costs to prepare a new carton, there would be additional labor costs to remove the product from the old carton and insert it in the new carton. With a container label, it is likely that the new label could be affixed directly on top of the existing label, reducing the amount of effort needed to make this change. Because packaging is normally automated, the agency has no information about how much time it would take to manually replace a container label or exchange a carton, but believes this could cost about 5 to 10 cents per unit.

Before the implementation of this rule, when an investigational product in

the SNS was subsequently approved, the product labeling would have needed to be immediately changed to add approved labeling information that was unavailable prior to approval. An exception or alternative to these labeling requirements might allow entities to ship investigational products with labeling that can be manually modified or supplemented at the SNS location once the drug is approved. Without an exception or alternative, it would be necessary to remove the investigational products from the SNS for relabeling or, in some cases, to replace the product.

This rule would avoid other potential costs. Without an exception or alternative, the SNS might be required to purchase costly replacement units. In other cases, some products may be appropriate for exceptions or alternatives because their availability for use in an emergency could be compromised if they had to be shipped out of the SNS to be relabeled. Removing such products from the stockpile, even temporarily, could jeopardize or adversely affect product safety or effectiveness (due to conditions of relabeling or related shipping, storage, and handling), requiring additional product testing or product replacement. Because replacement costs would vary widely and depend on the nature of the product, the number of units affected, and current market price, the amount of these avoided costs is unknown.

Although we only describe the potential benefits of this interim final rule in qualitative terms, we believe it is reasonable to assume that the benefits of providing flexibility in labeling requirements for SNS products justify the potential compliance costs of the rule. Moreover, the rule will allow FDA the flexibility to manage the products in the SNS without risking the safety, effectiveness, or availability of these products for use in an emergency.

E. Small Business Impacts

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. This rule is not expected to have a significant impact on a substantial number of small entities. It is estimated that this interim final rule will cost small entities no more than $1,130 when they submit a request. For affected small entities (e.g., medical product manufacturers, relabelers, or packers) we expect that this would represent a negligible proportion of annual receipts. Therefore, the agency certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities.

F. Regulatory Options Considered

No new regulatory action. The agency considered and rejected this option. The Agency recognized that certain medical products in the SNS, due to their anticipated circumstances of use in an emergency, might need to be labeled in a manner that did not comply with certain FDA labeling regulations. Without the ability to grant an exception to labeling requirements, existing FDA labeling regulations would have rendered such medical products misbranded. Moreover, the relabeling of these products to comply with FDA labeling regulations could have adversely affected their safety, effectiveness, or availability. As a result, FDA would have needed to exercise enforcement discretion to allow labeling to deviate from FDA requirements. To the extent possible, FDA believes that amending its labeling regulations is preferable to reliance on enforcement discretion to ensure the continued availability of medical products that are or will be in the SNS.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown as follows with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile.

Description: FDA is issuing regulations to permit FDA Center Directors to grant a request submitted under §§ 201.26(c)(1)(i) (human drug products), 610.68(c)(1)(i) (biological products), 801.128(c)(1)(i) (medical devices), and 809.11(c)(1)(i) (in vitro diagnostic products for human use) for an exception or alternative to certain applicable regulatory labeling provisions when these products are or will be included in the SNS.

The request must:

- Identify the specified lots, batches, or other units of the affected product;
- Identify the labeling provisions under this rule that are the subject of the request;
- Explain why compliance with the specified labeling provisions could adversely affect the safety, effectiveness, or availability of the product subject to the request;
- Describe any proposed safeguards or conditions that will be implemented so that the labeling of the product includes appropriate information necessary for the safe and effective use of the product given the anticipated circumstances of use of the product;
- Provide a draft of the proposed labeling; and
- Provide any other information requested by the FDA Center Director in support of the request.

The FDA Center Director will grant the request if he or she determines that compliance with the identified labeling provisions could adversely affect the safety, effectiveness, or availability of specified lots, batches, or other units of human drugs, biological products, or medical devices that are or will be included in the SNS.

Description of Respondents: Entities that manufacture (including labeling, packing, relabeling, or repackaging), distribute, or store affected products.

FDA estimates the information collection burden as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.26(c)(1)(i)	18	1	18	24	432
610.68(c)(1)(i)	10	1	10	24	240
801.128(c)(1)(i) and 809.11(c)(1)(i)	2	1	2	24	48
Total					720

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Although FDA cannot predict the number of future requests, based on limited information within FDA, we estimate that approximately 30 respondents will request annually one exception or alternative to labeling provisions to avoid misbranding of their products in the SNS. The estimate of one request per respondent is based on the anticipated occasional occurrence of a product being misbranded while in the SNS. We are estimating that each respondent will spend from 8 to 24 hours preparing each request. The hours per response are based on estimated time that it takes to prepare a supplement to an application, which may be considered similar to a request for an exception or alternative.

The information collection provisions in §§ 314.70, 601.12, 807.81 and 814.39 have been approved under OMB control numbers 0910–0001 (expires May 31, 2008), 0910–0338 (expires September 30, 2008), 0910–0120 (expires August 31, 2010), and 0910–0231 (expires September 30, 2007), respectively.

The information collection provisions for this interim final rule have been approved under the emergency processing provisions of the PRA. The assigned OMB approval number of this collection of information is 0910–0614. This approval expires on June 30, 2008. Interested persons are requested to fax comments regarding the information collection by (see DATES) to the Office of Information and Regulatory Affairs, OMB (see ADDRESSES).

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.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.30(k) 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.

IX. Federalism

As stated in the preamble, FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of this Executive Order requires agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." In this rule, FDA is revising certain requirements concerning the format and content of labeling for human drugs, biological products, and medical devices that are or will be included in the SNS to provide for exceptions or alternatives to these requirements under specified circumstances. To the extent that a State requires labeling that directly conflicts with, is different from, or is in addition, to any exceptions or alternatives granted under this rule, the State-required labeling would be subject to implied conflict preemption. Moreover, certain State requirements regarding the format and content of nonprescription drug labeling and/or labeling of approved medical devices may be subject to the express preemption provisions in section 751 of the FFD&C Act (21 U.S.C. 360k) (nonprescription drugs) and section 521 of the FFD&C Act (approved medical devices).

FDA is aware that State requirements on medical product labeling, often as a result of product liability lawsuits, may conflict with Federal requirements. FDA restated its longstanding views on preemption in the preamble to the recently promulgated final rule entitled "Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products" (see 71 FR 3922 at 3933 through 3936 and 3967 through 3969). That discussion is applicable to this interim final rule as well, and reflects the agency's current position on this issue.

Section 4(c) of Executive Order 13132 instructs us to restrict any Federal preemption of State law to the "minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated." This interim final rule meets the preceding requirement because, as discussed previously, it would preempt only State laws that directly conflict with, are different from, or are in addition to any Federal requirements. Section 4(d) of Executive Order 13132 states that when an agency foresees the possibility of a conflict between State law and federally protected interests within the agency's area of regulatory responsibility, the agency "shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict." In this case, FDA foresees the possibility of a conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

Section 4(e) of Executive Order 13132 adds that "when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency "shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings." FDA is seeking input from all stakeholders on the provisions of this interim final rule through publication of the rule in the **Federal Register**, and will consult with State and local officials in an effort to avoid conflicts between State law and Federal protected interests in accordance with Executive Order 13132.

In conclusion, the agency believes that it has complied with all of the applicable requirements under Executive Order 13132 and has determined that this interim final rule is consistent with the Executive order.

X. Request for Comments

Interested persons may submit to the Division of Dockets Management (see

ADDRESSES) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Add § 201.26 to subpart A to read as follows:

§ 201.26 Exceptions or alternatives to labeling requirements for human drug products held by the Strategic National Stockpile.

(a) The appropriate FDA Center Director may grant an exception or alternative to any provision listed in paragraph (f) of this section and not explicitly required by statute, for specified lots, batches, or other units of a human drug product, if the Center Director determines that compliance with such labeling requirement could adversely affect the safety, effectiveness, or availability of such product that is or will be included in the Strategic National Stockpile.

(b)(1)(i) A Strategic National Stockpile official or any entity that manufactures (including labeling, packing, relabeling, or repackaging), distributes, or stores a human drug product that is or will be included in the Strategic National Stockpile may submit, with written concurrence from a Strategic National Stockpile official, a written request for an exception or alternative described in paragraph (a) of this section to the Center Director.

(ii) The Center Director may grant an exception or alternative described in paragraph (a) of this section on his or her own initiative.

(2) A written request for an exception or alternative described in paragraph (a) of this section must:

(i) Identify the specified lots, batches, or other units of the human drug product that would be subject to the exception or alternative;

(ii) Identify the labeling provision(s) listed in paragraph (f) of this section that are the subject of the exception or alternative request;

(iii) Explain why compliance with such labeling provision(s) could adversely affect the safety, effectiveness, or availability of the specified lots, batches, or other units of a human drug product that are or will be held in the Strategic National Stockpile;

(iv) Describe any proposed safeguards or conditions that will be implemented so that the labeling of the product includes appropriate information necessary for the safe and effective use of the product, given the anticipated circumstances of use of the product;

(v) Provide a draft of the proposed labeling of the specified lots, batches, or other units of the human drug product subject to the exception or alternative; and

(vi) Provide any other information requested by the Center Director in support of the request.

(c) The Center Director must respond in writing to all requests under this section.

(d) A grant of an exception or alternative under this section will include any safeguards or conditions deemed appropriate by the Center Director so that the labeling of product subject to the exception or alternative includes the information necessary for the safe and effective use of the product, given the anticipated circumstances of use.

(e) If you are a sponsor receiving a grant of a request for an exception or alternative to the labeling requirements under this section:

(1) You need not submit a supplement under § 314.70(a) through (c) or § 601.12(f)(1) through (f)(2) of this chapter; however,

(2) You must report any grant of a request for an exception or alternative under this section as part of your annual report under §§ 314.70(d) or 601.12(f)(3) of this chapter.

(f) The Center Director may grant an exception or alternative under this section to the following provisions of this chapter, to the extent that the requirements in these provisions are not explicitly required by statute:

(1) § 201.1(h)(1) through (h)(2), (h)(5) through (h)(6), and (i);

(2) § 201.10(a), (d)(2), (f), (g)(1), and (h)(1);

(3) § 201.17;

(4) § 201.18;

(5) § 201.19;

(6) § 201.20;

(7) § 201.21;

(8) § 201.22;

(9) § 201.24; and

(10) § 312.6.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 3. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 371, 381, 382, 383, 393; 42 U.S.C. 262.

■ 4. Section 312.6 is amended by adding paragraph (c) to read as follows:

§ 312.6 Labeling of an investigational new drug.

* * * * *

(c) The appropriate FDA Center Director, according to the procedures set

forth in §§ 201.26 or 610.68 of this chapter, may grant an exception or alternative to the provision in paragraph (a) of this section, to the extent that this provision is not explicitly required by statute, for specified lots, batches, or other units of a human drug product that is or will be included in the Strategic National Stockpile.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 5. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 6. Section 314.70 is amended by revising paragraph (a)(1) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

(a) * * *

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, the applicant must notify FDA about each change in each condition established in an approved application beyond the variations already provided for in the application. The notice is required to describe the change fully. Depending on the type of change, the applicant must notify FDA about the change in a supplement under paragraph (b) or (c) of this section or by inclusion of the information in the annual report to the application under paragraph (d) of this section.

(ii) The submission and grant of a written request for an exception or alternative under § 201.26 of this chapter satisfies the applicable requirements in paragraphs (a) through (c) of this section. However, any grant of a request for an exception or alternative under § 201.26 of this chapter must be reported as part of the annual report to the application under paragraph (d) of this section.

* * * * *

PART 601—LICENSING

■ 7. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

■ 8. Section 601.12 is amended by revising paragraph (f)(3)(i)(D) and by adding paragraph (f)(5) to read as follows:

§ 601.12 Changes to an approved application.

* * * * *

(f) * * *

(3)(i) * * *

(D) A change made pursuant to an exception or alternative granted under § 201.26 or § 610.68 of this chapter.

* * * * *

(5) The submission and grant of a written request for an exception or alternative under § 201.26 or § 610.68 of this chapter satisfies the requirements in paragraphs (f)(1) through (f)(2) of this section.

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 9. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 10. Add § 610.68 to subpart G to read as follows:

§ 610.68 Exceptions or alternatives to labeling requirements for biological products held by the Strategic National Stockpile.

(a) The appropriate FDA Center Director may grant an exception or alternative to any provision listed in paragraph (f) of this section and not explicitly required by statute, for specified lots, batches, or other units of a biological product, if the Center Director determines that compliance with such labeling requirement could adversely affect the safety, effectiveness, or availability of such product that is or will be included in the Strategic National Stockpile.

(b)(1)(i) A Strategic National Stockpile official or any entity that manufactures (including labeling, packing, relabeling, or repackaging), distributes, or stores a biological product that is or will be included in the Strategic National Stockpile may submit, with written concurrence from a Strategic National Stockpile official, a written request for an exception or alternative described in paragraph (a) of this section to the Center Director.

(ii) The Center Director may grant an exception or alternative described in paragraph (a) of this section on his or her own initiative.

(2) A written request for an exception or alternative described in paragraph (a) of this section must:

(i) Identify the specified lots, batches, or other units of the biological product that would be subject to the exception or alternative;

(ii) Identify the labeling provision(s) listed in paragraph (f) of this section that are the subject of the exception or alternative request;

(iii) Explain why compliance with such labeling provision(s) could adversely affect the safety, effectiveness, or availability of the specified lots, batches, or other units of the biological product that are or will be included in the Strategic National Stockpile;

(iv) Describe any proposed safeguards or conditions that will be implemented so that the labeling of the product includes appropriate information necessary for the safe and effective use of the product, given the anticipated circumstances of use of the product;

(v) Provide a draft of the proposed labeling of the specified lots, batches, or other units of the biological product subject to the exception or alternative; and

(vi) Provide any other information requested by the Center Director in support of the request.

(c) The Center Director must respond in writing to all requests under this section.

(d) A grant of an exception or alternative under this section will include any safeguards or conditions deemed appropriate by the Center Director so that the labeling of product subject to the exception or alternative includes the information necessary for the safe and effective use of the product, given the anticipated circumstances of use.

(e) If you are a sponsor receiving a grant of a request for an exception or alternative to the labeling requirements under this section:

(1) You need not submit a supplement under § 601.12(f)(1) through (f)(2) of this chapter; however,

(2) You must report any grant of a request for an exception or alternative under this section as part of your annual report under § 601.12(f)(3) of this chapter.

(f) The Center Director may grant an exception or alternative under this section to the following provisions of this chapter, to the extent that the requirements in these provisions are not explicitly required by statute:

(1) § 610.60;
(2) § 610.61(c) and (e) through (r);
(3) § 610.62;
(4) § 610.63;
(5) § 610.64;
(6) § 610.65; and
(7) § 312.6.

PART 801—LABELING

■ 11. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

■ 12. Add § 801.128 to subpart D to read as follows:

§ 801.128 Exceptions or alternatives to labeling requirements for medical devices held by the Strategic National Stockpile.

(a) The appropriate FDA Center Director may grant an exception or alternative to any provision listed in paragraph (f) of this section and not explicitly required by statute, for specified lots, batches, or other units of a medical device, if the Center Director determines that compliance with such labeling requirement could adversely affect the safety, effectiveness, or availability of such devices that are or will be included in the Strategic National Stockpile.

(b)(1)(i) A Strategic National Stockpile official or any entity that manufactures (including labeling, packing, relabeling, or repackaging), distributes, or stores devices that are or will be included in the Strategic National Stockpile may submit, with written concurrence from a Strategic National Stockpile official, a written request for an exception or alternative described in paragraph (a) of this section to the Center Director.

(ii) The Center Director may grant an exception or alternative described in paragraph (a) of this section on his or her own initiative.

(2) A written request for an exception or alternative described in paragraph (a) of this section must:

(i) Identify the specified lots, batches, or other units of the medical device that would be subject to the exception or alternative;

(ii) Identify the labeling provision(s) listed in paragraph (f) of this section that are the subject of the exception or alternative request;

(iii) Explain why compliance with the labeling provision(s) could adversely affect the safety, effectiveness, or availability of the specified lots, batches, or other units of a medical device that are or will be held in the Strategic National Stockpile;

(iv) Describe any proposed safeguards or conditions that will be implemented so that the labeling of the device includes appropriate information necessary for the safe and effective use of the device, given the anticipated circumstances of use of the device;

(v) Provide a draft of the proposed labeling of the specified lots, batches, or other units of the medical device subject to the exception or alternative; and

(vi) Provide any other information requested by the Center Director in support of the request.

(c) The Center Director must respond in writing to all requests under this section. The Center Director may impose appropriate conditions when granting such an exception or alternative under this section.

(d) A grant of an exception or alternative under this section will include any safeguards or conditions deemed appropriate by the Center Director so that the labeling of devices subject to the exception or alternative includes the information necessary for the safe and effective use of the device, given the anticipated circumstances of use.

(e) If the Center Director grants a request for an exception or alternative to the labeling requirements under this section:

(1) The Center Director may determine that the submission and grant of a written request under this section satisfies the provisions relating to premarket notification submissions under § 807.81(a)(3) of this chapter.

(2)(i) For a Premarket Approval Application (PMA)-approved device, the submission and grant of a written request under this section satisfies the provisions relating to submission of PMA supplements under § 814.39 of this chapter; however,

(ii) The grant of the request must be identified in a periodic report under § 814.84 of this chapter.

(f) The Center Director may grant an exception or alternative under this section to the following provisions of this chapter, to the extent that the requirements in these provisions are not explicitly required by statute:

(1) § 801.1(d);
(2) § 801.60;
(3) § 801.61;
(4) § 801.62;
(5) § 801.63;
(6) § 801.109; and
(7) Part 801, subpart H.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

■ 13. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374, 381, 393; 42 U.S.C. 264, 271.

■ 14. Section 807.81 is amended by revising paragraph (b) to read as follows:

§ 807.81 When a premarket notification submission is required.

* * * * *

(b)(1) A premarket notification under this subpart is not required for a device for which a premarket approval application under section 515 of the act, or for which a petition to reclassify under section 513(f)(2) of the act, is pending before the Food and Drug Administration.

(2) The appropriate FDA Center Director may determine that the submission and grant of a written request for an exception or alternative under § 801.128 or § 809.11 of this chapter satisfies the requirement in paragraph (a)(3) of this section.

* * * * *

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

■ 15. The authority citation for 21 CFR part 809 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

■ 16. Add § 809.11 to subpart B to read as follows:

§ 809.11 Exceptions or alternatives to labeling requirements for in vitro diagnostic products for human use held by the Strategic National Stockpile.

(a) The appropriate FDA Center Director may grant an exception or alternative to any provision listed in paragraph (f) of this section and not explicitly required by statute, for specified lots, batches, or other units of an in vitro diagnostic product for human use, if the Center Director determines that compliance with such labeling requirement could adversely affect the safety, effectiveness, or availability of such products that are or will be included in the Strategic National Stockpile.

(b)(1)(i) A Strategic National Stockpile official or any entity that manufactures (including labeling, packing, relabeling, or repackaging), distributes, or stores an in vitro diagnostic product for human use that is or will be included in the Strategic National Stockpile may submit, with written concurrence from a Strategic National Stockpile official, a written request for an exception or alternative described in paragraph (a) of this section to the Center Director.

(ii) The Center Director may grant an exception or alternative described in paragraph (a) of this section on his or her own initiative.

(2) A written request for an exception or alternative described in paragraph (a) of this section must:

(i) Identify the specified lots, batches, or other units of an in vitro diagnostic product for human use that would be subject to the exception or alternative;

(ii) Identify the labeling provision(s) listed in paragraph (f) of this section that are the subject of the exception or alternative request;

(iii) Explain why compliance with such labeling provision(s) could

adversely affect the safety, effectiveness, or availability of the specified lots, batches, or other units of the in vitro diagnostic product for human use that are or will be held in the Strategic National Stockpile;

(iv) Describe any proposed safeguards or conditions that will be implemented so that the labeling of the product includes appropriate information necessary for the safe and effective use of the product, given the anticipated circumstances of use of the product;

(v) Provide a draft of the proposed labeling of the specified lots, batches, or other units of the in vitro diagnostic products for human use subject to the exception or alternative; and

(vi) Provide any other information requested by the Center Director in support of the request.

(c) The Center Director must respond in writing to all requests under this section. The Center Director may impose appropriate conditions or safeguards when granting such an exception or alternative under this section.

(d) A grant of an exception or alternative under this section will include any safeguards or conditions deemed appropriate by the Center Director to ensure that the labeling of the product subject to the exception or alternative includes the information necessary for the safe and effective use of the product, given the anticipated circumstances of use.

(e) If the Center Director grants a request for an exception or alternative to the labeling requirements under this section:

(1) The Center Director may determine that the submission and grant of a written request under this section satisfies the provisions relating to premarket notification submissions under § 807.81(a)(3) of this chapter.

(2)(i) For a Premarket Approval Application (PMA)-approved in vitro diagnostic product for human use, the submission and grant of a written request under this section satisfies the provisions relating to submission of PMA supplements under § 814.39 of this chapter; however,

(ii) The grant of the request must be identified in a periodic report under § 814.84 of this chapter.

(f) The Center Director may grant an exception or alternative under this section to the following provisions of this part, to the extent that the requirements in these provisions are not explicitly required by statute:

(1) § 809.10(a)(1) through (a)(6) and (a)(9);

(2) § 809.10(b);

(3) § 809.10(c)(2);

(4) § 809.10(d)(1)(i) through (d)(1)(v), (d)(1)(viii), and (d)(2); and

(5) § 809.10(e)(1)(i) through (e)(1)(vi) and (e)(1)(ix) through (e)(1)(xi).

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

■ 17. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

■ 18. Section 812.5 is amended by adding paragraph (d) to read as follows:

§ 812.5 Labeling of investigational devices.

* * * * *

(d) The appropriate FDA Center Director, according to the procedures set forth in § 801.128 or § 809.11 of this chapter, may grant an exception or alternative to the provisions in paragraphs (a) and (c) of this section, to the extent that these provisions are not explicitly required by statute, for specified lots, batches, or other units of a device that are or will be included in the Strategic National Stockpile.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 19. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 20. Section 814.39 is amended by adding paragraph (g) to read as follows:

§ 814.39 PMA Supplements.

* * * * *

(g) The submission and grant of a written request for an exception or alternative under § 801.128 or § 809.11 of this chapter satisfies the requirement in paragraph (a) of this section.

■ 21. Section 814.84 is amended by adding paragraph (b)(3) to read as follows:

§ 814.84 Reports.

* * * * *

(b) * * *

(3) Identify changes made pursuant to an exception or alternative granted under § 801.128 or § 809.11 of this chapter.

Dated: December 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–25165 Filed 12–27–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0381; FRL–8510–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Clean Air Interstate Rule Budget Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes budget trading programs for nitrogen oxides (NO_X) annual, NO_X ozone season, and sulfur dioxides (SO_2) annual emissions to address the requirements of EPA's Clean Air Interstate Rule (CAIR). Virginia will meet its CAIR requirements by participating in the EPA-administered regional cap-and-trade program for NO_X annual, NO_X ozone season, and SO_2 annual emissions. EPA is determining that the SIP revision fully implements the CAIR requirements for Virginia. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plan (FIP) that addresses NO_X annual, NO_X ozone season, and SO_2 annual emissions in Virginia.

EFFECTIVE DATE: The final rule is effective on December 28, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0381. All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308 or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 2007, and supplemented on April 30, 2007 and June 11, 2007, the Virginia Department of Environmental Quality (VADEQ) submitted a CAIR SIP revision to meet the requirements of CAIR, which was promulgated on May 12, 2005 (70 FR 25162), and subsequently revised on April 28, 2006, and December 13, 2006. The SIP revision is comprised of new regulations under 9 VAC 5 Chapter 140 of the Virginia Code as follows: Part II—NO_X Annual Trading Program; Part III—NO_X Ozone Season Trading Program; and Part IV—SO_2 Annual Trading Program. The regulations address all the requirements of the part 96 model rules set forth in the May 12, 2005 CAIR rulemaking.

On September 25, 2007 (72 FR 54385), EPA published a notice of proposed rulemaking (NPR) to approve Virginia's CAIR SIP revision. A detailed discussion of the CAIR requirements, Virginia's CAIR submittal, and EPA's rationale for approval of Virginia's CAIR SIP revision may be found in the NPR and will not be repeated here. On October 24, 2007, EPA received adverse comments from the State of Connecticut Department of Environmental Protection.

II. Public Comments and EPA Responses

Comment: On October 24, 2007, the Connecticut Department of Environmental Protection (CTDEP) submitted adverse comments on EPA's proposed approval of Virginia's CAIR SIP revision. CTDEP encourages EPA to approve state programs adopted to meet the emission reduction requirements of CAIR. However, it argues that before approving state CAIR plans, EPA should evaluate individually and in the aggregate each state's clean air programs. They argue such evaluation is necessary to ensure that each state's emissions do not significantly contribute to downwind nonattainment. CTDEP asserts its belief that the CAIR program does not ensure that the CAA section 110(a)(2)(D)(i) requirements to prohibit transported emissions that significantly contribute to nonattainment in Connecticut and other states will be met. CTDEP expresses concern that EPA is determining through this and other similar rulemakings that CAIR programs are sufficient to meet States' section 110(a)(2)(D)(i) obligations. CTDEP asserts, based on EPA and State modeling for CAIR, that the levels of transported pollution remaining after CAIR implementation are large enough that, even with local controls, it may be difficult for Connecticut to attain the 8-hour ozone NAAQS by 2010. Finally, CTDEP questions EPA's determination that highly cost effective controls are adequate to address States' section 110(a)(2)(D)(i) obligations as compared to "reasonable cost" controls that could be achieved to effect more stringent NO_X reductions.

Response: EPA does not agree that it is appropriate or necessary for EPA to conduct additional analysis before approving Virginia's CAIR SIP revision. In the CAIR rulemaking promulgated on May 12, 2005 (70 FR 25162), EPA established model rules for multi-State cap and trade programs for annual NO_X, ozone season NO_X, and annual SO_2 that States may choose to adopt to meet the required emissions reductions in a flexible and cost-effective manner. EPA requires States that wish to participate in the EPA-administered cap and trade program to use the model rule (with only limited flexibility to modify specific provisions) to ensure that all participating sources, regardless of which State in the CAIR region they are located, are subject to the same trading and allowance holding requirements. Virginia has chosen to participate in the cap and trade program administered by EPA and has chosen to adopt the model rules with modifications allowed by flexibilities in the model rule. EPA has evaluated Virginia's SIP revision and determined that Virginia is meeting its CAIR requirements. CTDEP does not challenge this determination. Thus, CTDEP's comments do not specifically pertain to any aspect of EPA's proposed action to approve the Virginia CAIR SIP revision. Rather, the comments appear to be directed broadly at EPA's decisions with regard to States' section 110(a)(2)(D)(i) obligations. These decisions were made by EPA in the context of the CAIR rulemaking, not in the proposed action to approve Virginia's CAIR SIP revision. Therefore, CTDEP's comments are not relevant to the proposed action. CTDEP had ample opportunity to submit comments both during the comment period for the proposed CAIR rulemaking of January 30, 2004 (70 FR 49708) and during the comment period for the proposed CAIR FIP of August 24, 2005 (70 FR 49708). EPA's proposal to approve Virginia's CAIR SIP did not reopen either the CAIR or CAIR FIP rulemakings. Consequently, CTDEP's comments are not relevant to this rulemaking, or timely with respect to the CAIR and CAIR FIP rulemakings. Thus, EPA does not believe it is necessary to conduct additional analysis on whether Virginia or any other state satisfies the requirements of 110(a)(2)(D)(i) before approving Virginia's CAIR SIP submission.

III. Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by

Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving Virginia's CAIR SIP revision submitted on March 30, 2007, and supplemented on April 30, 2007 and June 11, 2007. Under the SIP revision, Virginia will participate in the EPA-administered cap-and-trade programs for NO_X annual, NO_X ozone season, and SO_2 annual emissions. The SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. As a consequence of the SIP approval, the Administrator of EPA will issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs for SO_2, NO_X annual, and NO_X ozone season emissions for Virginia.

V. Effective Date

EPA finds that there is good cause for this approval to become effective on the date of publication because a delayed effective date is unnecessary due to the nature of the approval, which allows the Commonwealth to make allocations under its CAIR rules. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

CAIR SIP approvals relieve states and CAIR sources within states from being subject to allowance allocation provisions in the CAIR FIPs that otherwise would apply to them, allowing States to make their own allowance allocations based on their SIP-approved State rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

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

"major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve Virginia's CAIR SIP revision may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 13, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding the entries for Chapter 140, Sections 1010 through 3880 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 140 Regulation for Emissions Trading				
*	*	*	*	*
Part II NO_x Annual Trading Program				
Article 1 CAIR-NO_x Annual Trading Program General Provisions				
5–140–1010	Purpose	4/18/07	12/28/07	[Insert page number where the document begins]
5–140–1020	Definitions	4/18/07	12/28/07 [Insert page number where the document begins].	Except for definition of "Nonattainment condition"
5–140–1030	Measurements, abbreviations, and acronyms.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1040	Applicability	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1050	Retired Unit Exemption	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1060	Standard requirements	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1070	Computation of time	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1080	Appeal procedures	4/18/07	12/28/07 [Insert page number where the document begins].	
Article 2 CAIR-designated Representative for CAIR NO_x Sources				
5–140–1100	Authorization and responsibilities of CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1110	Alternate CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1120	Changing CAIR-designated representative and alternate CAIR-designated representative; changes in owners and operators.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1130	Certificate of representation	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1140	Objections concerning CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1150	Delegation by CAIR-designated representative and alternate CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
	Article 3 Permits			
5–140–1200	General CAIR NO_X Annual Trading Program permit requirements.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1210	Submission of CAIR permit applications	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1220	Information requirements for CAIR permit applications.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1230	CAIR permit contents and term	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1240	CAIR permit revisions	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 5 CAIR NO_X Allowance Allocations			
5–140–1400	CAIR NO_X Annual trading budgets	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1410	Timing requirements for CAIR NO_X allowance allocations.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1420	CAIR NO_X allowance allocations	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1430	Compliance supplement pool	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 6 CAIR NO_X Allowance Tracking System			
5–140–1510	Establishment of accounts	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1520	Responsibilities of CAIR-authorized account representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1530	Recordation of CAIR NO_X allowance allocations.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1540	Compliance with CAIR NO_X emissions limitation.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1550	Banking	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1560	Account error	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1570	Closing of general accounts	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 7 CAIR, NO_X Allowance Transfers			
5–140–1600	Submission of CAIR NO_X allowance transfers.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1610	EPA recordation	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1620	Notification	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 8 Monitoring and Reporting			
5–140–1700	General requirements	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1710	Initial certification and recertification procedures.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1720	Out of control periods	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1730	Notifications	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1740	Recordkeeping and reporting	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1750	Petitions	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 9 CAIR NO_X Opt-In Units			
5–140–1800	Applicability	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1810	General	4/18/07	12/28/07 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–140–1820	CAIR-designated representative	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1830	Applying for CAIR opt-in permit	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1840	Opt-in process	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1850	CAIR opt-in permit content	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1860	Withdrawal from CAIR NO_X Annual Trading Program.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1870	Change in regulatory status	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–1880	CAIR NO_X allowance allocations to CAIR NO_X opt-in units.	4/18/07	12/28/07 [Insert page number where the document begins].	
	Part III NO_X Ozone Season Trading Program			
	Article 1 CAIR NO_X Ozone Season Trading Program General Provisions			
5–140–2010	Purpose	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2020	Definitions	4/18/07	12/28/07 [Insert page number where the document begins].	Except for definition of "Nonattainment condition"
5–140–2030	Measurements, abbreviations, and acronyms.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2040	Applicability	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2050	Retired unit exemption	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2060	Standard requirements	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2070	Computation of time	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2080	Appeal procedures	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 2 CAIR- Designated Representative for CAIR NO_X Ozone Season Sources			
5–140–2100	Authorization and responsibilities of CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2110	Alternate CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2120	Changing CAIR-designated representative and alternate CAIR-designated representative; changes in owners and operators.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2130	Certificate of representation	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2140	Objections concerning CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2150	Delegation by CAIR-designated representative and alternate CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 3 Permits			
5–140–2200	General CAIR NO_X Ozone Season Trading Program permit requirements.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2210	Submission of CAIR permit applications	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2220	Information requirements for CAIR permit applications.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2230	CAIR permit contents and term	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2240	CAIR permit revisions	4/18/07	12/28/07 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
	Article 5 CAIR NO_X Ozone Season Allowance Allocations			
5–140–2400	CAIR NO_X Ozone Season trading budgets.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2405	State trading budgets for nonelectric generating units.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2410	Timing requirements for CAIR NO_X Ozone Season allowance allocations.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2420	CAIR NO_X Ozone Season allowance allocations.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2430	CAIR NO_X Ozone Season allowance allocations for individual existing nonelectric generating units.	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 6 CAIR NO_X Ozone Season Allowance Tracking System			
5–140–2510	Establishment of accounts	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2520	Responsibilities of CAIR-authorized account representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2530	Recordation of CAIR NO_X Ozone Season allowance allocations.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2540	Compliance with CAIR NO_X emissions limitation.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2550	Banking	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2560	Account error	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2570	Closing of general accounts	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 7 CAIR NO_X Ozone Season Allowance Transfers			
5–140–2600	Submission of CAIR NO_X Ozone Season allowance transfers.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2610	EPA recordation	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2620	Notification	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 8 Monitoring and Reporting			
5–140–2700	General requirements	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2710	Initial certification and recertification procedures.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2720	Out of control periods	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2730	Notifications	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2740	Recordkeeping and reporting	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2750	Petitions	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 9 CAIR NO_X Ozone Season Opt-in Units			
5–140–2800	Applicability	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2810	General	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2820	CAIR-designated representative	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2830	Applying for CAIR opt-in permit	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2840	Opt-in process	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2850	CAIR opt-in permit contents	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2860	Withdrawal from CAIR NO_X Ozone Season Trading Program.	4/18/07	12/28/07 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–140–2870	Change in regulatory status	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–2880	CAIR NO_X Ozone Season allowance allocations to CAIR NO_X Ozone Season opt-in units.	4/18/07	12/28/07 [Insert page number where the document begins].	
	Part IV SO_2 Annual Trading Program			
	Article 1 CAIR SO_2 Trading Program General Provisions			
5–140–3010	Purpose	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3020	Definitions	4/18/07	12/28/07 [Insert page number where the document begins].	Except for definition of "Nonattainment condition"
5–140–3030	Measurements, abbreviations, and acronyms.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3040	Applicability	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3050	Retired Unit Exemption	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3060	Standard requirements	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3070	Computation of time	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3080	Appeal procedures	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 2 CAIR-designated Representative for CAIR SO_2 Sources			
5–140–3100	Authorization and responsibilities of CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3110	Alternate CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3120	Changing CAIR-designated representative and alternate CAIR-designated representative; changes in owners and operators.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3130	Certificate of representation	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3140	Objections concerning CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3150	Delegation by CAIR-designated representative and alternate CAIR-designated representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 3 Permits			
5–140–3200	General CAIR SO_2 Trading Program permit requirements.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3210	Submission of CAIR permit applications	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3220	Information requirements for CAIR permit applications.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3230	CAIR permit contents and term	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3240	CAIR permit revisions	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 5 CAIR SO_2 Allowance Allocations			
5–140–3400	State trading budgets	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3410	Timing requirements for CAIR SO_2 allowance allocations.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3420	CAIR SO_2 allowance allocations	4/18/07	12/28/07 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
	Article 6 CAIR SO_2 Allowance Tracking System			
5–140–3510	Establishment of accounts	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3520	Responsibilities of CAIR-authorized account representative.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3530	Recordation of CAIR SO_2 allowances	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3540	Compliance with CAIR SO_2 emissions limitation.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3550	Banking	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3560	Account error	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3570	Closing of general accounts	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 7 CAIR SO_2 Allowance Transfers			
5–140–3600	Submission of CAIR SO_2 allowance transfers.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3610	EPA recordation	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3620	Notification	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 8 Monitoring and Reporting			
5–140–3700	General requirements	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3710	Initial certification and recertification procedures.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3720	Out of control periods	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3730	Notifications	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3740	Recordkeeping and reporting	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3750	Petitions	4/18/07	12/28/07 [Insert page number where the document begins].	
	Article 9 CAIR SO_2 Opt-in Units			
5–140–3800	Applicability	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3810	General	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3820	CAIR-designated representative	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3830	Applying for CAIR opt-in permit	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3840	Opt-in process	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3850	CAIR opt-in permit contents	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3860	Withdrawal from CAIR SO_2 Trading Program.	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3870	Change in regulatory status	4/18/07	12/28/07 [Insert page number where the document begins].	
5–140–3880	CAIR SO_2 allowance allocations to CAIR SO_2 opt-in units.	4/18/07	12/28/07 [Insert page number where the document begins].	

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[FR Doc. E7–24950 Filed 12–27–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–0171; FRL–8512–1]

RIN 2060–AM14

National Emission Standards for Hospital Ethylene Oxide Sterilizers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emissions standards for new and existing hospital sterilizers that emit hazardous air pollutants and are area sources within the meaning of Clean Air Act section 112(a)(2). The final rule is based on EPA's determination as to what constitutes the generally available control technology or management practices for the hospital sterilizer area source category.

This action is being finalized as part of EPA's obligation to regulate area sources listed for regulation pursuant to Clean Air Act section 112(c)(3).

DATES: The final rule is effective on December 28, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0171. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. For the Air and Radiation Docket and Information Center, the telephone number is (202) 566–1742, the fax number is (202) 566–9744, the Web site is *http://www.epa.gov/oar/docket.html*, and the e-mail address is *a-and-r-Docket@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. David Markwordt, Office of Air Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–0837; fax number: (919) 541–0246; e-mail address: *markwordt.david@epa.gov*.

SUPPLEMENTARY INFORMATION: *Outline.* The information presented in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by these final standards include:

Category	NAICS[1] code	Example of potentially regulated entities
General Medical and Surgical Hospitals	622110	Hospital sterilizers.
Specialty (Except Psychiatric and Substance Abuse) Hospitals	622310	Hospital sterilizers.

[1] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.10382 of subpart WWWWW (National Emissions Standards for Hospital Ethylene Oxide Sterilizers). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action is also available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States

Court of Appeals for the District of Columbia Circuit by February 26, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information for Final Area Source Standard

Sections 112(c)(3) and 112(k)(3)(B) of the CAA instruct EPA to identify not less than 30 hazardous air pollutants (HAP) which, as a result of emissions from area sources,[1] present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories to ensure that sources representing 90 percent of the 30 listed HAP (the "urban HAP") are subject to regulation. Consistent with these provisions, in 1999, in the Integrated Urban Air Toxics Strategy (64 FR 38706, 64 FR 38715–716, July 19, 1999), EPA identified the 30 urban HAP and listed the source categories that account for 90 percent of the urban HAP emissions.[2]

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." As explained in the proposed national emission standards for hazardous air pollutants (NESHAP), we are setting standards for the Hospital Sterilizers Area Source category pursuant to section 112(d)(5) of the CAA. See 71 FR 64907, November 6, 2006.

III. Summary of the Final Rule and Significant Changes Since Proposal

This section summarizes the final rule and identifies and discusses the significant changes since proposal. For changes that were made as a result of public comments, we have provided detailed explanations of the changes and the rationale in the responses to comments in section V of this preamble.

A. What is the affected source and the compliance date?

This final rule applies to any existing or new hospital ethylene oxide sterilization facility that is an area source of HAP. The owner or operator of an existing area source must comply with this area source NESHAP by December 29, 2008. The owner or operator of a new area source must comply with this area source NESHAP by December 28, 2007 or upon initial startup, whichever is later.

B. What is required by the management practice?

In our November 6, 2006 proposal, we proposed two alternative emission standards for this area source category. As Alternative 1, we proposed to require that the affected source, as defined above, sterilize full loads of medical items having common aeration times except during emergency circumstances that dictate the use of less than full loads to protect human health. As Alternative 2, we proposed a finding that there are no generally available control technologies or management practices (GACT) within the meaning of CAA section 112(d)(5) for the Hospital Sterilizers Area Source category. As explained in more detail in section V of this preamble, based on the comments and information we received during the public comment period, we conclude that the management practice described in Alternative 1 reflects GACT for this area source category, and we, therefore, adopt Alternative 1 as the standard for area source hospital ethylene oxide sterilization facilities.

Specifically, the final rule requires that a hospital ethylene oxide sterilization facility sterilize full loads of items having a common aeration time except where medical necessity dictates the use of less than a full load to protect human health. As explained in more detail in section V.A.3 of this preamble, the determination that a medical necessity exists must be made by a hospital central services staff,[3] a hospital administrator, or a physician on duty. This management practice applies to all affected sources. As explained in more detail in section V.A.2 of this preamble, sources may demonstrate compliance with this requirement by operating their sterilizers with an air pollution control device and providing the certification required in this final rule.

C. What are the testing and initial compliance requirements?

There are no performance test requirements for the management practice standard. Affected sources are required to submit an Initial Notification of Compliance Status that notifies EPA that they operate a sterilizer covered by the rule and certify that they are operating their sterilizers in accordance with the requirement of the rule.

In the preamble to the proposed rule, we acknowledged that some hospitals operate their sterilizers with add-on controls and that such controls achieve reductions in ethylene oxide emissions that are at least equivalent to the ethylene oxide reductions resulting from the management practice. Therefore, the final rule includes the use of a control device as an alternative compliance option for the management practice requirement. Specifically, a source may demonstrate compliance by certifying that it is operating its sterilizer(s) with an air pollution control device. The source must certify that it is running the sterilizer(s) in accordance with any applicable State and/or local regulations, or, if there are no such regulations, with manufacturers' specifications.

D. What are the notification, recordkeeping, and reporting requirements?

As mentioned above, affected sources must submit an Initial Notification of Compliance Status that includes the

[1] An area source is a stationary source of HAP emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

[2] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, the area source category list has undergone several amendments.

[3] Hospital central services staffs are healthcare professionals, including managers and technicians, who are either directly involved in or responsible for sterile processing at a hospital.

required compliance certification described above. The final rule does not require ongoing reporting.

Except for hospital ethylene oxide sterilization facilities that demonstrate compliance by using add-on controls, affected sources must maintain on site records of the date and time of each sterilization operation. If less than a full load is sterilized due to medical necessity, the operator must record this as well. These sterilization records must be kept in a form suitable and readily available for expeditious review. They must be kept for 5 years and at least the most recent 2 years on site.

IV. Exemption of Certain Area Source Categories From Title V Permitting Requirements

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is "impracticable, infeasible, or unnecessarily burdensome" on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term "unnecessarily burdensome" in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (Exemption Rule).

The four factors that EPA identified in the Exemption Rule for determining whether title V is "unnecessarily burdensome" on a particular area source category include: (1) whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on "a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act." See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on the hospital sterilizer area source category, we considered, consistent with the guidance provided by the legislative history of CAA section 502(a), whether exempting the Hospital Sterilizer Area Source category would adversely affect public health, welfare, or the environment. See 70 FR 15254–15255, March 25, 2005.

In the proposed rule, we evaluated the four factors described above in relation to the Hospital Sterilizer Area Source category and explained our proposed conclusion that the factors collectively demonstrated that compliance with title V requirements would be unnecessarily burdensome for the source category. Among other things, we explained in the preamble to the proposed rule, that title V permitting would not result in significant improvements to the compliance requirements for the Hospital Sterilizer Area Source category. In the proposal, we further explained that title V permitting may impose a significant burden on facilities within this source category, some of which are small businesses. We explained that, for many facilities, the cost of obtaining a title V permit may far exceed the cost of complying with the final rule without significant gains in compliance. Based on the above analysis, we proposed that title V permitting would be "unnecessarily burdensome" for hospital sterilizer area sources. We also proposed that the exemptions from title V would not adversely affect public health, welfare, and the environment.

In response to the proposed rule, we received two comments concerning the proposed title V exemption. However, as discussed in more detail in section V.A.7 of this preamble, neither comment addressed the above-mentioned factors that we considered in proposing the title V exemption. Accordingly, our assessment of these factors remains unchanged in light of these comments. We, therefore, finalize the proposed exemption for the Hospital Sterilizer Area Source category in this rule. Hospital sterilizer area sources are not required to obtain title V permits solely for purposes of being the subject of this final NESHAP; however, if they are otherwise required to obtain title V permits, such requirements are not affected by this exemption.

V. Summary of Comments and Responses

The hospital sterilizer area source rule was proposed on November 6, 2006 (71 FR 64907). The 60-day comment period ended on January 5, 2007, and we received a total of 10 comment letters on the proposed NESHAP. Comments were received from one industry trade association, a representative of one affected facility, representatives from two affected Federal agencies, one sterilant manufacturer, three State and local air pollution control agencies, one State agency association, and one private citizen. This final rule reflects our consideration of all of the comments received on the proposed action. This section summarizes the significant comments received on the proposed NESHAP and our response thereto. A summary of all of the minor comments and EPA's response thereto are presented here in this preamble and in the Response to Comments Document (RTC Document), which is available in Docket No. EPA–HQ–OAR–2005–0171.

A. Proposed Alternative 1: Management Practice

1. Management Practice Approach

Comment: Two commenters supported promulgation of the management practice approach, i.e., Regulatory Alternative 1. One of the commenters noted that EPA recognizes that, by minimizing ethylene oxide use with the management practice, hospital ethylene oxide sterilization facilities also minimize ethylene oxide emissions. Both commenters expressed that the proposed management practice alternative ensures that hospitals sterilize the most number of medical devices per pounds of ethylene oxide emitted, and it is consistent with hospital practices.

Two commenters stated that the management practice is common sense. One commenter argued that EPA's proposed GACT were neither acceptable nor consistent with legal requirements. Another commenter stated that EPA's

alternatives do not reflect what many sterilizers have achieved (using control technology) and are capable of achieving cost effectively.

Response: As previously mentioned, we are setting standards for hospital sterilizer area sources based on GACT (i.e., generally available control technologies or management practices) pursuant to section 112(d)(5) of the CAA. As several commenters noted, the management practice for running sterilizers with full loads will ensure that hospitals sterilize the most number of medical devices per pounds of ethylene oxide emitted. We believe that the comments indicating that the management practice is common sense, consistent with current operating practices at many hospitals, and cost-effective, all support our determination that this management practice represents a generally available management practice that is used to control ethylene oxide emissions from area source hospital sterilizers. We, therefore, disagree with the comment that the management practice requirement in this final rule is not consistent with legal requirements. In addition, for a detailed discussion on EPA's consideration of the existing control technologies, please see section V.C of this preamble.

2. Exemption of Certain Sources From the Rule

Comment: One commenter recommended that EPA exclude controlled sources (i.e., sources with add-on control) and sources that use an ethylene oxide concentration of less than 10 percent from all requirements associated with Alternative 1 should EPA adopt that alternative. The commenter expressed that Alternative 1 imposes no additional substantive requirements on controlled sterilizers and would only add administrative burdens with no additional environmental benefits. The commenter also asserted that sources that use an ethylene oxide concentration of less than 10 percent can be excluded with no detrimental effect.

Response: EPA disagrees that this rule contains no substantive requirements on controlled sterilizers. As we clarify in the final rule and in section III.B of this preamble, all area source hospital sterilizers, including sources with add-on controls, are subject to the requirements in this final rule. However, the final rule provides certain compliance options. Specifically, the final rule provides sources with add-on controls the option of demonstrating compliance with the management practice requirement by certifying that they will continue to operate their sterilizers with such control.

EPA also rejects the recommendation of excluding from this rule sources that use an ethylene oxide concentration of less than 10 percent. We recognize that there are hospital sterilization facilities that use sterilant gas blends with low ethylene oxide concentrations. However, we have no information suggesting that facilities using low ethylene oxide sterilant gas blends emit negligible amounts of ethylene oxide. On the contrary, it is our understanding that there is little difference in the amount of ethylene oxide usage (and, therefore, ethylene oxide emissions) between operating a sterilization cycle with pure ethylene oxide as opposed to using sterilant gas blend with less than 10 percent ethylene oxide. When we listed the Hospital Sterilizer Area Source category, we included hospital ethylene oxide sterilization facilities using sterilant gas blends and the commenter did not provide any information that suggests these facilities should not be part of the source category. Further, we have analyzed the costs and impacts associated with the management practice that we are finalizing and we believe the costs are reasonable. See section V.C.1 of this preamble. For the reasons stated above, we reject the commenter's recommendation to exclude from this regulation sources using sterilant gas blends with less than 10 percent ethylene oxide concentration.

3. Exception to the Management Practice Requirement

Comment: One commenter stated that EPA would need to establish, based on comments received and then propose again for comment, examples of definitions of circumstances that would be acceptable for an exemption to the full load requirement. Another commenter observed that hospitals try to minimize their use of ethylene oxide and avoid exceptions to full load runs. Although the commenter stated that generating and managing an inclusive list of all the exceptions to running a full load may be difficult, it provided examples for such exceptions. Specifically, the commenter stated that, on some days, a hospital may receive back from surgery just a few devices that must be ethylene oxide-sterilized and returned as soon as possible to surgery for cases scheduled for the next morning. The commenter stated that, in these instances, the hospital can be forced to run a sterilizer with less than a full load. The commenter also stressed that hospital surgical needs can be unpredictable.

The commenter stated that hospitals have reduced their use of ethylene oxide to sterilize medical devices (and its ethylene oxide emissions) by switching to single-use devices or alternative sterilizing and disinfection technologies, or by consolidating ethylene oxide sterilization. The commenter noted that, ironically, a hospital may increase the frequency with which it needs to run a partially loaded ethylene oxide sterilizer as a result. The commenter, however, emphasized that even with occasional running of less than full loads, there has been a continuing decline in hospital ethylene oxide use and emissions.

Another commenter similarly noted that hospitals currently strive to run full loads unless it is medically necessary to run less than a full load. According to the commenter, often the medical devices processed by the hospital ethylene oxide sterilizer are expensive and hospitals can only afford to retain a minimal number of such devices. The commenter further noted that some of the devices are older devices and cannot be replaced. The commenter stated that these devices are typically utilized in surgical areas and, at times, these devices may need to be used on consecutive days. The commenter stated that the ethylene oxide sterilizer load is processed at the end of the day so the devices will be ready for surgery the following day. According to the commenter, by waiting to run a sterilization cycle until the end of the day, the sterilizer load has a chance to fill up. The commenter noted, however, that if a medical device is needed the following day, the load will be processed even though the load is not full. The commenter stated that the determination to process a load is based on the needs of the patient.

Response: According to the comments, hospitals deviate from the full-load management practice only when patient safety may be at risk. EPA agrees that medical necessity warrants operating a partially loaded ethylene oxide sterilizer. To accommodate patient needs, we have incorporated in the final rule an exception based on medical necessity.

EPA also agrees with the comment that developing a comprehensive list of medically necessary circumstances warranting sterilization of a partial load is difficult. EPA is concerned that such a list may inadvertently exclude some justified circumstances. Further, as reflected in our final rule, we believe that the decision to run a partially loaded sterilizer due to medical necessity should be made by authorized hospital personnel who have knowledge

of patients' medical needs instead of by EPA. However, to assure that hospitals run sterilizers in full loads except during medically necessary circumstances, the final rule requires that facilities document and maintain records of every sterilization cycle, including each partially loaded sterilization, and confirm that it was medically necessary.

Comment: One commenter noted that many university hospitals develop new and unique surgical procedures and devices that may need to be sterilized in partial loads to comply with the more stringent requirements for sterilizing a new instrument.

Response: We believe that it is medically necessary to allow hospitals to sterilize medical devices that are under research and development without a full load. The novelty or uniqueness of the design in some instances require different sterilizing parameters than those used for regular medical devices. In addition, unlike medical devices that are regularly used for patient care, new and experimental medical devices that are under research and development do not have established or known sterilization cycles. Therefore, they may compromise the effectiveness of sterilizing other devices in the same loads. However, hospitals generally do not possess enough medical devices that are under research and development to fully load a sterilizer. To avoid compromising the sterilization process of medical devices regularly used for patient care, we believe that it is medically necessary to allow hospitals to sterilize medical devices that are under research and development in separate and partial loads. Hospitals may invoke the medical necessity exception in the final rule when sterilizing devices that are under research and development.

4. National or Urban

Comment: Three commenters recommended that EPA apply this rule nationwide. Two of the commenters noted that hospital parking areas are typically close to the hospital and that visitors and employees are, therefore, exposed to emissions from hospital ethylene oxide sterilizers regardless of the hospital's location (i.e., urban or rural). One commenter stated that the impacts of ethylene oxide emissions are localized and would be similar for most urban and rural areas. According to the commenter, hospitals are typically located in residential areas, whether or not they are in urban areas, and that populations residing nearby would likely be exposed to the ethylene oxide emissions from a hospital ethylene oxide sterilization facility. Another commenter further stated that hospitals clearly serve more sensitive populations who could be more susceptible to impacts from exposure to ethylene oxide. The commenter similarly noted that the impacts of ethylene oxide emissions are very local and would be roughly the same for both urban and rural areas, except perhaps for hospitals located in areas with a high population density.

Two commenters noted that the cost (of controlling a sterilizer) to a facility is the same for a rural hospital and an urban hospital. The commenters stated that, because the cost and impact are the same, there does not appear to be any rationale for treating rural hospitals differently from urban hospitals.

Response: We agree that a nationwide approach is appropriate given the facts and circumstances of this particular area source category. A rule of nationwide applicability is particularly appropriate here because requiring controls nationwide provides for equitable emission reductions. Control costs are not expected to differ in rural versus urban settings, therefore, the control's cost-effectiveness is the same, and economic impacts are equally distributed. Furthermore, because hospitals are generally located in densely populated areas, we expect negligible difference in the scope of this rule's coverage between a national and an urban (i.e., Urban-1 and Urban-2 areas) rule.[4] We have received no comments recommending that we limit this rule's applicability only to hospitals in Urban-1 and Urban-2 areas.

5. Compliance Date

Comment: One commenter stated that EPA's proposal that a source comply with the management practices within 1 year after the effective date of the final rule may not be a sufficient period of time. The commenter stated that two scenarios could result for medical facilities under the management practice alternative. According to the commenter, one scenario could be that medical facilities may need to purchase smaller ethylene oxide sterilizers to turn around medical instrumentation and equipment without having to purchase more of these medical items, and this could involve construction projects/costs to make ready additional space to accommodate the new sterilizers. The commenter stated that the other scenario could be that medical facilities may need to purchase additional medical instrumentation and equipment to allow for sufficient availability while waiting for enough items to accumulate to run a full load in an ethylene oxide sterilizer. The commenter suggested that EPA consider the costs of additional ethylene oxide sterilizer equipment and related construction, as well as the additional medical instrumentation and equipment costs in any proposed rule by EPA.

Response: EPA does not believe that the management practice requirement in Alternative 1 will result in either of the scenarios described above. The management practice requires sterilizing full loads except during medically necessary circumstances, i.e., necessary to protect human health. As discussed above, this exception to running sterilizers in full loads is based on patient needs. Under the final rule, whether a medically necessary circumstance exists must be determined by an authorized hospital personnel. The final rule, however, requires only that the hospital personnel consider whether sterilizing a partial load is necessary to protect human health; the personnel are not required to consider whether there are viable alternatives to running a partial load, such as purchasing additional sterilizer equipment or medical devices, before invoking the exception to the management practice requirement. Therefore, we do not expect any need for construction and/or capital expenditures associated with such new purchases, as the commenter suggested. We have received no other comments suggesting that hospitals may have difficulty achieving compliance with the management practice alternative within 1 year, as we proposed. We, therefore, retain the 1-year compliance deadline in the final rule.

6. Recordkeeping

Comment: In the proposed rule, EPA solicited comments on whether to require recordkeeping under Alternative 1. We received six comments on recordkeeping. One commenter asked that EPA specify what recordkeeping would entail if less than full loads were run and what EPA would propose to be done with these records. Another commenter stated that, regardless of the size of the load, all items sterilized are recorded following the Association for the Advancement of Medical Instrumentation standard, Ethylene

[4] In the *Integrated Urban Strategy*, EPA defined "urban areas" to include Urban-1 and Urban-2 areas. (64 FR 38724). The Urban-1 and Urban-2 definitions are based on the United States Census Bureau's most current decennial census data. Urban-1 areas are counties with metropolitan statistical areas with a population greater than 250,000. Urban-2 counties are all other counties where more than 50 percent of the population is designated urban by the United States Census Bureau.

Oxide Sterilization in Health Care Facilities: Safety and Effectiveness, ANSI/AAMI ST 41:1999. According to the commenter, the sterilizer records under this standard include the following: Load or lot number; item description and quantity; the department; the name of the sterilizer operator; aeration time and temperature; results of the biological monitoring (which is processed with each load to ensure that sterilization has occurred); chemical indicator results; and reports of nonresponsive chemical indicators.

Two commenters stated that hospitals keep a record of each load they run for traceability. Two commenters stated that hospitals could probably add a few more items of information to their records to comply with EPA's requirements. These commenters recommended that EPA's recordkeeping requirements be consistent with hospitals' current practice in maintaining records of sterilized loads.

Two commenters indicated that some State programs require keeping sterilization records, and one commenter stated that some States have required such recordkeeping for many years. The commenters indicated that some hospitals keep such records through computerized recordkeeping systems while others use handwritten records. The commenters believed that these requirements are not likely to be overly burdensome or costly to the facilities.

Response: In light of the comments indicating that hospitals are already keeping records of each sterilization cycle and that such recordkeeping provisions are not overly costly or burdensome, we are requiring affected facilities to keep sterilization records in the final rule. Specifically, the final rule requires that a facility record the date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and, for each partial load, state that it was medically necessary. Based on information provided during the comment period, we believe that this recordkeeping requirement is consistent with hospitals' current practice. We also believe the time required to keep these records would be offset by the time saved by the reduced cycles run.

7. Title V Permitting

Comment: One commenter favored title V permitting. The commenter stated that, by requiring title V permits, title V funds could be used to assure compliance. The commenter noted that, according to an EPA Regional office, title V funds cannot be used for non-title V programs. The commenter stated that if, from a national perspective, EPA prefers to exempt area sources such as these from title V permitting, EPA should explain the level of effort they expect from State and local agencies, and develop a funding mechanism for that effort. The commenter further noted that, in this case, the commenter's State already has operating permits for affected facilities and that there would be little cost involved in updating these permits to reflect the Federal rule during the normal permit renewal process.

Response: As discussed in the preamble to the proposed rule, EPA considered four factors in determining whether title V is "unnecessarily burdensome" for a particular area source category. Based on its consideration of these factors, EPA concluded that the requirements of title V would be unnecessarily burdensome for area source hospital ethylene oxide sterilization facilities. Among other things, EPA concluded that title V permitting would not result in significant improvements to the compliance requirements for the hospital ethylene oxide sterilization area source category and that title V permitting would likely impose a significant burden on facilities within the source category, some of which are small businesses. The Agency also found that, for many facilities, the cost of obtaining a title V permit may far exceed the cost of complying with the final rule without significant gains in compliance. EPA further determined that the proposed exemptions from title V would not adversely affect public health, welfare, and the environment.

Although the commenter advocates title V permitting, the commenter failed to address EPA's application of the four factors described above, and its conclusion that the proposed exemptions would not adversely affect public health, welfare, and the environment. Indeed, none of the commenters disagreed with any of EPA's proposed findings described above and in the proposed rule that served as the basis for the proposed title V exemption.

Instead of challenging EPA's application of the four factors relevant to determining whether title V requirements would be unnecessarily burdensome on a particular area source category, the commenter focuses on the fact that, in its State, area source hospital sterilizers have State operating permits and that adding the requirements of this rule to those permits would involve little costs. The fact that title V permitting may not be burdensome or costly in one State does not reflect the burden or costs associated with title V permitting nationwide. Once again, the commenter has not identified any flaws in EPA's application of the four factor test described above, which involve an assessment of the costs of title V reporting for the entire source category. Therefore, for the reasons discussed above and in the proposed rule, we are exempting area source hospital ethylene oxide sterilization facilities from the requirements of title V in this final rule.

The commenter apparently favored title V permitting based on its belief that "by requiring title V permits, EPA would allow title V funds to be used to assure compliance." The commenter requested that EPA explain the level of State and local efforts that may be involved in implementing and enforcing the requirements of the final rule and develop a funding mechanism for that effort. We expect such effort to be minimal. We believe that the management practice and the associated recordkeeping requirements in this final rule are straightforward and can, therefore, be easily implemented and enforced. Further, according to the comments received, the management practice requirement is consistent with hospital practices and hospitals are already keeping records of sterilization cycles. In light of the above, we do not anticipate that State and local agencies would need to spend a significant level of effort to implement and enforce this rule. EPA, however, remains committed to working with State and local agencies to implement this rule. State and local agencies that receive grants for continuing air programs under CAA section 105 should work with their project officers to determine what resources are necessary to implement and enforce this area source standard. EPA will continue to provide the resources appropriated for CAA section 105 grants consistent with the statute and the allotment formula developed pursuant to the statute.

Comment: One commenter agreed with EPA's proposal that title V permits are not necessary for area sources. The commenter noted that some hospitals, however, already have or are covered by title V permits, and that any rulemaking has the potential to impose additional permit modification costs. The commenter asserted that EPA should minimize title V permitting cost impacts by adding a provision in this rule stating that an existing title V permit does not have to be reopened or revised to address the requirements of this rule until the next time the permit is renewed, reopened, or revised for another reason. The commenter

alternatively proposed that EPA consider an exemption similar to that which was included in 40 CFR 63.7881(c)(3) of the recently finalized amendments to the Site Remediation NESHAP.

Response: The commenter requested that EPA prescribe in this rule the time for reopening and revising existing title V permits for area source hospital sterilizers. CAA section 502(a) authorizes EPA to exempt an area source category from title V permitting if the Administrator finds that compliance with title V is impracticable, infeasible, or unnecessarily burdensome on such category; however, to the extent that some sources within this area source category are already otherwise required to obtain title V permits, CAA section 502(a) does not authorize EPA to affect in any way these sources' existing obligations under title V, including when the permits must be renewed. As discussed above, pursuant to CAA section 502(a), EPA has determined that the requirements of title V would be unnecessarily burdensome for area source hospital ethylene oxide sterilization facilities. Accordingly, this final rule exempts area source sterilization facilities from the obligation to obtain title V permits for purposes of being subject to the requirements of this rule. The commenter, however, is requesting that EPA prescribe in this rule the time for reopening and revising existing title V permits for area source hospital sterilizers. The commenter's request is unrelated to and beyond the scope of EPA's authority to issue this area source rule pursuant to CAA sections 112(c)(3) and 112(d)(5). The request is also beyond the scope of EPA's authority under CAA section 502(a) to exempt area sources from title V permitting. We, therefore, reject the commenter's request to include its recommended language in this final rule.

B. Proposed Alternative 2: No Control

Comment: One commenter recommended that EPA select Regulatory Alternative 2 (the no additional control alternative). The commenter stated that hospitals have strong economic incentives to operate sterilizers with a full load because doing so reduces both material and labor costs. According to the commenter, because economics already drive hospital ethylene oxide sterilization facilities to implement the management practice, Alternative 1 is unlikely to result in significant emission reduction. The commenter states that it has encouraged its facilities to switch to alternative sterilization methods and, therefore, there are not many ethylene oxide sterilizers at its facility.

Response: As previously mentioned, we included two regulatory alternatives in the proposed rule. As Alternative 1, we proposed to require that hospitals sterilize full loads of medical items having common aeration times except during emergency circumstances that dictate the use of less than full loads to protect human health. However, at the time of the proposal, we had limited information to conclude that the proposed management practice in Alternative 1 reduced ethylene oxide emissions or was cost-effective. Therefore, we included an alternative proposal (Alternative 2) that there are no GACT within the meaning of CAA section 112(d)(5) for the Hospital Sterilizers Area Source category. We also solicited comments on the costs and emission reduction estimates for the management practice.

As explained in more detail in section V.A.1 of this preamble, we have since received comments indicating that the management practice minimizes ethylene oxide emissions by minimizing ethylene oxide use and that the practice is cost-effective. We, therefore, conclude that the management practice requirement we proposed as Alternative 1 reflects a generally available management practice within the meaning of CAA section 112(d)(5) for this area source category.

The commenter apparently agreed that the management practice is cost-effective. It stated that hospitals have economic incentives to run the sterilizers full because it reduces both labor and material costs. The commenter, nevertheless, recommended Alternative 2, claiming that Alternative 1 may not achieve significant reduction since it is already being implemented. However, the CAA does not require a GACT standard to achieve any specific level of emission reduction.

As explained above, we have determined that the management practice that we proposed as Alternative 1 represents GACT for this area source category. The commenter offered no information suggesting otherwise. Having determined that our proposed Alternative 1 represents GACT, we can no longer conclude that there are no GACT within the meaning of CAA section 112(d)(5). We, therefore, reject the commenter's recommendation that we adopt the no control option (Alternative 2) in this final rule.

C. Add-on Controls

1. Cost Considerations

Comment: Four commenters recommended that EPA require add-on controls for the area source hospital ethylene oxide sterilizers. Two commenters noted that, in the preamble to the proposed rule, EPA stated that the two predominant types of control devices (i.e., acid-water scrubbers and catalytic oxidation units) reduce emissions by approximately 99 percent. One of these two commenters also noted that, according to the National Toxicology Program, researchers have demonstrated that the application of these control technologies to hospital sterilizers effectively reduce ethylene oxide concentrations. This commenter, therefore, concluded that proven control technology is readily available to control ethylene oxide emissions from hospital sterilizers and that application of this technology is practicable, feasible, prudent, and not unnecessarily burdensome. Two commenters drew the same conclusion, noting that the control technologies have been required by some State programs for many years. One commenter similarly stated that if more than half of the sources already have add-on controls, it suggests that these controls are practical and feasible.

One commenter expressed that, with nearly half of the hospitals using add-on controls, it is hard to understand EPA's rationale in the proposed rule that add-on controls are too costly. One commenter suggested that, if cost is to be considered, EPA should consider a full array of alternatives, including the cost of alternatives to sterilization and alternative means of sterilization, and compare them to the cost of controlling ethylene oxide sterilization. The commenter stated that the proposed rule presumes ethylene oxide sterilization must be preserved. The commenter noted that in the Hospital, Medical, Infectious Waste Incinerator (HMIWI) standard, however, EPA recognized that there were alternatives to incineration of the wastes and, therefore, required emission controls that were not necessarily cost-effective. The commenter recommended that the same approach should be applied here.

One commenter stated that installing control would be an unnecessary cost to hospitals providing no benefits. The commenter observed that hospital ethylene oxide sterilization has declined due to Occupational Safety and Health Administration regulations, new sterilization methods, and new designs and materials used in medical devices. The commenter, however, emphasized that ethylene oxide sterilization is a

necessity in hospitals. The commenter explained that the medical devices processed by ethylene oxide are expensive and that hospitals can only afford minimal amounts on hand. The commenter further explained that some of the medical devices are old and cannot be replaced. The commenter noted that these devices are typically utilized in surgical areas. The commenter stated that EPA's rationale makes clear that existing ethylene oxide emission control technology will not provide the type of cost-benefit needed to justify new hospital investment in the control devices. The commenter noted that the cost of add-on control would include not just the cost of the device, but also the cost of installation, facility modification, annual testing of control devices, and utility and maintenance.

Response: CAA section 112(d)(5) provides that, with respect to area source categories listed pursuant to CAA section 112(c), the Administrator may, in lieu of MACT, promulgate standards or requirements which provide for the use of GACT. As explained in the preamble to the proposed rule, EPA is issuing the standards for the hospital sterilizers area source category under CAA section 112(d)(5).

In determining what constitutes GACT for a particular area source category, EPA evaluates the control technologies and management practices that reduce HAP emissions and are generally available for the area source category. The legislative history supporting CAA section 112(d)(5) provides that EPA may consider costs in determining what constitutes GACT for the area source category.[5]

In considering costs, the commenters who recommended add-on control focused mainly on the actual costs to hospitals and asserted that such control is likely not too costly if many hospitals are using it under existing State or local requirements. As we stated in the preamble to the proposed rule, EPA recognizes that over half of the hospitals use add-on controls. However, the actual cost to individual hospitals is but one cost factor that we considered in this rulemaking. We also noted that the total annualized cost for add-on controls, which we estimated to be $8.5 million, exceeds the total annualized cost for the management practice, which we estimated to range from $32,000 to $61,000, by more than 100 fold. In addition, we considered the cost-effectiveness of the add-on controls. See, e.g., *Husquavarna AB* v. *EPA*, 439 U.S. App. DC 118, 254 F.3d 195, 201 (DC Cir. 2001) (finding EPA's decision to consider costs on a per ton of emissions removed basis reasonable because CAA section 213 did not mandate a specific method of cost analysis). EPA's cost analysis for the add-on controls showed poor cost-effectiveness. Specifically, EPA's cost-effectiveness estimate for add-on controls was $200,000 per ton of ethylene oxide reduced. This cost-effectiveness excludes monitoring, recordkeeping, and reporting costs.

We also considered alternatives to ethylene oxide sterilization, as one commenter suggested. We learned from several commenters that, although ethylene oxide sterilization in hospitals has declined, it remains a necessity for certain medical devices that cannot be easily replaced or sterilized by other means. We agree with these commenters that, in light of the declined level of ethylene oxide sterilization and the lack of alternatives for sterilizing certain unique and expensive medical devices, the benefit of requiring add-on control is outweighed by the various costs associated with such control. Based on the foregoing, we determined that add-on controls do not represent GACT for this area source category.

One commenter argued that EPA required add-on control in the HMIWI standard that were not necessarily cost-effective and that EPA should take the same approach in this final rule.[6] The HMIWI standard, however, was promulgated pursuant to section 129 of the CAA, which requires that EPA establish standards that reflect the MACT. Consistent with the requirements of CAA section 129, EPA issued the original HMIWI standards based on MACT. CAA section 129(a)(2) does not allow EPA to consider costs in setting the floor for control. By contrast, EPA is issuing this final rule pursuant to CAA section 112(d)(5), which allows EPA to consider costs, including cost-effectiveness, in establishing GACT. Thus, the HMIWI rule is not relevant, because in that rule, EPA, by statute, could not consider costs.

2. Best Available Control Technology (BACT) or MACT

Comment: One commenter stated that, because ethylene oxide is a known human carcinogen, its emissions should be controlled using the BACT. The commenter stated alternatively that, due to the widespread use of control on hospital sterilizers, the MACT floor level of control would be add-on controls under CAA section 112(d)(2). The commenter stated that, based on the experience in its State, the MACT floor and associated recordkeeping are feasible and prudent and, therefore, none of EPA's proposals are in accordance with legal requirements. The commenter claimed that the proposed NESHAP must be revised to represent MACT floor of add-on emission control and recordkeeping as required by law.

Response: CAA section 112(c)(2) requires that EPA establish emission standards under CAA section 112(d) for the categories listed under CAA section 112(c), including area source categories listed pursuant to CAA section 112(c)(3). As mentioned above, EPA may issue standards for listed area source categories based on MACT (CAA section 112(d)(2)) or GACT (CAA section 112(d)(5)). CAA Section 112(d) does not contain a standard based on BACT. Therefore, EPA rejects the commenter's request to require the use of BACT because such standard is not authorized by the CAA.

The commenter also argued alternatively that neither of EPA's proposed alternatives was in accordance with legal requirements and that EPA must issue a MACT standard as required by law. The commenter, however, did not identify any legal requirement that allegedly is not satisfied by EPA's proposed alternatives or requires EPA to issue a MACT standard for the Hospital Sterilizer Area Source category. On the contrary, the commenter noted that "EPA is 'exercising discretion' in promulgating standards or requirements under section 112(d)(5) of the CAA." Although the commenter acknowledged that EPA has discretion under CAA section 112(d)(5) to issue a GACT standard in lieu of a MACT standard for listed area source categories, it claimed that, based on its State's experience with regulating and controlling ethylene oxide emissions from hospital sterilizers, the MACT floor and associated recordkeeping are feasible and prudent. The commenter argued that, therefore, neither of EPA's proposals is acceptable in accordance with legal requirements and that EPA

[5] Additional information on the definition of "generally available control technologies or management practices" (GACT) is found in the Senate report on the 1990 amendments to the CAA (S. Rep. No. 101–228, 101st Cong. 1st session. 171–172). That report states that GACT is to encompass: * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

[6] 40 CFR part 60, subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators (constructed on or before June 20, 1996).

40 CFR part 60, subpart Ec—Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.

must issue a MACT standard as required by law.

The commenter's argument seems to imply that EPA must first find that a MACT standard is infeasible, imprudent, or otherwise inappropriate before the Agency can legally issue a GACT standard for an area source category pursuant to section 112(d)(5) of the CAA. However, there is no such requirement under the CAA. In fact, the CAA does not contain any condition precedent for issuing a GACT standard under CAA section 112(d)(5). CAA section 112(d)(5), which is entitled "Alternative standard for area sources," provides:

> With respect *only* to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator *may, in lieu of* the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants. (*Emphasis added*).

There are two critical aspects to CAA section 112(d)(5). First, CAA section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to CAA section 112(c). The commenter does not dispute that EPA listed the Hospital Sterilizer Area Source category pursuant to CAA section 112(c)(3). Second, CAA section 112(d)(5) provides that, for area sources listed pursuant to CAA section 112(c), EPA "*may, in lieu of*" the authorities provided in CAA section 112(d)(2) and 112(f), elect to promulgate standards that provide for the use of generally available control technologies or management practices (GACT). Section 112(d)(2) provides that emission standards established under that provision "require the maximum degree of reduction in emissions" of HAP (also known as MACT).[7] Webster's dictionary defines the phrase "in lieu of" to mean "in the place of" or "instead of." See Webster's II New Riverside University (1994). Thus, CAA section 112(d)(5) authorizes EPA to promulgate standards that provide for the use of GACT *instead of* issuing MACT standards. The statute does not set any condition precedent for issuing standards under CAA section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to CAA section 112(c), which is the case here. Had Congress intended that EPA first conduct a MACT analysis for each area source category and only if cost or some other reason made applying the MACT standard inappropriate for the category would EPA be able to issue a standard under CAA section 112(d)(5), Congress would have stated so expressly in CAA section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis, or beyond-the-floor analysis before the Agency could issue a CAA section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under CAA section 112(c)(3), and that is precisely what EPA has done in this rulemaking.

Although EPA has no obligation to justify why it is issuing a GACT standard for an area source category as opposed to a MACT standard, we did so in the proposed rule. See 71 FR 64910, November 6, 2006. As explained in the proposed rule, we determined that the MACT floor level of control would be add-on controls if we were to develop this area source rule based on CAA section 112(d)(2). As explained in more detail in section V.C.1 of this preamble, we took costs into consideration and determined that the benefit of requiring add-on controls is outweighed by the costs associated with such control. We believe the consideration of costs is especially important for the well-controlled area sources at issue in this final action because, given current well-controlled levels, a MACT floor determination, where costs cannot be considered, could result in only marginal reductions in emission at very high costs.

3. Consideration of Health Impacts or Risks

Comment: According to one commenter, EPA's decision not to require add-on control appears to be based on cost-effectiveness without much regard for heath impact or risk. The commenter argued that an appropriate analysis would consider the health impacts where people are exposed. Four commenters identified health risks from ethylene oxide exposure as a basis for requiring add-on control. The commenters noted that ethylene oxide is a carcinogen and described in detail health effects from ethylene oxide exposure. In addition, one commenter stated that, since these sterilization units are located in hospitals which are densely populated with staff and patients, extra care should be taken to assure their health and safety. One commenter expressed concern that people living, working, and visiting the vicinity of the uncontrolled sources (i.e., those that do not have add-on controls) are not afforded the same level of protection as those near controlled sterilizers.

Two commenters stated that hospital ethylene oxide emissions are minimal and declining and that the potential risks of ethylene oxide emissions, based on the EPA analysis, are also minimal. Accordingly, both commenters stated that there is no benefit for installing ethylene oxide emission control equipment, and one commenter stated that any benefits would be insignificant and far outweighed by the real costs associated with the control.

Response: As previously explained, pursuant to sections 112(c)(3) and 112(k)(3)(B) of the CAA, EPA identified ethylene oxide as one of 30 HAP that present the greatest threat to public health in the largest number of urban areas and listed Hospital Sterilizers Area Source as a category needed to ensure that sources representing 90 percent of area source ethylene oxide emissions are subject to regulation.

In the 1990 CAA Amendments, Congress established a two-phase approach for setting HAP emission standards. *Sierra Club* v. *EPA*, 353 F.3d 976, 980 (D.C. Cir. 2004). The first phase is the initial standard setting phase, which is the phase at issue in this rulemaking.[8] In this phase, the standards are technology-based, and this is true regardless of whether we issue MACT standards under CAA section 112(d)(2) and (d)(3), or GACT standards under CAA section 112(d)(5).[9] See Senate Report at 148 (1989); *Sierra Club* v. *EPA*, 353 F.3d at 980.

In this final rule, EPA is establishing emissions standards for this area source category under CAA section 112(d)(5), which authorizes EPA to set emissions standards based on GACT for a listed area source category. The legislative history describes GACT as "methods, practices, and techniques which are

[7] CAA section 112(d)(5) also references CAA section 112(f). See CAA section 112(f)(5) (entitled "Area Sources" and providing that EPA is not required to conduct a review or promulgate standards under CAA section 112(f) for any area source category or subcategory listed pursuant to CAA section 112(c)(3) and for which an emission standard is issued pursuant to CAA section 112(d)(5)).

[8] The second phase of standard setting involves a risk-based analysis. Specifically, CAA section 112(f)(2) requires EPA to determine—8 years after issuance of the initial MACT standard—whether residual risks remain that warrant more stringent standards than achieved through MACT. CAA Section 112(f)(5) provides that the Agency shall not be required to conduct a residual risk for area sources for which EPA has issued a GACT standard.

[9] CAA Section 112(d)(4) does provide, however, that with respect to pollutants for which the EPA Administrator has established a health threshold, EPA can consider such threshold in setting standards under CAA section 112(d). Ethylene oxide is a carcinogen and is, thus, not a pollutant for which the Administrator has established a health threshold, and, therefore, CAA section 112(d)(4) is not relevant to this category.

commercially available and appropriate for application by sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems." S. Rep. No. 101–228, at 171 (1989) (Senate Report).

Consistent with the statute and the legislative history, in determining GACT, we evaluated the control technologies and management practices that reduce HAP emissions from the ethylene oxide Hospital Sterilizer Area Source category, and we assessed the costs of implementing such approaches. We did not consider health impacts or risks in establishing the emission standards for the Hospital Sterilizer Area Source category, as the commenters recommended, nor were we required by statute to do so. However, we note that health risk did play a role in this process in that the determination of which pollutants to regulate and from which categories was governed by the statutory requirement to regulate sources accounting for 90 percent or more of the 30 HAP that present the greatest health threat in urban areas.

4. Potential Backsliding

Comment: One commenter noted that many hospital ethylene oxide sterilizers are controlled (i.e., with add-on controls) as the result of State and local programs. The commenter stated that in the preamble to the proposed rule, EPA recognizes the contributions of the State and local programs and is apparently relying upon them to ensure adequate control of hospital sterilizers. The commenter stated that EPA's proposal to rely on these programs, in lieu of Federal requirements, is unwise and inappropriate. The commenter stated that the existence of State and local regulations does not relieve the agency of its duty to set emissions control requirements under CAA section 112. The commenter further noted that many State and local agencies are not able to be more stringent than Federal requirement and that it is conceivable that some agencies could be required to change their regulations to be consistent with those of the Federal government, resulting in relaxing of existing non-Federal rules. The commenter also claims that State and local regulations can change in the future for other reasons. The commenter stated that, in the absence of Federal requirements, there would be nothing to prevent backsliding by the sources if a State or local rule is realized or eliminated.

Another commenter stated that for sources in its State, EPA's issuance of this rule means that existing sources would continue to be subject to the State air toxics rule that requires 99 percent control, but new sources would only be subject to EPA's requirement. The commenter stated that this amounts to backsliding on emission control requirements and an increase in emissions.

Response: EPA has not shed its responsibility to set emission standards under CAA section 112 because of existing State and local regulations. On the contrary, EPA is issuing this final rule today to regulate ethylene oxide emissions from hospital sterilizers. As described above, pursuant to CAA section 112(d)(5), EPA has established in this final rule a management practice requirement that represents GACT for this area source category. EPA did not reject the add-on control option in this rulemaking because it was relying on existing State and local programs to require add-on controls, as one commenter contended. Rather, as previously explained in section V.C.1 of this preamble, EPA concludes that add-on controls do not represent GACT for this area source category.

Two commenters expressed concern that certain States may require that their existing regulations be relaxed as not to be more stringent than EPA's standards. However, CAA section 112(l) only prohibits States from setting standards that are less stringent than EPA's standards; the CAA does not affect State and local emission standards that are more stringent than the requirements of this final rule. The issue of potential backsliding that the commenters raised is based on State law, which EPA has no authority to change. We, however, encourage States to revisit their State laws to address this concern.

5. Emissions From Aeration

Comment: One commenter noted that some sterilizers only operate their catalytic control devices during the initial purge of ethylene oxide (following sterilization) and not during the entire aeration cycle. The commenter stated that the control device should be used for all discharges, not just the initial purge.

Response: The commenter appears to be arguing that a control device should be used to control both sterilization and aeration ethylene oxide emissions instead of just sterilization emissions. The final rule does not, however, require the use of a control device. EPA has determined that the management practice in the final rule represents GACT and requires that hospitals run sterilizers in full loads except during medically necessary circumstances. This requirement will reduce both sterilization and aeration ethylene oxide emissions by reducing the amount of ethylene oxide usage.

Although the final rule does not require the use of a control device, it allows the use of a control device as an alternative compliance option for the management practice requirement because the use of a control device achieves reduction in ethylene oxide emissions that are at least equivalent to the ethylene oxide reduction resulting from the management practice. This is true even if the control device is used to control ethylene oxide emissions from sterilization only. Therefore, controlling aeration emissions with a control device is not necessary under the alternative compliance option.

VI. Summary of Environmental, Energy, Cost, and Economic Impacts

We estimate that in 2002 there were, at most, 1,900 hospital area sources that conduct ethylene oxide sterilization, of which approximately 630 do not presently have add-on controls. The final management practice was estimated at proposal to reduce the 44 tpy emitted from ethylene oxide sterilizers by 2 to 9 tpy. We did not receive any comments that would allow us to improve this estimate. Several commenters, however, stated that they are already employing the management practice. With the management practice, we believe there is minimal effect on either air quality or non-air quality environmental impacts and there are negligible energy or economic impacts. Annualized costs to comply with the final standards are estimated to range from $32,000 to $61,000 per year.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in the final rule are based

on the information collection requirements in the 40 CFR part 63 General Provisions (subpart A), some of which are incorporated into the final NESHAP. The ICR document includes the burden estimates for all applicable General Provisions. The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The final NESHAP for area sources requires a one-time initial notification by hospital ethylene oxide sterilization facilities certifying that the facility is in compliance with rule requirements and requires recordkeeping for each sterilization cycle for sterilizers not equipped with an air pollution control device.

The annual burden for the information collection averaged over the first 3 years of this ICR is estimated to total 3,576 labor hours per year at a cost of $245,000 for the 1,900 existing hospital sterilizer area sources. Small annualized capital/startup costs and small operation and maintenance costs are associated with the requirements. No costs or burden hours are estimated for new area sources because no new sources are estimated during the next 3 years. 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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 would 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 the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) A small business that is a hospital as defined by NAICS codes 622110 and 622310 whose parent company has less than $31.5 million in gross revenue (based on Small Business Administration (SBA) 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The final rule requires the use of a management practice to minimize the operation of the ethylene oxide sterilization unit and will, therefore, have minimal nationwide costs, i.e., range from $32,000 to $61,000 per year. We have determined that less than 3 percent of the hospitals are small businesses as defined by the SBA. We have also determined that none of these small businesses are significantly impacted by this proposal for none of them will incur annualized compliance costs of 0.1 percent of sales or greater.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The final rule is designed to harmonize with existing State or local requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final 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. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule does not significantly or uniquely affect small governments. The final rule contains no requirements that apply to such governments, impose no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them. Therefore, the final rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State

and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule imposes requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This final rule imposes requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to this final rule.

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

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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

This final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and 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. Further, we have concluded that the final rule is not likely to have any adverse energy effects because energy requirements would likely be less than existing levels. No additional pollution controls or other equipment that would consume energy are required by this final rule.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule establishes national standards for the area source category.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule will be effective on December 28, 2007.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 20, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Part 63 is amended by adding subpart WWWWW to read as follows:

Subpart WWWWW—National Emission Standards for Hospital Ethylene Oxide Sterilizers

Sec.

Subpart WWWWW—National Emission Standards for Hospital Ethylene Oxide Sterilizers

Applicability and Compliance Dates

§ 63.10382 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an ethylene oxide sterilization facility at a hospital that is an area source of hazardous air pollutant (HAP) emissions.

(b) The affected source subject to this subpart is each new or existing sterilization facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before November 6, 2006.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after November 6, 2006.

§ 63.10384 What are my compliance dates?

(a) *Existing source.* If you have an existing affected source, you must comply with applicable requirements in this subpart no later than December 29, 2008.

(b) *New source.* If you start up a new affected source on or before December 28, 2007, you must comply with applicable requirements in this subpart by December 28, 2007.

(c) *New source.* If you start up a new affected source after December 28, 2007, you must comply with applicable requirements in this subpart upon startup of your affected source.

Standards

§ 63.10390 What management practice standard must I meet?

You must sterilize full loads of items having a common aeration time, except under medically necessary circumstances, as that term is defined in § 63.10448.

Initial Compliance Requirements

§ 63.10400 How do I demonstrate initial compliance?

(a) Except as provided in paragraphs (b) and (c) of this section, you must demonstrate initial compliance with the management practice standard in § 63.10390 by submitting an Initial Notification of Compliance Status certifying that you are sterilizing full loads of items having a common aeration time except under medically necessary circumstances.

(b) If you operate your sterilization unit(s) with an air pollution control device pursuant to a State or local regulation, you may demonstrate initial compliance with § 63.10390 by submitting an Initial Notification of Compliance Status certifying that you are operating the sterilization unit in accordance with your State or local regulation and following control device manufacturer's recommended procedures.

(c) If you operate your sterilization unit(s) with an air pollution control device but are not subject to any State or local regulation, you may demonstrate initial compliance with § 63.10390 by submitting an Initial Notification of Compliance Status certifying that you are venting the ethylene oxide emissions from each sterilization unit to an add-on air pollution control device. You must certify that you are operating the control device during all sterilization processes and in accordance with manufacturer's recommended procedures.

§ 63.10402 By what date must I demonstrate initial compliance?

You must demonstrate initial compliance with § 63.10390 upon startup or no later than 180 calendar days after your compliance date, whichever is later.

Monitoring—Continuous Compliance Requirements

§ 63.10420 How do I demonstrate continuous compliance with the management practice requirements?

For each sterilization unit not equipped with an air pollution control device, you must demonstrate continuous compliance with the management practice standard in § 63.10390 by recording the date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and if not, a statement from a hospital central services staff, a hospital administrator, or a physician that it was medically necessary.

Notifications, Reports, and Records

§ 63.10430 What notifications must I submit and by when?

(a) You must submit an Initial Notification of Compliance Status that includes the information required in paragraphs (a)(1) through (5) of this section and the applicable certification in § 63.10400.

(1) The name and address of the owner or operator.

(2) The address (i.e., physical location) of the affected source.

(3) An identification of the standard and other applicable requirements in this subpart that serve as the basis of the notification and the source's compliance date.

(4) A brief description of the sterilization facility, including the number of ethylene oxide sterilizers, the size (volume) of each, the number of aeration units, if any, the amount of annual ethylene oxide usage at the facility, the control technique used for each sterilizer, and typical number of sterilization cycles per year.

(5) A statement that the affected source is an area source.

(b) You must submit the Initial Notification of Compliance Status to the appropriate authority(ies) specified in § 63.9(a)(4). In addition, you must submit a copy of the Initial Notification of Compliance Status to EPA's Office of Air Quality Planning and Standards. Send your notification via e-mail to *CCG-ONG@EPA.GOV* or via U.S. mail or other mail delivery service to U.S. EPA, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Attn: Hospital Sterilizers Project

Leader, Research Triangle Park, NC 27711.

(c) You must submit the Initial Notification of Compliance Status no later than 180 calendar days after your compliance date, consistent with § 63.10402.

§ 63.10432 What records must I keep?

You must keep the records specified in paragraphs (a) and (b) of this section.

(a) A copy of the Initial Notification of Compliance Status that you submitted to comply with this subpart.

(b) Records required by § 63.10420 for each sterilization unit not equipped with an air pollution control device.

§ 63.10434 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review.

(b) You must keep each record for 5 years following the date of each record.

(c) You must keep each record onsite for at least 2 years after the date of each record. You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.10440 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in 40 CFR 63.1 through 63.16 apply to you.

§ 63.10442 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies include approval of alternatives to the applicability requirements under 40 CFR 63.10382, the compliance date requirements in 40 CFR 63.10384, and the management practice standards as defined in 40 CFR 63.10390.

§ 63.10446 Do title V permitting requirements apply to area sources subject to this subpart?

You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.10448 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in 40 CFR 63.2, and in this section as follows:

Aeration process means any time when ethylene oxide is removed from the aeration unit through the aeration unit vent or from the combination sterilization unit through the sterilization unit vent, while aeration or off-gassing is occurring.

Aeration unit means any vessel that is used to facilitate off-gassing of ethylene oxide.

Air pollution control device means a catalytic oxidizer, acid-water scrubber, or any other air pollution control equipment that reduces the quantity of ethylene oxide in the effluent gas stream from sterilization and aeration processes.

Combination sterilization unit means any enclosed vessel in which both the sterilization process and the aeration process occur within the same vessel, *i.e.*, the vessel is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing and is followed by off-gassing of ethylene oxide.

Common aeration time means that items require the same length of time to off-gas ethylene oxide.

Full load means the maximum number of items that does not impede proper air removal, humidification of the load, or sterilant penetration and evacuation in the sterilization unit.

Hospital means a facility that provides medical care and treatment for patients who are acutely ill or chronically ill on an inpatient basis under supervision of licensed physicians and under nursing care offered 24 hours per day. Hospitals include diagnostic and major surgery facilities but exclude doctor's offices, clinics, or other facilities whose primary purpose is to provide medical services to humans or animals on an outpatient basis.

Hospital central services staff means a healthcare professional, including manager and technician, who is either directly involved in or responsible for sterile processing at a hospital.

Medically necessary means circumstances that a hospital central services staff, a hospital administrator, or a physician concludes, based on generally accepted medical practices, necessitate sterilizing without a full load in order to protect human health.

State or local regulation means a regulation at the State or local level that requires a hospital to reduce the quantity of ethylene oxide emissions from ethylene oxide sterilization units.

Sterilization facility means the group of ethylene oxide sterilization units at a hospital using ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing.

Sterilization process means any time when ethylene oxide is removed from the sterilization unit or combination sterilization unit through the sterilization unit vent.

Sterilization unit means any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing. As used in this subpart, the term includes combination sterilization units.

Table to Subpart WWWWW of Part 63

As required in § 63.10440, you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART WWWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART WWWWW

Citation	Subject	Applies to subpart WWWWW	Explanation
§ 63.1(a)(1)–(4), (6), (10)–(12), (b)(1), (3)	Applicability	Yes.	
§ 63.1(a)(5), (7)–(9)	[Reserved].		
§ 63.1(b)(2)	[Reserved].		

TABLE 1 TO SUBPART WWWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART WWWWW—Continued

Citation	Subject	Applies to subpart WWWWW	Explanation
§ 63.1(c)(1)–(2)	Applicability of this part after a relevant standard has been set.	Yes	§ 63.10446 of this subpart exempts affected sources from the obligation to obtain title V operating permits for purposes of being subject to this subpart.
§ 63.1(c)(3)–(4)	[Reserved].		
§ 63.1(c)(5)	Subject to notification requirements	No.	
§ 63.1(d)	[Reserved].		
§ 63.1(e)	Emission limitation by permit	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities	Yes.	
§ 63.5	Construction/reconstruction	No.	
§ 63.6(a), (b)(1)–(5), (7)	Compliance with standards and maintenance requirements.	Yes.	
§ 63.6(b)(6)	[Reserved].		
§ 63.6(c)(1)	Compliance dates for existing sources	Yes	Subpart WWWWW requires compliance 1 year after the effective date.
§ 63.6(c)(2), (5)	Compliance dates for CAA section 112(f) standards and for area sources that become major.	No.	
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(d)	[Reserved].		
§ 63.6(e)–(h)	Alternative nonopacity emission standard.	No.	
§ 63.6(i)–(j)	Compliance extension	Yes.	
§ 63.7	Performance testing requirements	No.	
§ 63.8	Monitoring requirements	No.	
§ 63.9(a)	Applicability and initial notifications addressees.	Yes.	
§ 63.9(b)	Initial notifications	No.	
§ 63.9(c)	Request for extension of compliance	Yes.	
§ 63.9(d)–(j)	Other notifications	No.	
§ 63.10(a)(1)–(2)	Recordkeeping and reporting requirements, applicability.	Yes.	
§ 63.10(a)(3)–(4)	General information	Yes.	
§ 63.10(a)(5)–(7)	Recordkeeping and reporting requirements, reporting schedules.	No.	
§ 63.10(b)(1)	Retention time	Yes.	
§ 63.10(b)(2)–(f)	Recordkeeping and reporting requirements.	No.	
§ 63.11	Control device requirements	No.	
§ 63.12	State authority and delegations	Yes.	
§§ 63.13–63.16	Addresses, Incorporations by Reference, availability of information, performance track provisions.	Yes.	

[FR Doc. E7–25233 Filed 12–27–07; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[EPA–HQ–OAR–2007–0429; FRL–8511–7]

RIN 2060–A045

Revisions to Consolidated Federal Air Rule; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: The EPA issued a final rule on August 27, 2007 (effective date November 26, 2007) that revised the General Provisions for Consolidated Federal Air Rule to allow extensions to the deadline imposed for source owners and operators to conduct required performance tests in specified force majeure circumstances. The final rule inadvertently stated that we were revising paragraph (c) introductory text when we actually added introductory text to paragraph (c). The purpose of this action is to correct this error.

This action merely addresses a formatting issue. Thus, it is proper to issue this notice without notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the Agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the change to the rule is a minor technical correction, is noncontroversial, and does not substantively change the agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

DATES: This correction is effective December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Lula Melton, Air Quality Assessment Division (C304–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2910; fax number: (919) 541–4511; e-mail address *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA issued a final rule on August 27, 2007 (72 FR 48938) that allows source owners or operators, in the event of a force majeure, to petition the Administrator for an extension of the deadline(s) by which they are required to conduct a performance test required by the Consolidated Federal Air Rule. A "force majeure" is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe, despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

II. Summary of Amendment

The EPA promulgated revisions to the General Provisions for Consolidated Federal Air Rule on August 27, 2007. Afterwards, we realized that we inadvertently stated that we were revising paragraph (c) introductory text when we actually added introductory text to paragraph (c). The purpose of this action is to correct this error.

III. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget (OMB). This action is not a "major rule" as defined by 5 U.S.C. 804(2). The technical correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA)(Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

The correction does not have a substantial direct effect on the States, or on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999).

Today's action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The technical correction also is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

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

The correction does not involve changes to the technical standards related to test methods or monitoring requirements; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The correction also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 U.S. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of today's action in the **Federal Register**. Today's action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective December 28, 2007.

List of Subjects in 40 CFR Part 65

Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 20, 2007.

Robert J. Meyers,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I, part 65 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

Subpart A—[Amended]

■ 2. In § 65.157, introductory text for paragraph (c) is added following the paragraph (c) heading to read as follows:

§ 65.157 Performance test and flare compliance determination requirements.

* * * * *

(c) * * * Except as specified in paragraphs (c)(1)(viii), (c)(1)(ix), (c)(1)(x), and (c)(1)(xi) of this section, unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of another subpart of this part, the owner or operator shall perform such tests specified in the following:

* * * * *

[FR Doc. E7–25293 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0116; FRL–8342–7]

Dimethenamid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dimethenamid in or on hop, dried cones; pumpkin, radish (roots and tops); rutabaga (roots and tops); turnip greens; turnip (roots and tops); and winter squash. The

Interregional Research Project No. 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also modifies 40 CFR 180.464, section (b) by deleting the existing time-limited tolerance for winter squash as a permanent tolerance is being established by this action.

DATES: This regulation is effective December 28, 2007. Objections and requests for hearings must be received on or before February 26, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0116. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@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 those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide 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 Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0116 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before February 26, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0116, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 4, 2007 (72 FR 16352) (FRL–8119–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E7152) by IR-4. The petition requested that 40 CFR 180.464 be amended by establishing a tolerance for residues of the herbicide dimethenamid, 1 (R,S)-2-chloro-N-[(1-methyl-2-methoxy) ethyl]-N-(2,4-dimethylthien-3-yl)-acetamide) in or on hop, dried cones at 0.05 parts per million (ppm); pumpkin at 0.01 ppm; radish, roots at 0.01 ppm; radish, tops at 0.01 ppm; rutabaga, roots at 0.01 ppm; rutabaga, tops at 0.1 ppm; turnip, greens at 0.1 ppm; turnip, roots at 0.01 ppm; turnip, tops at 0.1 ppm; and winter squash at 0.01 ppm. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has approved regionally restricted tolerances for pumpkin and winter

squash for States of Oregon and Washington only, in that supporting data are limited to EPA growing Region 12. The reason for these changes is further explained in the supporting document for this action, entitled, "Dimethenamid-P. Petition for Registration for Uses Turnips and Hops. Summary of Analytical Chemistry and Residue Data. Petition 6E7152," in docket ID number EPA–HQ–OPP–2007–0116.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of dimethenamid on hop, dried cones at 0.05 ppm; pumpkin at 0.01 ppm; radish, roots at 0.01 ppm; radish, tops at 0.01 ppm; rutabaga, roots at 0.01 ppm; rutabaga, tops at 0.1 ppm; turnip, greens at 0.1 ppm; turnip, roots at 0.01 ppm; turnip, tops at 0.1 ppm; and winter squash at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered the validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by dimethenamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2007–0116 in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for dimethenamid used for human risk assessment can be found at *http://www.regulations.gov* in document, "Dimethenamid-P. Amended Human Health Risk Assessment for a Proposal for the Establishment of Tolerances for Dimethenamid-P Use on Winter Squash, Pumpkin, Radish (Roots and Tops), Rutabaga (Roots and Tops), Turnip (Roots, Tops and Greens) and on Hops, Dried Cones," at docket ID number EPA–HQ–OPP–2007–0116.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to dimethenamid, EPA considered exposure under the petitioned-for tolerances as well as all existing dimethenamid tolerances in (40 CFR 180.464). EPA assessed dietary exposures from dimethenamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used Dietary Exposure Evaluation Model/Food Consumption Intake Database (DEEM/FCID) Version 2.03 which incorporates food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). An appropriate acute endpoint attributable to a single dose was selected for the population subgroup females 13-49. The acute dietary analysis was conducted for dimethenamid assuming tolerance level residues, default processing factors, and 100% crop treated (CT) information.

ii. *Chronic exposure.* In conducting the chronic dietary exposure (food and drinking water assessment), EPA used consumption data from the USDA 1994–1996 and 1998 Nationwide CSFII. The chronic dietary exposure assessment was conducted for dimethenamid assuming tolerance level residues, default processing factors, and 100%CT information.

iii. *Cancer.* Dimethenamid is a category "C" possible human carcinogen. The chronic reference dose (cRfD) of 0.05 milligram/kilogram/day (mg/kg/day) used for risk assessment is based on non-cancer precursor effects in the liver; therefore, the cRfD is considered protective of both cancer and non-cancer effects. A separate cancer exposure assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure

analysis and risk assessment for dimethenamid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of dimethenamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of dimethenamid for acute exposures are estimated to be 66.7 parts per billion (ppb) for surface water and 1.0 ppb for ground water. The EDWCs for chronic exposures are estimated to be 20.2 ppb for surface water and 1.0 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The EDWCs for use sites with the highest values were used. For acute dietary risk assessment, the water concentration value of 66.7 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 20.2 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Dimethenamid is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to dimethenamid and any other substances and dimethenamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethenamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is no concern for increased qualitative and/or quantitative susceptibility following prenatal and postnatal exposure to dimethenamid in rats and rabbits. In the developmental toxicity study in rats there was an increased incidence of post-implantation loss and minor skeletal variations. In the developmental toxicity study in rabbits, late resorptions and minor skeletal variations were observed at the highest dose tested. In the rabbit, the developmental effects occurred at the same dose as maternal toxicity; whereas in the rat, the developmental effects occurred at much higher doses than in the dams. The reproduction study showed decreases in body weight in both pups and parental animals at the same dose levels.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for dimethenamid is complete.

ii. There is no indication that dimethenamid is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that dimethenamid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100%CT and tolerance-level residues which results in very high-end estimates of dietary exposure. The dietary drinking water assessment utilizes values generated by modeland associated modeling parameters which are designed to provide health protective, high-end estimates of water concentrations. These assessments will not underestimate the exposure and risks posed by dimethenamid.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to dimethenamid will occupy <1 % of the aPAD at the 95th percentile for females 13-49 years old, the population group of concern for acute dimethenamid exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to dimethenamid from food and water will utilize 3% of the cPAD for all infants (<1 year old), the subpopulation group with greatest exposure. There are no residential uses for dimethenamid that result in chronic residential exposure to dimethenamid.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethenamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern (LOC). A

short-term aggregate risk assessment is not required.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Dimethenamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern. An intermediate-term aggregate risk assessment is not required.

5. *Aggregate cancer risk for U.S. population.* The chronic reference dose (cRfD) of 0.05 mg/kg/day used for risk assessment is based on non-cancer precursor effects in the liver; therefore, the cRfD and chronic risk assessment are considered protective of both cancer and non-cancer effects.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to dimethenamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with a nitrogen phosphorus detector (GC/NPD) Method AM–0884–0193–1) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican maximum residue limits (MRLs) for dimethenamid on any of the crops/commodities being proposed in this petition.

V. Conclusion

Therefore, tolerances are established for residues of the herbicide dimethenamid, 1 (R,S)-2-chloro-N-[(1-methyl-2-methoxy) ethyl]-N-(2,4-dimethylthien-3-yl)-acetamide) in or on hop, dried cones at 0.05 parts per million (ppm); pumpkin at 0.01 ppm; radish, roots at 0.01 ppm; radish, tops at 0.01 ppm; rutabaga, roots at 0.01 ppm; rutabaga, tops at 0.1 ppm; turnip, greens at 0.1 ppm; turnip, roots at 0.01 ppm; turnip, tops at 0.1 ppm; and winter squash at 0.01 ppm. The existing time-limited tolerance for winter squash shall be deleted as a permanent tolerance is being established by this action.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.464 is amended by alphabetically adding the following commodities to the table in paragraph (a), removing the text in paragraph (b), and reserving it, and adding text to paragraph (c) to read as follows:

§ 180.464 Dimethenamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Hop, dried cones	0.05
* * * *	*
Radish, roots	0.01
Radish, tops	0.01

Commodity	Parts per million
Rutabaga, roots	0.01
Rutabaga, tops	0.1
* * * * *	
Turnip, greens	0.1
Turnip, roots	0.01
Turnip, tops	0.1
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for residues of dimethenamid, 1 (R,S)-2-chloro-N-[(1-methyl-2-methoxy) ethyl]-N-(2,4-dimethylthien-3-yl)-acetamide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Pumpkin	0.01
Squash, winter	0.01

* * * * *

[FR Doc. E7–25090 Filed 12–27–07; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0114; FRL–8343–2]

Fluroxypyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of fluroxypyr and its metabolite in or on pome fruit, group 11; millet (grain, forage, hay and proso millet straw). Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 28, 2007. Objections and requests for hearings must be received on or before February 26, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0114. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@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 those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide 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 Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0114 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before February 26, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0114, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 4, 2007 (72 FR 16352) (FRL–8119–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E7168) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.535 be amended by establishing tolerances for combined residues of the herbicide fluroxypyr, 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid], in or on pome, fruit, group 11 at 0.02 parts per million (ppm); millet, grain at 0.5 ppm; millet, forage at 12.0 ppm; millet, hay at 20.0 ppm; millet, proso, grain at 0.5 ppm; millet, proso, straw at 12.0 ppm; millet, proso, forage at 12.0 ppm; millet, proso, hay at 20.0 ppm; millet, pearl, grain at 0.5 ppm; millet, pearl, forage at 12.0 ppm; and millet, pearl, hay at 20.0 ppm. That notice referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that separate tolerances for proso and pearl millet grain, forage, and hay are not needed since these commodities are covered by the tolerances being established for millet grain, millet forage and millet hay.

EPA is also deleting all the tolerances in § 180.535(b) for field and sweet corn, onion, and sorghum commodities that are no longer needed since they have expired. The deletions under § 180.535(b) are time-limited tolerances that were established under section 18 emergency exemptions that have since expired and have been superceded by the establishment of general tolerances for the same commodities under § 180.535(a).

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of fluroxypyr, 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid] on fruit, pome, group 11 at 0.02 ppm; millet, grain at 0.5 ppm; millet, forage at 12.0 ppm; millet, hay at 20.0 ppm and millet, proso, straw at 12.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by fluroxypyr as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studiescan be found at *http://www.regulations.gov* in document *Fluroxypyr: Human Health Risk Assessment to Support Proposed New Uses on Pome Fruits and Millet* at Attachment #2 page 27 - 30 in docket ID number EPA–HQ–OPP–2007–0114.

Fluroxypyr has low acute toxicity by the oral and dermal routes and moderate acute toxicity by the inhalation route. The kidney is the target organ for fluroxypyr following oral exposure to rats, mice, and dogs. In the rat, increased kidney weight and death were observed in both sexes in the 90–day feeding study, increased kidney weight and chronic progressive glomerulonephropathy were observed in both sexes in the chronic study. Increased kidney weight was observed in the maternal rat in the developmental toxicity study, and kidney effects (deaths due to renal failure; increased kidney weight, and microscopic kidney lesions) were observed in both sexes in the 2–generation reproduction study. Although kidney toxicity (early signs of acute tubular nephrosis) was observed in dogs in the 28–day feeding study, no kidney effects or other treatment related toxicity was seen in the chronic feeding study in dogs. Increased kidney lesions (increased incidences of renal papillary necrosis and regenerative nephrosis in females) were observed in mice following long-term exposure. Treatment related deaths were noted in maternal rats (600 milligrams/kilograms/day (mg/kg/day)) and rabbits (400 mg/kg/day). Endpoints for risk assessment were based on kidney effects seen in the database. There was no evidence of increased susceptibility (quantitative/qualitative) following *in utero* exposure to the acid and the ester in rats and rabbits, or following prenatal and/or postnatal exposure in rats. There are no neurotoxicity concerns from the acute and subchronic neurotoxicity studies, and the weight of the evidence indicates a lack of concern for developmental neurotoxicity. Therefore, a developmental neurotoxicity study (DNT) is not required. Fluroxypyr is classified as "not likely" as a human carcinogen and there was no concern for its mutagenicity potential.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose

at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

A summary of the toxicological endpoints for fluroxypyr used for human risk assessment can be found at *http://www.regulations.gov* in document *Fluroxypyr: Human Health Risk Assessment to Support Proposed New Uses on Pome Fruits and Millet* at page 11 in docket ID number EPA–HQ–OPP–2007–0114.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluroxypyr, EPA considered exposure from the petitioned-for tolerances as well as all existing fluroxypyr tolerances in (40 CFR 180.535). EPA assessed dietary exposures from fluroxypyr in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a single exposure.

No such effects were identified in the toxicological studies for fluroxypyr; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

iii. *Cancer.* Based on the results of carcinogenicity studies in rats and mice, EPA has concluded that fluroxypyr is "not likely to be carcinogenic to humans." Consequently, a quantitative cancer exposure and risk assessment is not appropriate for fluroxypyr.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for fluroxypyr in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of fluroxypyr. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of fluroxypyr for chronic exposures are estimated to be 3.28 ppb for surface water and 0.04 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 3.28 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluroxypyr is currently registered for the following residential non-dietary sites: Application to residential turf grass and recreational sites such as golf courses, parks, and sports fields. EPA assessed residential exposure using the following assumptions:

Residential handlers may receive short-term dermal and inhalation exposure to fluroxypyr when mixing, loading and applying the formulations. However, toxicity by the dermal route of exposure is not expected; therefore only inhalation daily doses for residential handlers were calculated. Adults and children may be exposed to fluroxypyr residues from dermal contact with turf during post-application activities. Toddlers may receive short- and intermediate-term oral exposure from incidental ingestion during post-application activities. A dermal risk assessment for post-application exposures was not conducted because a dermal endpoint was not selected. Therefore, only the following post-application exposure scenarios resulting from lawn treatment were assessed:

i. Toddlers' incidental ingestion of pesticide residues on lawns from hand-to-mouth transfer,

ii. Object-to-mouth transfer from mouthing of pesticide-treated turfgrass, and

iii. Incidental ingestion of soil from pesticide-treated residential areas.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluroxypyr and any other substances and fluroxypyr does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluroxypyr has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the

FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased susceptibility (quantitative/qualitative) following *in utero* exposure to the fluroxypyr in rats and rabbits, or following prenatal and/or postnatal exposure in rats. There are no neurotoxicity concerns from the acute and subchronic neurotoxicity studies, and the weight of the evidence indicates a lack of concern for developmental neurotoxicity.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for fluroxypyr is complete.

ii. There is no indication that fluroxypyr is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fluroxypyr results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated and tolerance-level residues. Conservative ground and surface water modeling estimates were used. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluroxypyr.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* None of the toxicology studies available for fluroxypyr indicated the possibility of an effect of concern occurring as a result of a single exposure; therefore, fluroxypyr is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fluroxypyr from food and water will utilize 1.4% of the cPAD for children 1-2 years old, the subpopulation group with greatest exposure. Based on the use patterns, chronic residential exposure to residues of fluroxypyr is not expected.

3. *Short-term risk and intermediate-term.* Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluroxypyr is currently registered for uses that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for fluroxypyr.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 4,400 to 53,000. The MOE for the U.S. population is 8,200. The most highly exposed subgroup was Children, 1-2 years old, with an MOE of 4,400.

4. *Aggregate cancer risk for U.S. population.* There was no evidence of carcinogenicity in two carcinogenicity studies in rats and mice with fluroxypyr. Therefore, fluroxypyr is considered "Not likely to be carcinogenic to humans." Fluroxypyr is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluroxypyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/mass-selective detector (GC/MSD)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no Codex, Canadian or Mexican MRLs for fluroxypyr for pome fruits or millet.

V. Conclusion

Therefore, tolerances are established for combined residues of fluroxypyr, 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid] in or on fruit, pome, group 11 at 0.02 ppm; millet, grain at 0.5 ppm; millet, forage at 12.0 ppm; millet, hay at 20.0 ppm and millet, proso, straw at 12.0 ppm.

Time-limited tolerances were established in 40 CFR 180.535(b) for residues of fluroxypyr on field and sweet corn, onion, and sorghum commodities in connection with FIFRA section 18 emergency exemptions granted by the EPA. All of these time-limited tolerances have expired and are no longer in force. Permanent tolerances have been established on these commodities in § 180.535(a). Because expired, time-limited tolerances for residues of fluroxypyr are without effect, this final rule removes them from EPA's regulations. EPA finds there is good cause to make this latter change without prior notice and comment because it eliminates obsolete portions of the regulation. EPA concludes notice and comment are unnecessary on such changes.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in*

Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.535 is amended by alphabetically adding the following commodities to the table in paragraph (a), removing the expired time-limited tolerances in paragraph (b), and reserving it to read as follows:

§ 180.535 Fluroxypyr 1-methylheptyl ester; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Fruit, pome, group 11	0.02
* * * *	*
Millet, forage	12.0
Millet, grain	0.5
Millet, hay	20.0
Millet, proso, straw	12.0
* * * *	*

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. E7–25092 Filed 12–27–07; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 433, and 440

[CMS–2287–F]

RIN 0938–AP13

Medicaid Program; Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: Under the Medicaid program, Federal payment is available for the costs of administrative activities "as found necessary by the Secretary for the proper and efficient administration of the State plan." This final rule eliminates Federal Medicaid payment for the costs of certain school-based administrative and transportation activities because the Secretary has found that these activities are not necessary for the proper and efficient administration of the Medicaid State plan and are not within the definition of the optional transportation benefit. Based on these determinations, under this final rule, Federal Medicaid payments will no longer be available for administrative activities performed by school employees or contractors, or anyone under the control of a public or private educational institution, and for transportation from home to school. In addition, this final rule responds to public comments received on the September 7, 2007 proposed rule.

EFFECTIVE DATE: These regulations are effective on February 26, 2008.

FOR FURTHER INFORMATION CONTACT: Sharon J. Brown, (410) 786–0673, Judi Wallace, (410) 786–3197.

SUPPLEMENTARY INFORMATION: We published a proposed rule in the **Federal Register** on September 7, 2007, at 72 FR 51397 that would eliminate Federal Medicaid payment for school-based administrative activities, based on a Secretarial finding that such activities are not necessary for the proper and efficient administration of the Medicaid State plan. Moreover, the proposed rule would also eliminate Federal Medicaid payment based on a finding that transportation from home to school and back for school-age children is neither necessary for the proper and efficient administration of the Medicaid State

plan, nor within the scope of the optional medical transportation benefit. We received 1,240 timely public comments on the proposed rule. After careful consideration of these comments, we are adopting the rule as proposed without change. We discuss later in this preamble our response to comments and our reasons for going forward with the proposed rule. Below, we first summarize the background and provisions of the proposed rule.

I. Background

A. Administrative Activities and Transportation Services Under the Medicaid Program

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs, operated by each State under an approved Medicaid State plan that provide medical assistance to needy individuals including low-income families, the elderly, and persons with disabilities. Federal payment is available to a State for a proportion of expenditures for medical assistance under the approved Medicaid State plan, and of expenditures necessary for administration of the State plan. This joint Federal-state financing of expenditures is described in section 1903(a) of the Act, which sets forth the rates of Federal financing for different types of expenditures.

Under section 1903(a)(7) of the Act, Federal payment is currently available at a rate of 50 percent of amounts expended by a State "as found necessary by the Secretary for the proper and efficient administration of the State plan." In addition, OMB Circular A–87, which contains the cost principles for State, local and Indian tribal governments for the administration of Federal awards, states that, "Governmental units are responsible for the efficient and effective administration of Federal awards." Under either of these provisions, administrative expenditures must be reasonable and necessary for the performance of functions funded by the Federal award.

Transportation to and from providers is not expressly mentioned in the Medicaid statute, but States can claim Federal matching dollars for such transportation in one of two ways. Since the inception of the program the Federal government has recognized that transportation is essential to the administration of the Medicaid State plan, to ensure that beneficiaries have access to covered services. Federal regulations at 42 Code of Federal Regulations (CFR) 431.53 require that Medicaid State plans "specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers" and describe the methods for doing so. Under 42 CFR 440.170(a), States are afforded the option of furnishing transportation as an optional covered medical service recognized under section 1905(a)(28) of the Act as defined and specified. Under this section, transportation is defined as "expenses for transportation and other related travel expenses determined necessary by the agency *to secure medical examination and treatment* (emphasis added) for a recipient." Travel expense is defined to include the cost of the actual transportation necessary to the medical service, meals and lodging en route to medical care and the cost of attendees to the beneficiary if necessary.

Whether transportation is furnished as an administrative activity under 42 CFR 431.53 or as an optional covered medical service could affect the Federal Medicaid matching rate and the flexibility available to the State, but these issues are not relevant for purposes of this final regulation.

B. Medicaid and Schools

A wide range of medical services may be furnished to students in school settings. In particular, pursuant to requirements under the Individuals with Disabilities Education Act (IDEA), schools deliver a broad range of educational and related services (e.g., educational, social, and medical services) to students with disabilities to address their diverse needs. Section 1903(c) of the Act prohibits the Secretary from denying or restricting Federal Medicaid payment to States for covered services furnished to a child with a disability on the basis that the services are included in the child's Individualized Education Program (IEP) or Individualized Family Services Plan (IFSP) established pursuant to the IDEA.

Some of the special education and related services required by the IDEA may be within the scope of medical assistance services covered under the Medicaid program. Medicaid covers medically necessary direct medical services included in an IEP or IFSP that are in a Medicaid covered category under the approved State Medicaid plan (such as speech therapy or physical therapy, but also including Early and Periodic Screening Diagnosis and Treatment), and that meet all other Federal and State Medicaid regulations (including provider qualifications and any amount, duration and scope limitations).

Schools and school districts perform a myriad of administrative activities that arise directly from the educational mission of the schools. Though these activities may include coordinating the delivery of Medicaid services with educational services, they are primarily associated with educational program requirements including IDEA requirements. Transportation to and from the school for most students is also part of the schools' educational responsibility.

C. Prior Agency Experience With School-Based Administration and Transportation

As detailed in the proposed rule, CMS had previously issued several guidance documents on school-based administration and transportation. In those interpretive guidance documents, CMS set forth a complex set of principles permitting State claims for school-based administration and transportation. The claims that resulted from this guidance were the subject of several audits by the Office of the Inspector General finding widespread fraud and abuse as well as improper claiming of costs to the Medicaid program that were incurred to meet mandates under educational programs.

II. Provisions of the Proposed Regulations

We published a proposed rule on September 7, 2007, at 72 FR 51397, that would eliminate Federal Medicaid payment for school-based administrative activities, based on a Secretarial finding that such activities are not necessary for the proper and efficient administration of the State plan. Moreover, the proposed rule would also eliminate Federal Medicaid payment based on a Secretarial finding that transportation from home to school and back for school-age children is neither necessary for the proper and efficient administration of the State plan, nor within the scope of the optional medical transportation benefit. Based on these findings, the proposed rule specified that Federal financial participation (FFP) under the Medicaid program will not be available for school-based administrative and certain transportation costs, with the exception of administrative activities conducted by employees of the State or local Medicaid agency.

Under the proposed rule, the following changes would apply to the costs of the following activities or services:

- FFP would no longer be available for the costs of school-based administrative activities under

Medicaid. By administrative activities, we referred to activities that are not properly included in the scope of a covered service. School-based administrative expenditures are expenditures under the administrative control of a public or private educational institution and that are conducted by school employees or contractors, or anyone under the control of a public or private educational agency.

• FFP would no longer be available for the costs of transportation from home to school and back for school-age children with an IEP or IFSP established pursuant to the IDEA.

The proposed rule would supersede all previous guidance, including guidance on school-based administrative claiming and school-based transportation.

Under the proposed rule, CMS would continue to reimburse States for school-based direct Medicaid services in their approved State plans. That is, the proposed rule would not affect the treatment of expenditures for direct medical services that are included in the approved State Medicaid plan and provided in schools, nor did it affect transportation of school-aged children from school or home to a non-school-based direct medical service provider that bills under the Medicaid program, or from the non-school-based provider to school or home.

Furthermore, under the proposed rule, CMS would continue to reimburse States for transportation costs related to children who are not yet school-age and are being transported from home to another location, including a school, and back to receive direct medical services, as long as the visit does not include an educational component or any activity unrelated to the covered direct medical service.

Federal funding would also continue to be available for administrative overhead costs that are integral to, or an extension of, a direct medical service and, as such, are claimed as medical assistance. These activities are properly reimbursed at the applicable Federal medical assistance percentage (FMAP) rate for the related direct medical service, and include patient follow-up, assessment, counseling, education, parent consultations, and billing activities. Furthermore, school-based administrative activities, such as Medicaid outreach and eligibility intake, that are conducted by employees of the State or local Medicaid agency would remain eligible for FFP under the proposed rule.

The proposed rule was based on a determination that administrative activities performed by schools, and transportation of school-age children from home to school and back, are not necessary for proper and efficient administration of the State Medicaid plan, and are not within the scope of the transportation services recognized by the Secretary under 42 CFR 440.170(a), for the following reasons:

(1) The activities or services support the educational program and do not specifically benefit the Medicaid program;

(2) The activities or services are performed by school systems to further their educational mission and/or to meet requirements under the IDEA, even in the absence of any Medicaid payment;

(3) The types of school-based administrative activities for which claims are submitted to Medicaid largely overlap with educational activities that do not directly benefit the Medicaid program; and

(4) Transportation from home to school and back is not properly characterized as transportation to or from a medical provider.

III. Analysis of and Responses to Public Comments

We received approximately 1,240 timely comments from State officials, school districts and consortia, educational organizations, child advocacy groups, health care organizations, school nurses, parents, teachers, school officials, providers, and other interested individuals. The largest group of comments came through a write-in campaign initiated by an organization titled the Council for Exceptional Children (CEC). The State with which the largest number of commenters identified themselves was California. All comments were reviewed and analyzed. After associating like comments, we placed them in categories based on subject matter. Summaries of the public comments received and our responses to those comments are set forth below.

General

Most commenters opposed the proposed regulation, for the reasons specified below. Of the commenters supporting the proposed rule, they either concurred that Medicaid funds should not be used to fulfill educational requirements or appreciated the potential for savings in Federal expenditures. The categorized comments and our responses are listed below.

Funding Issues

Comment: The largest number of comments focused on funding issues, arguing that any loss of funding would potentially "* * * reduce the funds available to our already strained special education budgets," according to one commenter. Another commenter argued that "* * * if States cannot take up the slack, and most of them are struggling to provide non-medical transportation to get children to school, as well as to satisfy other Federal requirements, this funding cut will be yet another unfunded * * * mandate." Many commenters noted that in their districts, schools are already strapped with tight budgets, some even specifying the exact amount of revenue they believed would be lost under the proposed regulation. One commenter noted that "Should administrative claiming be eliminated, we would have to shift funds from other areas in our budgets to cover the cost or raise taxes if this proposal should become a reality." And: "Our school division struggles daily with dwindling local resources and increasing demand * * *. Loss of these funds * * * would unfairly exacerbate a dire situation." It is unrealistic, many commenters argued, to assume that any State or school would be able to replace the loss of Federal Medicaid reimbursement that would result from finalization of the proposed rule.

Response: Such comments appear to support our view and concern that Title XIX funds are being used as a funding source without specific benefit to the Medicaid program. Constrained local and State funding for education is not the basis for determining whether a cost is properly claimed under Medicaid. Specifically, administrative expenditures must be deemed necessary for the proper and efficient administration of the Medicaid State plan in order for reimbursement to be available. The need for schools to obtain additional funding in itself does not justify continued Federal Medicaid reimbursement. Limitation of Medicaid claims to administrative and transportation activities that are directly related to the furtherance of the Medicaid State plan is necessary to maintain the financial integrity of the Medicaid program. None of these commenters provided any factual basis to conclude that the activities in question were, indeed, necessary for the proper and efficient administration of the Medicaid State plan (or transportation necessary to ensure that individuals obtain access to Medicaid providers).

Comment: Some commenters focused on the fact that Medicaid reimbursement is used to meet other educational needs and augment underfunded budgets. Commenters noted that reimbursement for school-based administrative activities is used for a wide variety of unrelated, but important, purposes, such as instructional materials and equipment, or to fund staff positions, and that schools rely on this funding for such purposes. According to one commenter, Medicaid reimbursement is used to allow service staff to attend workshops and to purchase "* * * needed technology and materials to better educate our children." Some asked how States and schools would make up for any funding shortfalls that result from finalization of the proposed rule. As one commenter noted: "* * * this * * * action by the Federal government would force us to make cuts in other essential educational programs to ensure that federally required services can continue, despite the lack of funding," such as electives, after-school activities, or arts and music programs. The loss of Medicaid payments could also result in schools having to lay off staff or curtail referral services, according to some commenters.

Response: Federal matching funds under Medicaid are only available for Medicaid services provided to Medicaid eligible individuals as described in the Medicaid State plan. The commenters expressly identified non-Medicaid costs that are clearly educational in nature. Constrained local and State funding for education is not the basis for determining whether a cost is properly claimed under Medicaid. We believe the final rule is necessary to maintain the financial integrity of the Medicaid program and there is nothing in this final rule which would eliminate funding for necessary direct medical services eligible for Medicaid funding.

Comment: Some commenters noted the fact that Congress has never fully funded the IDEA, and in lieu of such funding, Medicaid reimbursement must be used. One commenter stated the following: "At a time when the Federal government is funding barely 18 percent of the national average per-pupil expenditures for each child in special education instead of the 40 percent that Congress promised to pay when IDEA was first enacted, major cutbacks in Medicaid reimbursements will severely restrict the ability of State and local school districts to provide much-needed health care services to disabled children." Without a commensurate increase in funding for IDEA-related requirements to offset cuts resulting from the proposed rule, they argue, critical services may be cut. The proposed rule makes no attempt to explain how States and school districts might compensate for the reduction in funding under Medicaid and the inadequate funding of IDEA-related mandates, they noted.

Response: The desire for supplemental funds to augment IDEA funding does not justify Medicaid payments that are not authorized by the Medicaid statute, regulations and applicable cost accounting principles. Under Office of Management and Budget Circular A–87, "governmental units are responsible for the efficient and effective administration of Federal awards." It is not consistent with efficient and effective administration of the Medicaid program to pay for administrative activities (including transportation from home to school and back) that are performed as part of a school's educational mission, do not specifically benefit the Medicaid program, are neither controlled nor supervised by the Medicaid program, and would be performed by the schools even in the absence of the Medicaid program. As stated earlier, we believe the final rule is necessary to maintain the financial integrity of the Medicaid program. Such comments appear to support our view and concern that Title XIX funds are being used for non-Medicaid purposes and that the request for additional funding for educational activities should be more appropriately directed to other Federal, State, and local funding sources.

Provision of Services

Comment: Some commenters worried that the proposed rule would adversely impact the provision of needed services to school-age children. One commenter noted that "* * * schools are providing necessary medical/psychological services and/or referrals that others are able to be reimbursed for, so this should not be cut." Some argued that any changes to the Medicaid program would have a detrimental effect on the medical care provided to students.

Response: The provision of, and reimbursement for, school-based medical services are not affected by the changes specified in the final rule. CMS will continue to recognize schools as valid settings for the delivery of direct medical services recognized in the Medicaid State plan. Medicaid reimbursement would remain available for covered services provided to children pursuant to an IEP or IFSP, whether they are provided in school or in the community. That is, CMS will continue to reimburse States for school-based Medicaid service costs authorized in their approved Medicaid State plans, including transportation of school-aged children from school or home to a non-school-based direct medical service provider that bills under the Medicaid program, and from the non-school-based provider to school or home. CMS will also continue to reimburse States for transportation costs related to children who are not yet school-age and are being transported from home to another location, including a school, and back to receive direct medical services, as long as the transportation is not primarily for purposes other than gaining access to a Medicaid provider for covered services (such as when it is regularly scheduled transportation to a day care program).

We do not believe the final rule will impact children eligible for Medicaid. IDEA mandates that services prescribed by a child's IEP or IFSP be provided to children. Section 1903(c) of the Act provides clearly that Medicaid reimbursement be made available for such services, when provided to Medicaid-eligible children, covered under the State plan, and provided by qualified providers that properly bill the Medicaid program. These requirements will not change as a result of the final rule. As a result, these services will continue to be provided to children pursuant to their IEP or IFSP, and will continue to be paid by Medicaid.

Comment: One commenter noted that "* * * while the proposed regulation does not directly affect reimbursement for these services, a school district's inability to be reimbursed for administrative services related to the provision of the medically necessary services will in fact have a chilling effect on a school district's ability to deliver these services." To deny Federal Medicaid matching for administrative activities provided by school employees or its contractors would, in the words of one commenter, "* * * improperly shift the cost of allowable Medicaid services entirely to State and localities, without regard for the reduction in service that would result."

Response: Federal funding would continue to be available for administrative overhead costs that are integral to, or an extension of, a direct medical service and, as such, are claimed as medical assistance. These activities are properly reimbursed at the applicable FMAP rate for the related direct medical service, and can include administrative activities under the direction of the medical service provider, such as patient-follow-up, parent consultations, and billing activities, when included in the

negotiated rate paid for direct medical services.

Comment: In certain comments, it was noted that Medicaid funding helps school pay for other types of services, such as mental health services, which would not otherwise be available to students. One commenter argued that if the proposed rule is promulgated, school-based services will be less effective and more costly for CMS, State Medicaid agencies, and schools. Another commenter noted that while the proposed rule does not explicitly restrict access to services in schools, it would make it less desirable for Medicaid programs to use school settings to provide services, and could inadvertently make it more difficult to meet Medicaid's original intent to fund necessary medical assistance "* * * to promote growth and development and prevent or ameliorate disabilities and conditions."

Response: Medicaid payment remains available for all covered services furnished in a school setting and for children. These covered services include the broadest possible range of services under the mandatory Medicaid covered benefit for early and periodic screening, diagnostic and treatment (EPSDT) services. As Medicaid will still provide funding for such services that qualify under the Medicaid State plan, this will likely mean that the availability of such services in a school setting will not diminish as a result of this rule.

Comment: A few commenters pointed to past and ongoing litigation over the failure to provide mandated services to children with disabilities and suggested that the likely consequences of the proposed rule would be a reduction in funding for necessary services they have fought in court to secure for these children. Specifically, some commenters cited the ruling in the *Bowen* v. *Massachusetts* case (487 U.S. 879 (1988) No. 87–712), in which an appellate court ruled that "* * * it is the nature of the services, not what the services are called or who provided them" that determines whether the services qualify for Medicaid reimbursement. By eliminating Federal Medicaid reimbursement for administrative activities engaged in by school employees, the proposed rule goes against Federal court interpretations of the Medicaid statute, they argue. Others interpret that ruling to mean that any attempt to eliminate Medicaid reimbursement for transportation as a covered service in a State plan based solely on the child's participation in an educational program would be in violation of the court's ruling in Bowen. The court ruling, they contend, nullifies CMS's attempts to justify elimination of reimbursement for school-based administrative and transportation service expenditures by labeling such expenditures as "educational" in nature.

Response: The final rule clarifies that Federal Medicaid funding is available for direct medical services provided by schools. To the extent that a State elects to reimburse transportation as an optional medical service, Federal reimbursement will still be available to the extent that the primary purpose of that transportation is access to a medical service. That is, CMS will continue to reimburse States for transportation of school-aged children from school or home to a non-school-based direct medical service provider that bills under the Medicaid program, and from the non-school-based provider to school or home. Furthermore, CMS will continue to reimburse States for transportation costs related to children who are not yet school-age and are being transported from home to another location, including a school, and back to receive direct medical services, as long as the transportation is not primarily for purposes other than gaining access to a Medicaid provider (such as when it is regularly scheduled transportation to a day care program). However, routine transportation from home to school and back for school age children is primarily educational in nature and will not be eligible for Medicaid reimbursement as part of a medical service.

Potential Impact on EPSDT

Comment: Some commenters argued that the proposed rule will make it difficult for States to fulfill requirements under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit specified in section 1905(a) of the Act. This mandate, they note, requires States to inform families about the availability of EPSDT services and assist them in accessing services. Many school systems have contracted with States so that school nurses and staff inform families about EPSDT. As currently written, the proposed rule would limit reimbursement for these activities to employees of the State Medicaid agency. This potential conflict between the EPSDT mandate and the proposed rule, they argue, would severely restrict the ability for States to meet their responsibility under ESPDT and hamper access to necessary services for children. Under EPSDT requirements, one commenter noted, States are urged to make use of other public, health, mental health and educational programs in order to ensure an effective child health program. They cited the State Medicaid Manual as not only encouraging State Medicaid agencies to coordinate EPSDT administrative activities with "school health programs of State and local health agencies," but also offering FFP to cover the costs to public agencies of providing direct support to the Medicaid agency in administering the EPSDT program.

Response: Under the final rule, States will still be required to meet EPSDT requirements and are afforded flexibility in meeting these requirements. We do not believe it is consistent with proper and efficient administration of the Medicaid State plan, however, to commingle EPSDT outreach functions with other school administrative or direct service activities. We continue to encourage States to coordinate Medicaid EPSDT programs with school health programs and State, local and other Federal health care or social welfare programs. Schools employ health care providers and other educational staff as information points for a variety of medical and social services far beyond simply the Medicaid program. This function is specific to the nature of a school-based provider and is not directly related to the administration of the Medicaid State plan. Coordination and information dissemination efforts that are not under the control and supervision of the State agency and are performed by schools, however, are fundamentally functions that further the mission of the schools to ensure that students receive necessary services using available Medicaid resources. Such activities are not directly for administration of the State Medicaid plan.

Support for School-Based Administration

Comment: A substantial number of commenters urged CMS to continue its support for school-based Medicaid administrative activities because, they argued, it can be an effective way to reach children in need of services and to ensure adequate medical care for disabled students and their families, who are often low-income and uninsured. One commenter noted that: "Families are familiar and comfortable with the people and the school, which makes schools a logical place to families to access health care. The unique role played by schools as a health service portal is irreplaceable." Some thought the proposed regulation would decrease the opportunities for children and families to learn about the availability of Medicaid, and the services provided to those eligible for coverage. As a result,

the proposed rule could result in increased health care costs through missed opportunities to enroll eligible children in Medicaid and connect them to needed services before they become catastrophic. A recurring theme was that the proposed rule fails to recognize that certain administrative activities performed by school-based staff are instrumental to ensuring access to covered Medicaid services for eligible low-income children.

Response: We acknowledge the importance of outreach and referral activities, and in no way preclude State or local Medicaid agencies from engaging in such activities. Nor do we preclude school employees from conducting activities that inform individuals of the availability of Medicaid services. But we disagree that such school employee activities are properly considered administration of the State plan. Such activities are performed as part of the normal operation of the school to ensure that students receive educational and related services, and to coordinate with other payers for those services. These activities are not performed for the purpose of State Medicaid plan administration. Moreover, this rule protects the financial integrity of the Medicaid program from the improper claiming and cost shifting found in Inspector General audits.

Comment: Other commenters cited the success of their school-based Medicaid programs and provided specific examples of such successes, noting the number of children enrolled in Medicaid as a result of their efforts and the ability to connect such children to needed services. One commenter stated that "* * * the proposed rule goes beyond reducing waste and abuse among the few by eliminating for all schools the positive benefits the program was designed to achieve." Another noted that the proposed rule does not take into account the appropriateness of schools providing administrative activities, especially to students with disabilities.

Response: CMS applauds the numerous examples of successful school-based Medicaid outreach and referral programs submitted by commenters. The success of these programs, however, does not compel a finding that school-based administration activities are a proper and efficient method for administration of a Medicaid State plan. In determining that these activities are not a proper and efficient method for administration of a State Medicaid program, we considered the extent to which such activities are conducted as a normal part of the operation of school education programs. We further considered the costs of improper Medicaid claiming because these activities are commingled with other school administrative activities and cannot be accurately allocated to Medicaid. Because these activities should occur in schools regardless of the availability of Medicaid funding and because the primary purpose of these activities is not the administration of the Medicaid program, we believe Medicaid should not provide funding for them.

Comment: Some commenters pointed to the May 2003 CMS Medicaid School-Based Administrative Claiming Guide, which states that "* * * the school setting provides a unique opportunity to enroll * * * and to assist" Medicaid eligible children "access the benefits available to them" as evidence that school-based Medicaid administrative claims should remain eligible for FFP. Another quote cited by commenters can be found in the 1997 CMS Medicaid and School Health: A Technical Assistance Guide, which stated:

> "Because of the proximity of schools to the target population, HCFA (now CMS) has always encouraged the participation of schools in the Medicaid program * * * [s]chool-based health services can represent an effective tool which can be used to bring more Medicaid-eligible children into preventive and appropriate follow-up care. In addition, schools present a wonderful opportunity for Medicaid outreach. That is, because schools are by definition "in the business of serving children," they can be a catalyst for encouraging otherwise eligible Medicaid children to obtain primary and preventive services as well as other necessary treatment services * * * we encourage efforts to inform potential eligibles about the Medicaid program and the EPSDT benefit."

The proposed rule, they believe, will force many States to curtail successful school-based initiatives to identify and enroll eligible low-income children in Medicaid that were encouraged by CMS itself, which is now promulgating a regulation to discontinue funding. Some commenters argued the proposed rule is a misguided approach and that it contradicts CMS' position that States should enroll eligible children.

Response: Schools remain a gateway for the delivery of health services for many children. As our response to the prior comment indicated, the issue is whether school-based administrative activities are a proper and efficient methodology for administration of the Medicaid State plan. We expect the central role of schools to continue, and we expect that many of these school-based administrative activities will continue as a normal part of the operation of a school program. We also expect that State or local Medicaid agencies will continue outreach efforts under their direction and control. This rule simply sets forth a clear test for the administrative activities that are appropriately claimed as necessary for the proper and efficient administration of the Medicaid State plan, and distinguishes those activities from the administration of a school program.

Better Guidance Needed

Comment: Some commenters argued that the solution to evidence of improper claiming for costs related to school-based Medicaid administration and transportation from home to school and back should be increased oversight, enforcement, and/or additional guidance, rather than elimination of reimbursement for such costs. They encouraged CMS to review the program and identify strategies for eliminating improper claiming practices without eliminating reimbursement for administrative costs. One commenter stated that "* * * Numerous alternative solutions exist, the most obvious of which is to install safeguards and auditing procedures that would eliminate the possibility of such fraudulent activity taking place in the future, thereby solving the problem while keeping the services intact." Many believe that clarifying guidance and controls on claiming are better alternatives to promulgating the proposed regulation, which was seen as draconian and dismissive of medical necessity. They believe the proposed rule is "* * * an overreaction to perceived problems in the past." CMS should focus its efforts on working with States to ensure proper claiming rather than promulgating new regulations. One commenter stated the following: "If CMS eliminates funding for every type of service, activity, or delivery system where it identifies inappropriate or even abusive claiming practices by some providers, funds would no longer be available for any benefits under the Medicaid program today."

Response: As described in Section VII of the responses, titled Alternatives Considered, we ultimately rejected the types of alternatives suggested by many of the commenters because the intervening years have proven that administrative activities cannot be adequately regulated or overseen within the resource limits available to CMS and the States. Plainly stated, we have concluded that it is not an effective approach to administration of the Medicaid State plan to rely on audits and monitoring to ensure that all claims are allowable.

Comment: One commenter recommended that "* * * CMS use its

rulemaking authority in a more constructive manner by defining clear guidance, criteria and limitations" and suggested applying the results of OIG's previous audits of States' school-based Medicaid claiming programs to develop better guidance and more effective oversight. That, they argue, would preserve the original intent of the program to reimburse States for legitimate activities performed by schools in support of Medicaid. As an alternative to the proposed rule, some suggested that CMS revisit past guidance and improve reporting requirements for school and States. One commenter suggested that "* * * Congress and the Administration * * * work together to achieve consensus on the appropriate policies and procedures." According to one commenter, CMS should work with representatives from State Medicaid agencies, schools systems, and other interested parties to "* * *resolve questions and areas of confusion" stemming from the 2003 Guide, develop clear claiming protocols, and reach consensus on related issues. According to some commenters, many of the claiming problems, stemmed from differing interpretations of Federal guidelines for claiming administrative and transportation costs based on inconsistent guidance from CMS Central and Regional Offices, and a lack of detailed guidelines on how to implement the programs. Commenters also recommended that CMS identify claiming issues in particular States and work with the appropriate State agencies to improve those programs rather than eliminating reimbursement for programs that are compliant with Federal requirements.

Response: Schools repeatedly complained that CMS guidance and oversight was burdensome and added substantially to the cost of activities that the schools were undertaking to fulfill their educational mission. More fundamentally, however, we disagree with the commenters' assumption that the problem is related to Federal oversight. Instead, we believe there is an inherent structural conflict of interest in commingling school administrative activities with Medicaid administrative activities.

Better Data Needed

Comment: Some commenters believe there needs to be clear set of data demonstrating the need to eliminate such reimbursement before the proposed regulation takes effect. They asked for data supporting the Secretary's finding that school-based administrative activities are not necessary for the proper and efficient administration of the State plan. One commenter stated: "[The proposed rule] does not provide evidence * * * in the form of an estimated dollar amount of fraudulent claims that have continued to occur after 2003." These commenters requested specific examples of the noted fraud and abuse, and suggested a clear, chronological accounting of improper billing is required before promulgating new regulations. One commenter urged CMS to "* * * examine thoroughly and report on the current effects of policies implementation through" its 2003 Guide before promulgating new regulations. There is no evidence, they note, to suggest that the 2003 Guide was inadequate.

Other commenters pointed to the fact that the Senate Finance Committee hearings cited in the preamble were held more than five years ago, and preceded the issuance of new guidance by CMS in 2003, which was intended to improve compliance with claiming requirements. CMS should carefully scrutinize current claims for school-based administrative expenditures, they argue, which would put the agency in a better position to establish regulations to ensure proper claiming.

Response: Detailed data on school-based Medicaid claiming is not available to CMS, due to limitations with respect to reporting requirements. Reporting for school-based Medicaid expenditures is voluntary; therefore, the data CMS used in calculating the projected cost savings may not match actual current spending. The proposed rule specifically requested public comment on potential fiscal impact. Commenters did not provide any clear data that were at variance with CMS assumptions. The limited data of which CMS is aware support the findings underlying the final rule.

Comment: Many commenters found it disingenuous for CMS to use as the rationale for the proposed rule OIG and GAO reports regarding alleged abuses that occurred in the early 1990s, prior to the issuance of any directives or guidelines on school-based Medicaid claiming. Furthermore, some commenters argued, these audits only took into account an insignificant number of schools, and the findings should not be extrapolated to all schools and claiming programs nationwide. Some commenters were troubled by "* * * dubious enforcement actions and audits" that have appeared "* * * more focused on limiting Federal expenditures than improving the appropriateness or effective administration" of the Medicaid State plan. Moreover, one commenter contended, the instances of inappropriate billing fall within the low to moderate range of similar billing problems elsewhere in overall Medicaid claiming. Another commenter noted that the proposed rule does not highlight the fact that their have been OIG audits of school-based Medicaid administrative claiming programs that did not identify any significant claiming errors.

Commenters highlighted the fact that the proposed rule refers to negative audit findings from a few States without indicating the prevalence CMS has found such practices among all States. Nor does the proposed rule describe the efforts CMS and the offending States have taken since those audit to remediate noncompliance. One commenter suggested that CMS conduct compliance audits on school-based administrative activities that have been conducted pursuant to the 2003 Guide before promulgating new regulations. As one commenter stated: "CMS has not yet fulfilled its own responsibility to conduct appropriate, consistent, and complete oversight and to provide reliable localized guidance." Overall, these commenters believe the negative audit findings referred to in the proposed rule do not establish an appropriate basis to eliminate a nationwide program.

Some focused on references in the proposed rule to OIG and GAO findings and Congressional concern over the dramatic increase in Medicaid claims for school-based costs. They argued that Congress expressed more concern for how CMS was administering the program, rather than how they were being operated, with the overall conclusion from the Senate Finance Committee hearings held in June 1999 and April 2000 being that there was a need for greater Federal oversight.

Response: The final rule is not based on any particular audit findings; but rather, the overall claiming trends and improper billing practices. We disagree with the premise that more Federal oversight could address the basic structural conflict of interest in commingling school administration with Medicaid administration; there is a strong incentive to shift costs to Medicaid for activities that would have been performed by schools in the normal course of their operation. As important, the activities are not under the supervision or control of the State or local Medicaid agency, and are not undertaken for the purpose of administration of the Medicaid State plan.

Comment: One commenter suggested that as an alternative to the proposed

regulation, CMS should consider investing resources from the Medicaid Integrity Program (MIP), established in the Deficit Reduction Act of 2005 (Pub. L. 109–432), to address school-based policy and reimbursement concerns and strengthen the integrity of the Medicaid program rather than impose a general prohibition on such reimbursement. They believe MIP resources could assist State agencies in determining when it is reasonable to bill Medicaid and develop cost-effectiveness guidelines related to school-based administration and transportation services.

Response: CMS may in the future utilize MIP funding to address school-based Medicaid issues. But this approach alone would not be sufficient to address the underlying problems with school-based administrative claiming and transportation. There is an inherent structural conflict of interest in commingling school administrative activities with Medicaid administrative activities and, as a result, we do not believe an audit approach would be adequate or the most efficient use of limited Federal resources in addressing these issues.

Statutory Intent

Comment: Some commenters argued that the proposed rule contradicts the intent of the Medicaid statute and other Federal regulations by reversing a policy that made Federal matching funds available for transportation provided to children with special health care needs who receive health care services while they are at school. Others argue that the policy determination underlying the provisions of the proposed rule contradicts the Medicaid statute insofar as it allows States flexibility in administering their Medicaid plans and collaborating with other State agencies. One commenter stated that "* * * singling out children and school districts is an arbitrary application of the "efficiency and economy" tenets central to Medicaid law and the administration of the State plan within it." Another commenter suggested the proposed rule would contradict existing law and circumvent Congressional intent were CMS to promulgate the regulations without specific legislative guidance.

A number of commenters focused on the intent of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360), which amended the Medicaid statute to allow States to begin receiving Medicaid reimbursement for services delivered to Medicaid-eligible children in schools pursuant to the IDEA. Therefore, they argue, Congressional intent is clear that Medicaid reimbursement should not be refused for activities performed in school settings. According to one commenter, the proposed rule "* * * obstruct[s] the Congressional directive establishing Medicaid funds to share in the cost of providing health care services to children in conjunction with their educational program." These commenters believe there to be firm legal standing for the allowable use of Medicaid claiming for the costs of transportation and administration, and that the proposed rule contradicts current law, citing section 1903(c) of the Act, which prohibits payment for covered services provided pursuant to the IDEA. Historically, they note, Congress and the Federal government have encouraged Medicaid to share in schools" costs for meeting the medical needs of students with disabilities.

Some commenters argued that the proposed rule would arbitrarily and capriciously reverse legal and historical precedents. They note that the underlying statutory basis for such activities has not changed in any way, and, as a result, CMS should not seek to reinterpret statutory basis to enforce new definitions for necessity and proper and efficient administration of the Medicaid State plan.

Response: Section 1903(c) of the Social Security Act authorized Medicaid funding for covered medical services included in an individualized education program (IEP) under the IDEA and covered in the Medicaid State plan, it does not, however authorize Medicaid funding for administrative activities that schools conduct in implementing their IDEA responsibilities. As a result, the final rule does not contradict the Medicaid statute.

Nor does the Medicaid statute specifically authorize payment for transportation to and from school. Transportation from home to school and back is central to the operation of a school program and, as such, Federal Medicaid payment will not be available for the transportation services to and from school. However, Medicaid payment will remain available for direct medical services that might be required under an IEP or IFSP in the course of such transportation. For example, if a student with a disability needs to be accompanied by a personal care attendant or a home health aide during transportation from home to school and back, Federal Medicaid payment would be available to the extent that the service was covered under the approved Medicaid State plan.

Comment: Some commenters suggested that with the proposed rule, CMS is attempting to base policy determination on how a State subdivides its functions, which is contrary to the Medicaid statute. The distinction in the proposed rule between education and Medicaid personnel is in conflict with the Medicaid statute because funding cannot be denied based on what arm of the State conducts the Medicaid activity, they argue.

Response: This rule is not based on the way the State subdivides its functions, but on the inherent structural problems in commingling administrative functions of the Medicaid program with school administration.

Secretarial Authority

Comment: Some commenters believe the Secretary is without authority under section 1903(a)(7) of the Act to find that amounts expended for administrative activities are not necessary for the proper and efficient administration of the Medicaid State plan solely because they are carried out by school personnel or staff under the control of a school rather by State or local Medicaid agency staff. One commenter argued that States are accorded the administrative flexibility in operating their Medicaid programs to have reimbursable activities performed by school personnel and that the Secretary may not limit that flexibility with an unsupported findings that conditions FFP by finding certain activities necessary only when carried out by certain employees. Furthermore, they argue, CMS cites no authority for eliminating FFP completely for all providers in response to adverse audit findings related to a few States. The Secretarial finding that school-based administrative and transportation are not necessary for the proper and efficient administration of the Medicaid State plan "* * * fails to include any analysis of fixed criteria or standards for which the Secretary would typically apply to reach that "not necessary" conclusion," according to one commenter.

Response: Under section 1903(a)(7), of the Act, it is the Secretary, not the State, that determines whether amounts expended are necessary for the proper and efficient administration of the Medicaid State plan. Therefore, it is within the Secretary's discretion to make a determination that certain administrative activities (including transportation from home to school and back) are not eligible for reimbursement. Specifically, section 1903(a)(7) states that Federal Medicaid funding is available for administrative expenditures "as found necessary by the Secretary for the proper and efficient administration of the State plan." In this

section, the statute explicitly imbues the Secretary with the ultimate authority and ability to make such determinations. As a result, we do not believe the provisions of the final rule exceed Secretarial authority.

Comment: Some commenters suggested that the activities targeted by the proposed rule are specifically authorized by the approved Medicaid State plan and that it is the State that should determine whether activities are proper and efficient within the approved plan. The proposed rule, they argue, would needlessly hinder the ability of States to provide essential services in a manner in which it deems most effective.

Response: As a matter of practice, States generally do not include reimbursement for administrative services as part of their approved Medicaid State plan. The relevant portions of the Medicaid State plan as mentioned in the comment describes covered services eligible for Medicaid payments and the reimbursement methodologies for those services. The rule will not affect medical services as defined in the Medicaid State plan nor the States" ability to offer those services in schools.

Comment: Some commenters questioned CMS' assertion that section 1903(c) of the Act contains no provision authorizing claiming for the costs of school-based Medicaid administration. They argue that because section 1903(c) does not specifically prohibit administrative claiming, the general practice is (and should be) to allow it to continue under current practice unless explicitly forbidden. Because the Medicaid statute specifically provides that the Secretary cannot prohibit or restrict coverage of Medicaid services simply because those services are included in an IEP or IFSP, the Secretary should not be allowed to impinge on States' abilities to claim for related costs.

Response: The rule does not prohibit States from claiming Federal matching funds for covered medical services pursuant to a child's IEP or IFSP. States may also claim for administrative costs directly related to the provision of a medical service, such as billing costs as part of the medical service reimbursement. Section 1903(c) specifically discusses medical services and does not address claiming for the administrative costs associated with the administration of the State's Medicaid program. The statute provides the Secretary with considerable discretion to determine allowable administrative activities. Under section 1903(a)(7), of the Act, it is the Secretary, not the State, that determines whether amounts expended are necessary for the proper and efficient administration of the Medicaid State plan. Therefore, it is within the Secretary's discretion to make a determination that certain administrative activities (including transportation from home to school and back) are not eligible for Federal Medicaid reimbursement.

Reversal of Policy

Comment: Some commenters argued that the proposed rule represents a significant reversal of long-standing policy and a revision of long-standing Medicaid regulations, policies, and guidance, noting that CMS first developed detailed guidance in 1997 regarding school-based Medicaid program. Three years later, a report issued by HHS in collaboration with the U.S. Department of Agriculture and the U.S. Department of Education and cited by many commenters stated that schools are a "natural setting" for conducting children's health insurance program outreach, and that "State Medicaid and SCHIP agencies seeking the best return on outreach investments often find that working with schools simplifies targeting audiences, distributing information, reaching families, and enrolling children." (Report to the President on School-Based Outreach for Children's Health Insurance, July 2000).

The proposed rule, they argue, would directly contradict this July 2000 report, which sought to encourage agreements between States Medicaid agencies and schools so that the latter could receive financial assistance for administrative activities to enroll eligible children. The proposed rule, they argue, would be "* * * regressive and a departure from acknowledged best practices in identifying and serving Medicaid beneficiaries."

Several commenters cited the 1999 and 2000 Senate Finance Committee hearings on school-based Medicaid claiming as a evidence of CMS' recognition that schools play an important role in ensuring that children receive needed health care services.

Response: The statute provides the Secretary with considerable discretion to determine allowable administrative activities and the scope of covered transportation services. Consistent with the Administrative Procedure Act, this final rule supersedes prior statements and issuances to establish a new policy concerning school based administration activities and covered transportation services. This final rule reflects careful consideration of years of experience, and of the public input provided in the rulemaking process. CMS believes this final rule is necessary to maintain the financial integrity of the Medicaid program.

Differential Treatment of Schools

Comment: Many commenters opposed the rule in its entirety because, they argued, it reflects a differential, more restrictive treatment of schools in comparison to other settings in which the same Medicaid-related activities are provided and for which funding would continue. There is no way to justify the inference in the proposed rule that school employees are deemed capable and necessary for the delivery of covered services, but are somehow incapable and unnecessary to conduct associated administrative activities, according to one commenter. If the proposed rule is promulgated, they argue, schools alone would be designated as ineligible for reimbursement as a provider of Medicaid administrative functions while other entities would remain eligible to receive reimbursement as the State Medicaid agency's designee. School employees would still be eligible for reimbursement for covered medical services, so it is inconsistent to deem them ineligible to conduct Medicaid administrative activities, they argue.

Certain commenters argued that allowable activities should be deemed necessary for the proper and efficient administration of the Medicaid State plan regardless of who employs the individuals performing the activities. The proposed rule, they argue, unfairly and incorrectly suggested that a State agency employee public health nurse can conduct Medicaid administrative activities, but a school nurse, who has the same qualifications, cannot. The proposed rule, they note, contains no recognition of the comparable professional qualifications of both school and employees and State Medicaid agency employees conducting these activities. One commenter noted that it is unfair to infer, as the proposed rule does, that only the school-based claiming methodology is invalid, while CMS will continue to permit similar claiming procedures in various other contexts.

Response: Under the rule, CMS will continue to recognize schools as valid settings for the delivery of Medicaid services. As a result, CMS will continue to reimburse States for covered school-based Medicaid service costs pursuant to a child's IEP or IFSP. The final rule reflects a determination that schools are unique settings, and that there is an inherent structural conflict when school administrative responsibilities and Medicaid administrative activities are

commingled that precludes accurate claims. As a result, the final rule reflects a conclusion that school-based administrative activities are only necessary for the proper and efficient administration of the Medicaid State plan when conducted by employees of the State or local Medicaid agency.

Due to inconsistent application of Medicaid requirements by schools to the types of administrative activities conducted in the school setting, the Secretary has determined that such activities can only be properly conducted, overseen and appropriately claimed under Medicaid when conducted by employees of the State or local Medicaid agency. School staff may continue to perform these types of administrative activities. The final rule will merely limit the availability of Federal matching funds based on the finding that it is not necessary for the proper and efficient administration of the Medicaid State plan for school staff to do so. We believe the final rule is necessary to maintain the financial integrity of the Medicaid program. The final rule does not question the importance of these types of administrative activities when performed by employees of the State Medicaid agency and still recognizes schools as valid settings for the delivery of Medicaid services.

Comment: One commenter argued that Office of Management and Budget Circular A–87 (OMB A–87) contradicts the proposed rule by including school districts in its definition of local governments eligible to participate in Federal awards. Insofar as school districts are defined as units of government, they should not be excluded from Medicaid participation in any way. Furthermore, it represents a reversal of recent Federal guidance on school participation in Medicaid claiming and contradictions of Federal definitions of "governmental units" and "local governments" that may participate in Medicaid claiming.

Response: This rule in no way addresses the status of schools and school districts as units of government. OMB Circular A–87 describes cost allocation requirements for units of government that receive Federal grants and must account for costs associated with those grants. OMB Circular A–87 does not, however, supplant the determination of the program agency as to the administrative activities necessary for the proper and efficient administration of the Medicaid program.

Comment: Some commenters pointed to Section 5230 of the State Medicaid Manual, which requires Medicaid agencies to coordinate services with local education agencies, title VI grantees, providers, and other public and private agencies, as support for the role of schools in helping the State administer the Medicaid program. The statute is replete with examples of the extent to which State agencies are expected to rely on other public agency staff to carry out Medicaid State plan obligations, one commenter noted. As another stated: "Collaboration with other public agencies is a consistent statutory theme; indeed, the statute both contemplates the involvement of other public agencies and give[s] States broad discretion over plan administration." The proposed rule would, in the words of one commenter, "* * * establish an operational barrier to using schools as a venue for performing administrative activities that support the Medicaid program." Singling out schools, school contractors, and school districts and eliminating their ability to receive reimbursement for Medicaid administrative activities will result in a less effective, less efficient Medicaid outreach and referral system.

A number of commenters took issue with the statement in the proposed rule that administrative activities provided in schools "* * * largely overlap with educational activities that do not directly benefit the Medicaid program." In reality, they argue, such activities do directly benefit the Medicaid program insofar as they help Medicaid eligible children to access covered services. One commenter stated the following: "The Secretary is * * * remiss in failing to consider that compulsory school attendance laws provide schools with a captive audience of underserved Medicaid eligible school-based children, thus providing an optimal setting for addressing their * * * needs." From a public policy perspective, they note, providing Medicaid activities in schools should be encouraged, rather than restricted, yet the proposed rule singles out schools settings for disparate restrictions and prohibitions that are not imposed on other eligible providers.

Response: The final rule clarifies that Medicaid is not the appropriate funding source for school-based administrative activities or for transportation from home to school and back. These activities or services are fundamentally undertaken for the educational mission of the school, rather than for administration of the Medicaid State plan. Based on our experience, we do not believe it is possible to develop and implement claiming methodologies that accurately allocate costs to Medicaid. The costs of such accounting exceed any incremental benefits to the Medicaid program from these activities and services, and we have concluded that it would be more efficient for States not to commingle Medicaid and school administration and transportation.

Potential for Outstationed State Medicaid Agency Employees

Comment: Some commenters argued that State Medicaid agencies are unlikely to send their own employees into schools to conduct administrative activities, and that to do so would be inefficient. These commenters believe that school-based outreach and enrollment efforts are successful precisely because of the involvement of school staff who are trusted by families and already in contact with children and their families. These commenters believe State and local Medicaid agencies can more efficiently carry out Medicaid administrative activities through relationships with other public entities, including schools. One commenter believes that States would have to hire thousands of eligibility workers to do the work currently carried out by school employees, at a far greater cost. To the extent State agency employees were outstationed in schools, they argue, this would establish a duplicative bureaucracy at State and Federal levels for activities that are more efficiently performed by school staff. They argue that this scenario would be financially and operationally inefficient compared to the current system.

Response: CMS cannot direct State or local Medicaid agencies to utilize their own staff to provide Medicaid administrative activities in schools, as each State Medicaid program differs, and States have flexibility in administering their programs. However, there is precedent to use agency outstation workers in alternative service delivery venues to administer the Medicaid State plan. Furthermore, outstationing eligibility workers is likely to result in enrolling eligible children more rapidly as they can make the actual eligibility determination, while school employees cannot.

While we agree that school employees often enjoy a special trust relationship with the families of students, this special relationship is more likely based on an employees" broad knowledge of a variety of health, education and social service programs. Because of the difficulty in determining specific administrative activities that are for the purpose of administration of the Medicaid State plan, we have determined that it is not proper and efficient to use school employees" for the administration of the State Medicaid program.

Comment: One commenter cited the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232(g), under which schools must keep student records confidential, as a serious impediment to having non-school employees (i.e., State Medicaid agency employees) engage in Medicaid outreach, enrollment, and other administrative functions.

Response: CMS does not believe the final rule will, in any way, impact education mandates under FERPA, with which schools must continue to comply. Furthermore, we believe non-school employees can conduct effective Medicaid outreach and enrollment for students without access to individual student school records.

Transportation-Specific Issues

Comment: Some commenters focused on the impact of the proposed rule on Medicaid reimbursement for costs related to transportation from home to school and back. These commenters asserted that specialized transportation to school is necessary for a special needs student and is necessary for the proper and efficient administration of the Medicaid State plan, as required by 1903(a)(7) of the Act. One commenter argued that CMS should preserve authority for States to submit claims in limited situations, specifically for transporting Medicaid eligible children from home to school and back if the child's health status requires monitoring or medical related services during transport.

These commenters argued that the proposed rule ignores the needs of many students with disabilities who require specialized transportation between home and school to facilitate frequent contact with school-based Medicaid services providers to treat chronic health conditions that are most cost-effectively treated during the course of the school day.

Response: Medical services provided in schools or as part of transportation to school are eligible for Medicaid reimbursement. However, Medicaid will not reimburse the school for actual transportation to school. Some comments seem to suggest that children with disabilities are in school systems primarily to receive medical services rather than to receive an education. Schools are educational institutions, and children are transported to schools to receive an education. Schools are required to provide access to medical care to allow children with medical needs to participate as fully in the educational system as children without special medical needs. Children are already in the school for the purpose of receiving their education when medical services are received and no additional transportation is medically necessary. Characterizing transportation from home to school as being for the purpose of obtaining medical services overlooks the fundamental purpose of the transportation.

Comment: Some commenters pointed to CMS' assertion that schools are required to provide transportation from home to school and back. On the contrary, they argue that there is no State or Federal requirement for schools to provide transportation from home to school and back for all in students in every State. For example, one commenter noted, some schools do not provide bus transportation for students who live within walking distance. Some commenters argue that the proposed rule incorrectly compares specialized transportation services for children with significant health problems and traditional school bus transportation. They argue that States set forth conditions that must be met in order for a student to qualify for the transportation benefit. For these reasons, they note, schools throughout the country have utilized Federal funding through Medicaid to transport children to school for medical appointments and provide bus aides when deemed necessary. The proposed rule, however, would prohibit Medicaid funding for these expenditures.

Response: Schools are educational institutions that may be required, under an Individualized Education Program to provide transportation to and from school for any individual child that may require transport to participate in the public education system even if that school does not provide transportation to other children in the community. Medicaid will not reimburse school districts for transportation requirements to and from school that the school must meet as part of the IEP. Once at the school, a student may obtain medical services but no additional transportation is required at that point.

With respect to transportation to and from school, however, Medicaid payment will remain available for direct medical services that might be required under an IEP or IFSP in the course of such transportation. For example, if a disabled individual needs to be accompanied by a personal care attendant or a home health aide, Federal Medicaid payment would be available to the extent that the service was covered under the approved Medicaid State plan.

Comment: Others argued that there was no basis to change previous CMS guidance, such as a May 2003 Guide and a 1997 technical assistance guide, that supported and offered guidelines for claiming costs related to transportation. These commenters pointed to section 1903(c) of the Social Security Act, which requires Medicaid to be primary to the U.S. Department of Education for payment of covered health-related services that are included in an IEP or IFSP, as support for reimbursing costs related to transportation from home to school and back. They noted that transportation is often prescribed in a child's IEP or IFSP.

Response: This regulation is not inconsistent with section 1903(c) of the Social Security Act because it addresses whether transportation between home and school is a covered Medicaid service, and does not affect the general obligation of the Medicaid program to pay for covered Medicaid services that are prescribed in an IEP or IFSP primary to education programs. This regulation departs from previous guidance because it properly acknowledges that the purpose of the transportation between home and school is for education rather than medical services. Such transportation is for the purpose of securing attendance at the school for educational reasons, and not for the purpose of obtaining access to medical providers. As such, we do not believe that such transportation is within the scope of covered Medicaid transportation, either as an administrative activity or as a covered medical assistance benefit in the approved Medicaid State plan.

Comment: Some commenters asserted that, in exempting from the proposed rule the costs of transportation from home to school and back for children who are not yet school age, that CMS is acknowledging the potential for schools to provide Medicaid services and perform Medicaid activities not solely to serve an educational purpose, which undercuts this provision of the proposed rule. Additionally, some commenters noted, Federal Medicaid funding remains available for the transportation of all other groups of Medicaid-covered individuals to medical services providers; it is only school-age children receiving medical services at school whose transportation will not be reimbursable. They argue that this funding exception violates Federal regulations that require comparability in the amount, duration, and scope of services for all those who qualify for Medicaid services 42 CFR Section 440.240. As one commenter noted, Medicaid policy regarding medical transportation does not restrict the beneficiary from participating in any other activity before returning home

from the place of treatment, as is the case in schools. And still another commenter argued that the proposed regulatory text is contradictory by continuing to make Federal Medicaid reimbursement available "for recipients to and from providers," while ignoring the fact that a school district can be a qualified Medicaid provider.

Response: For school-aged children, transportation between home and school is for the purpose of attending an educational institution, and not for the purpose of obtaining access to medical providers. This reasoning does not apply for individuals who are not yet school-aged, and thus we did not include this population in the rule's prohibition. The commenters err in assuming that transportation obtained for purposes other than to obtain access to medical providers is within the scope of covered Medicaid transportation. For instance, when an individual needs transportation for the purpose of attending a medical appointment in a nearby city, transportation to that provider would be covered even if the individual also shopped or engaged in other incidental activities on the trip. But when an individual is employed in that nearby city and commutes on a daily basis for the purpose of engaging in employment, the daily commute would not become covered Medicaid transportation when the individual attends a medical appointment at work. While this distinction is not always clear, it is clear in the instance of transportation between home and school for school-aged children.

Comment: Some commenters suggested that the proposed regulation may create new, unanticipated transportation costs if children begin to receive more services with a community-based provider, rather than in school, because many school districts will not be able to absorb transportation costs that were once matched with Medicaid funds. Other commenters asserted that the cost of providing specialized transportation is significantly more expensive than transportation provided to regular students, and should be reimbursable for that reason.

Response: This final rule will not interfere in any way with the ability of States to determine school transportation policy, but simply recognizes that routine school transportation from home to school and back and related administrative activities are not authorized under the Medicaid statute as necessary for the proper and efficient administration of the Medicaid State plan, nor do they meet the definition of an optional transportation benefit under Medicaid. Children are transported to school primarily to receive an education, not to receive medical services. The final rule will merely eliminate Medicaid as a funding source; it will not affect the provision of such transportation. Moreover, this rule will not affect the status of covered medical services furnished in the course of transportation such as services of a personal care attendant or a home health aide.

Comment: One commenter suggested that CMS may have overlooked the fact that, in some cases, a child's disability is so severe that he or she is unable to attend a mainstream district school, or even a special day class within the district. In those cases, the child must attend an out-of-district public school, a non-public school placement, or a residential facility, to-and-from which districts are not automatically providing transportation. In cases where children would receive covered medical services at one of these sites, and the district must send the child to these placements because of their particular medical needs, the proposed regulations would preclude billing for the costs of such transportation, they note.

Response: We do not believe a school district's election to educate students in one location or another affects the basic purpose of the transportation to ensure attendance at an educational institution. Even in these circumstances, the transportation to and from school is for educational purposes.

We agree, however, that when an individual is transported for the provision of medical services to a location that is not a school, such as a community provider, the transportation would be covered because that transportation was necessary to access a medical service that is not available at the school.

Comment: Another commenter pointed to Executive Order 13330, issued February 24, 2004, which directs the Secretary of the U.S. Department of Health and Human Services to promote interagency cooperation in the provision of transportation services and argued that the proposed rule contradicts this Executive Order. The commenter stated: "To determine that transportation is only necessary when performed by employees of the State or local Medicaid agency fails to recognize the efficiencies available when transportation is a coordinated effort."

Response: The quoted language reflects confusion about this rule. This rule reflects a determination that transportation to and from school is not for the purpose of administration of the Medicaid State plan, nor is such transportation necessary to ensure beneficiary access to medical providers. We encourage the coordination of covered Medicaid transportation with other programs, but Medicaid reimbursement of transportation services is limited to ensuring beneficiary access to medical providers in the community. It does not include transportation routinely provided for other purposes.

Comment: Some commenters noted that school districts often rely on Medicaid reimbursements for the costs of outfitting buses with specialized equipment. These commenters urged that such funding remain available.

Response: Medicaid payment will continue to be available to pay for medical equipment, appliances and supplies that are covered under the home health benefit, to the extent medically necessary for a particular individual and, when furnished by schools, included in an IEP or IFSP. Medical necessity is determined under State-established medical necessity criteria. Nothing in the final rule will affect claiming under Medicaid for these types of expenditures. Medicaid reimbursement will not be available, however, for costs of permanently outfitting buses with equipment for general use in accommodating individuals with disabilities or other medical issues. Such costs are not within the scope of a covered Medicaid benefit. Instead such costs are integral to the uncovered transportation between home and school.

Impact Analysis

Comment: Some commenters argued that the estimated savings represents a cost shifting, rather than a cost savings, from the Federal government to State and local school districts that are obligated to provide these services. As a result, they believe the projected cost savings specified in the proposed rule are misleading. Another commenter argued that it is disingenuous to state that the proposed rule would not have a "significant economic impact on local school districts." Schools may lose up to $600 million in the first year of the proposed rule's implementation, one commenter noted in referencing the projected cost savings. While this may be a very small component of the overall Medicaid budget, they contend, it is not insignificant to the school districts and States that rely on this funding to maintain the quality of services provided to students with disabilities.

Still other commenters question the projected savings resulting to the proposed rule, suggesting that these savings could be primarily attributable

to one of the two issues addressed in the proposed rule; specifically, transportation for school-age children. As a result, they argue the two parts of the proposed rule should be considered separately and their potential impact separately calculated. There is also no estimate in the impact analysis of the number of children who would not be identified and enrolled in Medicaid if States cannot maintain school-based outreach programs without Federal support, one commenter was disappointed to find.

Response: The final rule anticipates Federal savings of approximately $635 million in the first year following implementation, but does not require States to replace that Federal funding with State funding or take any other particular steps. Any mandates regarding school transportation spending arise under State constitutions, or other Federal or State laws. School-based Medicaid administrative activities and transportation from home to school and back are not required activities under the Medicaid statute.

As stated in the proposed and final versions of the rule, there is admitted uncertainty in the projected cost savings to the extent that State-reported expenditures related to school-based administration and transportation may not match actual current spending, and to the extent that the impact of the proposed rule is greater than or less than assumed. The cost savings are based upon State voluntary reporting of quarterly expenditures to CMS. Since this reporting for school-based activities is voluntary, these estimates may not match actual current spending. Furthermore, claims related to the costs of transportation from home to school and back as a direct service are included in the total amount claimed for all medical assistance. Therefore, it is difficult, if not impossible, to determine the impact of the final rule on the types of transportation costs that would be affected.

Comment: One commenter believed the rationale for the estimated cost savings is flawed because not all school districts currently claim or receive FFP for administrative and transportation services, and that Federal funding is spread unevenly among States, districts, and schools. Therefore, they suggest, comparing the costs of the proposed rule to overall nationwide spending for elementary and secondary education minimizes its financial impact. Instead, one commenter argued that a more realistic financial analysis is necessary, one which would:

1. Examine the financial impact of the proposed cuts only on districts that actually claim for reimbursements;
2. Take into consideration the unique aspects (such as fixed costs) of school district budgets; and
3. Include the likely loss of State Medicaid funding that would result from schools no longer being able to sustain these programs.

Response: The proposed and final rules reference total elementary and secondary spending in 2004, as defined by the Bureau of the Census, in determining the projected impact on expenditures. It is difficult, if not impossible, to reach consensus on a single expenditure total to be used as the basis for calculating the potential impact of the proposed rule. We determined the Census data to be the most reliable and accurate data available. As stated in Section VI., the estimated annual Federal savings under this final rule is only about one eighth of one percent of total annual spending on elementary and secondary schools (in 2004 total elementary and secondary spending was $453 billion according to the *Statistical Abstract of the United States*, Table 245, at *http://www.census.gov/compendia/statab/education*).

Comment: Other commenters disagreed with the assessment in the proposed rule that it would not have a significant impact on a substantial number of small entities, either disagreeing with the threshold definition of significant impact or that of small governmental jurisdictions. This was an issue for which CMS specifically solicited public comment. Under the definition of small governmental jurisdiction used by CMS, that is, those with a population of less than fifty thousand, nearly every school district in certain States would qualify as small entities, according to one commenter. This commenter went on to note that these smaller districts are often rural with a high percentage of students receiving free or reduced priced lunches. As a result, schools that are poor, rural, isolated and small will be disproportionately impacted due to existing budget constraints and extremely limited resources.

Certain commenters believe the cost benefit analysis to be flawed. One commenter stated that the analysis presumes that most school districts are uniform in size, which is not the case. Another argued that the proposed rule aggregates all Federal spending on elementary and secondary education "* * * as a means to minimize the rule's financial impact on school districts." Some stated that the proposed rule inaccurately minimizes the fiscal impact the proposed rulemaking would have on school districts, stating that it is "* * * misleading and inaccurate for CMS to compare the cost of school-based health care to the entire budgets for K–12 education." Rather than "one eighth of one percent of total annual spending, the proposed rule, they argue, would impose a 50 percent impact insofar as the matching rate for allowable administrative expenditures is 50 percent FFP.

Response: As noted in Section VI., for purposes of the Regulatory Flexibility Act, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions, including school districts. "Small" governmental jurisdictions are defined as having a population of less than fifty thousand. Admittedly, there is uncertainty in this estimate to the extent that State-reported expenditures related to school-based administration and transportation may not match actual current spending and to the extent that the impact of the proposed rule is greater than or less than assumed. We nevertheless believe, as indicated in our calculations and in the absence of reliable data to the contrary, that the impact of this rule will be only a small percentage of administrative and transportation expenditures by such entities. Furthermore, the input we received in response to the solicitation for public comments on the potential impact on small entities offered only speculation and did not provide sufficient quantitative data to argue for a reassessment of the potential impact.

Comment: One commenter believes the discussion in the Impact Analysis of Executive Order 13132 is flawed by a failure to accurately assess the impact on State and local governments and by the factual error inherent in characterizing as "routine" the transportation needs of school-based children receiving Medicaid services in a school setting pursuant to an IEP.

Response: As stated in Section VI., with respect to transportation specifically, States and/or schools will be required under the final rule to continue funding transportation of school-age children from home to school and back to the extent it is required by education statute(s). That is because schools provide transportation to and from school for all students, not just (or even primarily) special education or Medicaid eligible students.

Regulatory Text

Comment: One commenter asked for clarification of what is meant in the

proposed Section 433.20 by "under the control of" a public or private educational institution. This commenter also asked for clarification in the regulatory text that activities required to support the provision of medical services are eligible for FFP if they are included in the rate paid for direct medical services, and requested a definition for "administrative overhead costs" to appear in the regulatory text.

Response: The reference in Section 433.20 to anyone "under the control of" a public or private educational institution is meant to incorporate any and all subcontracting arrangements that schools or other educational institutions may enter into for the provision of services or administrative activities in schools. The definition of administrative overhead costs cannot be specified in the regulatory text because it is dependent upon the types of costs that are included in the rate paid for direct medical services, which is negotiated by each State and specified in the approved Medicaid State plan. These reimbursement rates are set by the State Medicaid agency and, therefore, any discussions regarding the appropriateness of such rates on the part of providers must be conducted at the State level.

Furthermore, CMS does not believe it is necessary to specify in the regulatory text that administrative activities that are integral to, or an extension of, a direct medical service remain eligible for FFP insofar as they are reimbursed through the rate paid for the service. This is because the regulatory text only limits the availability of FFP for Medicaid administration, not services (except insofar as transportation from home to school and back is defined as a service). That is, the final rule does not affect Federal reimbursement for the costs of allowable direct medical service expenditures.

Comment: One commenter requested that the regulatory text explicitly note the continued availaoility of FFP for the costs of transporting school-age children from school or home to a non-school based direct medical service provider that bills under the Medicaid program or from the non-school based provider to school or home. Another commenter asked for language to be included in the regulatory text specifying that FFP is available for transportation services provided to children who are "not yet school-age" to and from providers, even if the site of service is a school.

Response: CMS does not believe it is necessary to specify in the regulatory text that Federal Medicaid reimbursement remains available for transportation provided to children who are not yet school-age to and from providers, even if the site of service is a school, because the regulatory text lists only those costs for which reimbursement will not be available. Similarly, it is not necessary to note in the regulatory text the continued availability of FFP for the costs of transporting school-age children from school or home to a non-school based direct medical service provider that bills under the Medicaid program or from the non-school based provider to school or home. Any such costs not included in the regulatory text are thereby exempt from the general prohibition on reimbursement.

Comment: One commenter requested a definition of "school-age" and "not yet school-age."

Response: The regulatory text purposely does not provide a definition for "school-age" and "not yet school-age" because such definitions may differ by State and no such distinction exists in the Medicaid statute; rather, such determinations are based on education requirements. We do intend the term "school-age children" to be defined by age. It is specifically worded as such to differentiate between children who are of the age to attend school for education and children who are not yet school-age.

Comment: One commenter asked for clarification in proposed Section 431.53 of whether transportation is only available to and from services that are included in a child's IEP or whether transportation is also available to and from other Medicaid services that are not included in a child's IEP.

Response: Federal Medicaid reimbursement for school-based services is generally available only for covered services provided pursuant to an IEP or IFSP, because non-IEP services are typically subject to Medicaid third party liability rules and "free care" policies, which limit the ability of schools to bill Medicaid for some of these health services and associated administrative costs. Third party liability requirements preclude Medicaid from paying for Medicaid coverable services provided to Medicaid beneficiaries if another third party (e.g., other third party health insurer or other Federal or state program) is legally liable and responsible for providing and paying for the services. The "free care" principle precludes Medicaid programs from recognizing as a cost of Medicaid-coverable services and activities any amount for services and activities which are available without charge or liability, and for which no other sources for reimbursement are pursued.

IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule in its entirety and does not in any way differ from the proposed rule.

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 (44 U.S.C. 35).

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–534), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258 and Executive Order 13422) directs agencies to assess all costs and benefits of all 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). This final rule's savings will exceed this economic threshold and it is therefore considered a major rule. The final rule is estimated to reduce Federal Medicaid outlays by $635 million in FY 2009 and by a total of $3.6 billion over the first five years (FY 2009–2013).

The RFA requires agencies to analyze options for regulatory relief of small entities if final rules have a "significant economic impact on a substantial number of small entities." For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions, including school districts. "Small" governmental jurisdictions are defined as having a population of less than fifty thousand. Individuals and States are not included in the definition of a small entity. Although many school districts have populations below this threshold and are therefore considered small entities for purposes of the RFA, we have determined the impact on local school districts as a result of the final rule will not exceed the threshold of

"significant" economic impact under the RFA, as discussed below.

States have the option under the final rule to continue funding school-based administrative activities using State-only funds; this rule simply eliminates the availability of Federal Medicaid matching funds for these expenditures when they are performed by employees of the school or contractors, or anyone under the control of a public or private educational institution, rather than employees of the Medicaid agency. However, with respect to transportation specifically, States and/or schools will continue transporting school-age children from home to school and back to the extent it is required by education statute(s). That is because schools provide transportation to and from school for all students, not just (or even primarily) special education or Medicaid eligible students.

The Individuals with Disabilities Education Act (IDEA) requires public schools to provide a free appropriate public education to children with disabilities. The IDEA authorizes funding through the U.S. Department of Education (not Medicaid) for special education and related services for children with disabilities. While section 1903(c) of the Social Security Act authorized Medicaid funding for covered services included in an Individualized Education Program (IEP) under the IDEA, section 1903(c) does not expressly authorize Medicaid funding for administrative activities that schools conduct in implementing their IDEA responsibilities.

The estimated annual Federal savings under this final rule are only about one eighth of one percent of total annual spending on elementary and secondary schools (in 2004 total elementary and secondary spending was $453 billion according to the *Statistical Abstract of the United States*, Table 245, at *http://www.census.gov/compendia/statab/education)*. According to the "Guidance on Proper Consideration of Small Entities in Rulemakings of the U.S. Department of Health and Human Services (May 2003)," if the average annual impact on small entities is 3 to 5 percent or more, it is to be considered significant. Because we used a threshold of 3 to 5 percent of annual revenues or costs in determining whether a proposed or final rule has a "significant" economic impact on small entities, we have determined that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule would not have a direct impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $127 million. This final rule contains no mandates that will impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of $127 million. The final rule anticipates Federal savings of approximately $635 million in the first year following implementation, but does not require States to replace that Federal funding with State funding or take any other particular steps. Any mandates regarding school transportation spending arise under State constitutions, or other Federal or State laws. School-based Medicaid administrative activities and transportation from home to school and back are not required activities under the Medicaid statute.

Executive Order 13132 on Federalism establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirements on State and local governments, preempts State law, or otherwise has Federalism implications. EO 13132 focuses on the roles and responsibilities of different levels of government, and requires Federal deference to State policy making discretion when States make decisions about the uses of their own funds or otherwise make State-level decisions. We find that this rule will not have a substantial effect on State or local government policy discretion. While this final rule would eliminate the ability of States to claim Federal Medicaid funding for school-based administrative and certain transportation costs, notably routine home-to-school and back bus transportation, it will not impose any requirement as to how States or localities administer or pay for such activities, or interfere in any way with the ability of States to determine school transportation policy. The rule will simply recognize that routine school transportation from home to school and back and related administrative activities are not authorized under the Medicaid statute as necessary for the proper and efficient administration of the Medicaid State plan, nor do they meet the definition of an optional transportation benefit under Medicaid.

B. Anticipated Effects

The final rule is a major rule because it is estimated to result in $635 million in savings during the first year and $3.6 billion in savings over the first five years. The following chart summarizes our estimate of the anticipated effects of this final rule.

TABLE I.—ESTIMATED REDUCTION IN FEDERAL MEDICAID OUTLAYS RESULTING FROM THE ELIMINATION OF REIMBURSEMENT FOR SCHOOL-BASED ADMINISTRATION AND CERTAIN TRANSPORTATION COSTS IN PROPOSED RULE

[Amounts in millions per Federal fiscal year]

	2009	2010	2011	2012	2013	2009–2013
School-Based Costs: Eliminate Reimbursement for Administration/Transportation	−$635	−$675	−$720	−$770	−$820	−$3620

Conclusion

These estimates assume implementation beginning in the 2008–09 school year and are based on recent reviews of State reported school-based administrative and direct medical service expenditures reported on the quarterly CMS expenditure forms (MBES/CBES Form 64.10I and Form 64.10PI Information Forms for School-Based ADM and MAP claims). From

these voluntary State claiming reports, an estimate of the total amount of claims under the Medicaid program that would be affected by the final rule was developed and then projected forward using the most recent assumptions available. There is uncertainty in this estimate to the extent that State-reported expenditures related to school-based administration and transportation may not match actual current spending and to the extent that the impact of the proposed rule is greater than or less than assumed. Furthermore, claims related to the costs of transportation from home to school and back as a direct service are included in the total amount claimed for all medical assistance. Therefore, it is difficult, if not impossible, to determine the impact of the final rule on the types of transportation costs that would be affected.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VII. Alternatives Considered

In developing this regulation, various alternatives were considered. We considered the possibility of conducting stronger review of reimbursement methodologies for the costs of Medicaid administrative activities provided in schools and transportation from home to school and back. We also considered seeking to implement policies requiring greater accountability and oversight responsibility for school-based administrative and transportation expenditures, and clarification of Federal requirements without any new regulation (using existing statutory and regulatory authority). In addition, we considered developing standard parameters applicable to claiming for all school-based Medicaid administration and transportation costs. However, we attempted, by issuing the May 2003 Medicaid School-Based Administrative Claiming Guide, to provide specific guidance on the requirements for claming costs related to school-based activities. In the end, we ultimately rejected these alternatives because the intervening years have proven that such activities cannot be adequately regulated or overseen.

We determined that the rulemaking process was the most effective method of implementing these policies because the rulemaking process was the best way to inform affected parties, allow for public input, and make clear that the requirements set forth are uniform, fair and consistent with the underlying statutory intent.

A. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the table below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the decrease in Federal Medicaid outlays resulting from the elimination of reimbursement for school-based administration and certain transportation costs that will be implemented by this final rule. The sum total of these expenditures is classified as savings in Federal Medicaid spending.

TABLE II.—ACCOUNTING STATEMENT

Category	Transfers	
Accounting Statement: Classification of Estimated Expenditures, From Fiscal Year 2009 to Fiscal Year 2013 (in millions)		
	Negative Transfer-Estimated decrease in expenditures:	
Annualized Monetized Transfers	3% Units Discount Rate	7% Units Discount Rate
	$721	$718
From Whom To Whom?	Federal Government to States	

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid Privacy Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support Claims, Grant programs—health, Medicaid Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 431.53 is revised to read as follows:

§ 431.53 Assurance of Transportation.

(a) A State plan must—

(1) Specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and

(2) Describe the methods that the agency will use to meet this requirement.

(b) For purposes of this assurance, necessary transportation does not include transportation of school-age children between home and school.

PART 433—STATE FISCAL ADMINISTRATION

■ 3. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 4. Part 433 is amended by adding a new § 433.20 to read as follows:

§ 433.20 Rates of FFP for Administration: Reimbursement for School-Based Administrative Expenditures.

Federal financial participation under Medicaid is not available for expenditures for administrative activities by school employees, school contractors, or anyone under the control of a public or private educational institution.

PART 440—SERVICES: GENERAL PROVISIONS

■ 5. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 6. Section 440.170(a)(1) is revised to read as follows:

§ 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

(a) *Transportation.* (1) "Transportation" includes expenses for transportation and other related travel expenses determined to be necessary by the agency to secure medical examinations and treatment for a recipient. Such transportation does not include transportation of school-age children from home to school and back.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 13, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: December 14, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–6220 Filed 12–21–07; 10:00 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–8005]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

EFFECTIVE DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region I:				
Connecticut: North Canaan, Town of, Litchfield County.	090149	February 21, 1975, Emerg;—, Reg; January 02, 2008, Susp.	01/02/2008	01/02/2008
Region II:				
New York: Cambridge, Village of, Washington County.	360883	October 18, 1974, Emerg; April 17, 1985, Reg; January 02, 2008, Susp.	do	Do.
Region III:				
Virginia: Appomattox, Town of, Appomattox County.	510194	February 22, 1974, Emerg; May 25, 1984, Reg; January 02, 2008, Susp.	do	Do.
Appomattox County, Unincorporated Areas.	510011	February 11, 1974, Emerg; July 17, 1978, Reg; January 02, 2008, Susp.	do	Do.
Region IV:				
North Carolina: Archdale, City of, Randolph County.	370273	May 27, 1975, Emerg; July 16, 1981, Reg; January 02, 2008, Susp.	do	Do.
Asheboro, City of, Randolph County	370196	June 12, 1975, Emerg; July 16, 1981, Reg; January 02, 2008, Susp.	do	Do.
Franklinville, Town of, Randolph County	370197	July 10, 1975, Emerg; July 1, 1987, Reg; January 02, 2008, Susp.	do	Do.
Montgomery County, Unincorporated Areas.	370336	February 20, 1997, Emerg; February 20, 1997, Reg; January 02, 2008, Susp.	do	Do.
Ramseur, Town of, Randolph County	370198	October 30, 1974, Emerg; March 1, 1987, Reg; January 02, 2008, Susp.	do	Do.
Randleman, City of, Randolph County	370199	August 15, 1975, Emerg; July 1, 1987, Reg; January 02, 2008, Susp.	do	Do.
Randolph County, Unincorporated Areas.	370195	February 3, 1976, Emerg; July 16, 1981, Reg; January 02, 2008, Susp.	do	Do.
Trinity, City of, Randolph County	370625	May 18, 2005, Emerg; May 18, 2005, Reg; January 02, 2008, Susp.	do	Do.
Troy, Town of, Montgomery County	370627	June 18, 2002, Emerg;—, Reg; January 02, 2008, Susp.	do	Do.
Region V:				
Wisconsin: Mequon, City of, Ozaukee County.	555564	July 2, 1971, Emerg; November 3, 1972, Reg; December 4, 2007, Susp.	12/04/2007	12/04/2007
Region VII:				
Nebraska: Nickerson, Town of, Dodge County.	310070	January 20, 2004, Emerg; January 20, 2004, Reg; January 02, 2008, Susp.	01/02/2008	01/02/2008
North Bend, City of, Dodge County	310239	January 15, 1974, Emerg; March 18, 1980, Reg; January 02, 2008, Susp.	do	Do.
Winslow, Village of, Dodge County	310410	March 7, 1975, Emerg; December 4, 1979, Reg; January 02, 2008, Susp.	do	Do.
Region VIII:				
Colorado: Fraser, Town of, Grand County.	080073	May 12, 1995, Emerg;—, Reg; January 02, 2008, Susp.	do	Do.
Grand Lake, Town of, Grand County	080214	May 9, 1979, Emerg; January 1, 1986, Reg; January 02, 2008, Susp.	do	Do.
Winter Park, Town of, Grand County	080305	July 30, 1980, Emerg; November 15, 1985, Reg; January 02, 2008, Susp.	do	Do.
Wyoming: Campbell County, Unincorporated Areas.	560081	December 8, 1975, Emerg; May 15, 1984, Reg; January 02, 2008, Susp.	do	Do.
Gillette, City of, Campbell County	560007	April 15, 1975, Emerg; May 15, 1978, Reg; January 02, 2008, Susp.	do	Do.
Wright, Town of, Campbell County.	560117	December 2, 2002, Emerg;—, Reg; January 02, 2008, Susp.	do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 17, 2007.

David I. Maurstad,

Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–25317 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
Pike County, Kentucky and Incorporated Areas Docket No.: FEMA–B–7456				
KY	Pike County (Unincorporated Areas).	Ferguson Creek.	At the confluence Ferguson Creek with Pikeville Pond	+676
	City of Pikeville		Approximately 100 feet upstream of confluence of Williams Branch	+853
	Pike County (Unincorporated Areas).	Harolds Branch.	At the confluence Harolds Branch with Pikeville Pond	+678
	City of Pikeville		Approximately 3,020 feet upstream of Pikeville Pond	+705
	Pike County (Unincorporated Areas).	Lower Chloe Creek.	At the confluence Lower Chloe Creek with Pikeville Pond	+676
	City of Pikeville		Approximately 680 feet downstream of confluence of Peter Fork	+747
	Pike County (Unincorporated Areas).	Pikeville Pond.	Approximately 3,160 feet downstream of confluence of Harolds Branch.	+666
	City of Pikeville		At the confluence Pikeville Pond with Levisa Fork	+686

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.
(Note: NGVD − .609′ = NAVD)

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified

ADDRESSES

Pike County (Unincorporated Areas)
Maps are available for inspection at 260 Hambley Boulevard, Pikeville, KY 41501.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
East Baton Rouge Parish, Louisiana and Incorporated Areas Docket No.: FEMA–B–7700			
Bayou Duplantier and Corporation Canal.	Confluence with Dawson Creek	+25	East Baton Rouge Parish.
	Intersection with Nicholson Drive on-ramp	+29	
Bayou Fountain	Confluence with Bayou Manchac	+14	East Baton Rouge Parish.
	500 feet upstream from the intersection with Nicholson Drive	+23	
North Branch.	Confluence with Bayou Fountain	+21	East Baton Rouge Parish.
	Approximately 2100 feet upstream from the intersection with Nicholson Drive (at pedestrian bridge).	+22	
South Branch.	Confluence with Bayou Fountain	+23	East Baton Rouge Parish.
	Approximately 2100 feet upstream from the intersection with Gourrier Ave	+24	
Tributary 1	Upstream face-Fulmer Skipwith Road	+16	East Baton Rouge Parish.
	Approximately 1200 feet upstream from the intersection with Highland Road	+18	
Clay Cut Bayou	Approximately 4400 feet downstream from Tiger Bend Road	+26	East Baton Rouge Parish.
	Approximately 600 feet upstream from the intersection with Bluebonnet Road	+32	
Dawson Creek	Confluence with Ward's Creek	+24	East Baton Rouge Parish.
	Approximately 1200 feet upstream from the intersection with Clay Cut Road	+36	
Elbow Bayou	Upstream face of Illinois Central Railroad	+18	East Baton Rouge Parish.
	Approximately 3.1 miles upstream from Ben Hur Road	+21	
Jacks Bayou	Confluence with Clay Cut Bayou	+30	East Baton Rouge Parish.
	Approximately 2400 feet upstream from the intersection with Parkforest Drive	+37	
Mississippi River.	Intersection of Bluebonnet Blvd and Nicholson Dr. (East Baton Rouge Parish limits).	+42	East Baton Rouge Parish.
	Mississippi River west of W. Mount Pleasant Road (East Baton Rouge Parish limits).	+52	
	West of W. Mount Pleasant Road (East Baton Rouge Parish Boundary)	+42	
	At confluence of Mississippi River and Bayou Manchac (East Baton Rouge Parish Boundary).	+52	
North Branch Wards Creek.	Confluence with Wards Creek	+29	East Baton Rouge Parish.
	Approximately 1100 feet upstream from the intersection with Connells Village Lane.	+44	
South Canal Diversion.	Approximately 2300 feet upstream from the intersection with Plank Road	+82	East Baton Rouge Parish, City of Baker.
	Approximately 2300 feet upstream from the intersection with Plank Road	+82	
East Baton Rouge Parish.	East Baton Rouge Parish	+16	East Baton Rouge Parish
	Approximately 2300 feet upstream from the intersection with Elvin Drive	+16	
Unnamed Tributary to North Branch Wards Creek (Harelson Lateral).	Confluence with North Branch Wards Creek	+40	East Baton Rouge Parish.
	Confluence with North Branch Wards Creek	+43	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Upper Cypress Bayou.	Approximately 2800 feet upstream from the intersection with Heck Young Rd	+81	City of Zachary.
	Approximately 100 feet downstream from the intersection with Rollins Road	+94	
Upper White Bayou.	Confluence with South Canal	+82	City of Zachary, East Baton Rouge Parish.
	Approximately 2700 feet upstream from Old Scenic Highway	+119	
Wards Creek ...	Confluence with Bayou Manchac	+18	East Baton Rouge Parish.
	Approximately 100 feet upstream from the intersection with Choctaw Drive	+51	
Weiner Creek ..	Confluence with Jones Creek	+39	East Baton Rouge Parish.
	Approximately 1100 feet upstream from the intersection with Church Entrance Road.	+42	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Baker
Maps are available for inspection at City Hall, 3325 Groom Road, Baker, LA 70714.

City of Zachary
Maps are available for inspection at City Hall, 4650 Main Street, Zachary, LA 70791.

East Baton Rouge Parish
Maps are available for inspection at 4th Floor Municipal Building, 300 North Blvd, Baton Rouge, LA 70802.

Liberty County, Texas and Unincorporated Areas
Docket No.: FEMA–B–7708

Cedar Bayou (Lower).	Approximately 1800 feet downstream from Kenning Road (County Boundary)	+36	Liberty County (Unincorporated Areas).
	Approximately 3200 feet upstream from Crosby East Gate Road (County Boundary).	+62	
Trinity River	Approximately 1.3 miles downstream from U.S. Route 90	+25	City of Liberty.
	Approximately 3.6 miles upstream from the Missouri Pacific Railroad	+36	Liberty County (Unincorporated Areas).

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Liberty
Maps are available for inspection at Liberty City Hall, 1829 Sam Houston, Liberty, TX 77575.

Liberty County (Unincorporated Areas)
Maps are available for inspection at Liberty County Annex, 2103 Cos Street, Liberty, TX 77575.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 18, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–25304 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURTIY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects the table to a final rule published in the **Federal Register** of September 17, 2007. This correction clarifies the table representing the flooding source(s), location of referenced elevation, the effective and modified elevation in feet and the communities affected for Cleveland County, North Carolina, and Incorporated Areas; specifically, for the flooding source "Brushy Creek Tributary 1 of Tributary 6," and for Randolph County, North Carolina, and Incorporated Areas, specifically, for the flooding source "Dodsons Lake 2" than was previously published.

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes final determinations of Base (1-percent-annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Federal Emergency Management Agency makes the final determinations for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator for the Mitigation Directorate of FEMA has resolved any appeals resulting from this notification.

Correction

■ Accordingly, in final rule FR Doc. E7–18260 published on September 17, 2007, (72 FR 52796), the following corrections are made to 44 CFR part 67:

§ 67.11 [Corrected]

■ 1. On page 52798, in § 67.11, in the table with center heading Cleveland County, North Carolina, and Incorporated Areas, the flooding source(s), location of referenced elevation, the effective and modified elevation in feet and the communities affected for flooding source "Brushy Creek Tributary 6", and on page 52811, in § 67.11, in the table with the center heading Randolph County, North Carolina, and Incorporated Areas, the flooding source(s), location of referenced elevation, the effective and modified elevation in feet and the communities affected for flooding source "Dodsons Lake Tributary 2", needs to be corrected to read as follows:

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
* * * * * * *			
Cleveland County, North Carolina, and Incorporated Areas Docket No.: FEMA–B–7711			
* * * * * * *			
Brushy Creek Tributary 1 of Tributary 6.	At the confluence with Brushy Creek Tributary 6.	+752	Cleveland County (Unincorporated Areas).
	Approximately 820 feet upstream of Barbee Road.	+780	
* * * * * * *			
Randolph County, North Carolina, and Incorporated Areas Docket Nos.: FEMA–D–7630, FEMA–D–7686, and FEMA–D–7694			
* * * * * * *			
Dodsons Lake 2	At the confluence with Dodsons Lake	+613	Randolph County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with Dodsons Lake.	+626	
* * * * * * *			

Dated: December 6, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–25296 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground. (modified)
City of Lynchburg, Virginia Docket No.: FEMA—B–7715				
Virginia	City of Lynchburg	Burton Creek	Confluence with Blackwater Creek	+660
			Approximately 1800 feet upstream of Wards Ferry Road.	+758
		Burton Creek Tributary No. 1.	Confluence with Burton Creek	+758
			Approximately 1.0 mile upstream of confluence with Burton Creek.	+870
		Tributary No. 2	Confluence with Burton Creek Tributary No. 1.	+767
			Approximately 950 feet upstream of Wade Land.	+844
		Tributary No. 3	Confluence with Burton Creek	+758
			Approximately 2300 feet upstream of confluence with Burton Creek.	+841
		Tributary No. 4	Confluence with Burton Creek	+755
			Approximately 0.5 mile upstream of Wards Ferry Road.	+836
		Tributary No. 5	Confluence with Burton Creek	+755
			Approximately 850 feet upstream of confluence with Burton Creek.	+768
		Tributary No. 6	Confluence with Burton Creek	+720
			Approximately 1250 feet upstream of confluence with Burton Creek.	+757
		Rock Castle Creek	Confluence with Burton Creek	+740
			Just upstream of Wards Ferry Road	+810
		Tributary No. 4	Confluence with Rock Castle Creek	+758
			Approximately 1500 feet upstream of railroad spur.	+843
		Tributary No. 5	Confluence with Rock Castle Creek	+740
			Approximately 200 feet upstream of Lynchburg Expressway.	+783
		Tributary No. 6	Confluence with Rock Castle Creek	+740

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. (modified)
			Approximately 800 feet upstream of Edgewood Drive.	+804

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Lynchburg

Maps are available for inspection at 900 Church Street, 2nd Floor Planning Division, Lynchburg, VA 24504.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground (modified)	Communities affected
Pearl River County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–7720			
East Hobolochitto Creek.	Just upstream of West Union Road	+86	Pearl River County (Unincorporated Areas).
	Approximately 420 feet upstream of Savannah Millard Road	+147	
Jumpoff Creek	At the confluence with East Hobolochitto Creek	+162	Pearl River County (Unincorporated Areas).
	Just upstream of Norfolk Southern Railroad	+238	
Juniper Creek	At the confluence with East Hobolochitto Creek	+166	Pearl River County (Unincorporated Areas).
	Approximately 1,900 feet upstream of Dupont-Harris Road	+252	
Long Branch	At the confluence with West Hobolochitto Creek	+72	Pearl River County (Unincorporated Areas).
	Approximately 6,900 feet upstream of Nelle Burkes Road	+161	
Mill Creek No. 1	At the Pearl River-Hanconk County Boundary	+79	Pearl River County (Unincorporated Areas).
	Approximately 4,800 feet upstream of Mill Creek 2 Tributary 4	+175	
No. 3	Approximately 170 feet upstream of Boley Bypass Road	+54	Pearl River County (Unincorporated Areas).
	Approximately 14,600 feet upstream of Highway 11	+180	
No. 4	Just upstream of the dam	+91	Pearl River County (Unincorporated Areas).
	Approximately 6,200 feet upstream of Rock Ranch Road	+143	
West Hobolochitto Creek.	Approximately 600 feet downstream of Henleyfield-McNeill Road	+98	Pearl River County (Unincorporated Areas).
	Approximately 200 feet upstream of Highway 26	+130	
White Sand Creek	At the confluence with West Hobolochitto Creek	+129	Pearl River County (Unincorporated Areas).
	Approximately 4,050 feet upstream of White Sand Creek Tributary 7	+247	
Wolf River	Approximately 16,100 feet downstream of McNeill-McHenry Road	+120	Pearl River County (Unincorporated Areas).
	Approximately 2,500 feet upstream of Highway 11	+241	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground (modified)	Communities affected
ADDRESSES			
Pearl River County (Unincorporated Areas)			
Maps are available for inspection at Department of Planning and Development, 167 Savannah-Millard Road, Poplarville, MS 39470.			
Warren County, Virginia, and Incorporated Areas Docket No.: FEMA–B–7705			
North Fork Shenandoah River.	Confluence with South Fork Shenandoah River	+498	Warren County (Unincorporated Areas).
	Town of Front Royal Corporate Limits (approximately 1.46 miles upstream of confluence with Shenandoah River).	+498	
South Fork Shenandoah River.	Confluence of Punches Run	+500	Warren County (Unincorporated Areas).
	Town of Front Royal Corporate Limits (just upstream of Catlett Mountain Road and Luray Avenue).	+506	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

ADDRESSES

Warren County (Unincorporated Areas)

Maps are available for inspection at 220 North Commerce Avenue, Suite 400, Front Royal, VA 22630.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 14, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–25288 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–2007–0018]

Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2008

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule increases the rail equipment accident/incident reporting threshold from $8,200 to $8,500 for certain railroad accidents/incidents involving property damage that occur during calendar year 2008. This action is needed to ensure that FRA's reporting requirements reflect cost increases that have occurred since the reporting threshold was last computed for calendar year 2007.

DATES: *Effective Date:* This regulation is effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Arnel B. Rivera, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, FRA, 1200 New Jersey Avenue, SE., West Building 3rd Floor, Washington, DC 20590 (telephone 202–493–1331); or Sandra S. Ries, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, FRA, 1200 New Jersey Avenue, SE., West Building 3rd Floor, Washington, DC 20590 (telephone 202–493–6047).

SUPPLEMENTARY INFORMATION:

Background

A "rail equipment accident/incident" is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that results in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material, greater than the reporting threshold for the year in which the event occurs. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b) and (c). Paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225 to reflect any cost increases or decreases. 61 FR 30940 (June 18, 1996); 61 FR 60632 (November 29, 1996); 61 FR 67477 (December 23, 1996); 62 FR 63675 (December 2, 1997); 63 FR 71790 (December. 30, 1998); 64 FR 69193 (December 10, 1999); 65 FR 69884 (November 21, 2000); 66 FR 66346 (December 26, 2001); 67 FR 79533 (December 30, 2002); 70 FR 75414 (December 20, 2005); 72 FR 1184 (January 10, 2007).

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/incident reporting threshold was revised. 72 FR 1184 (January 10, 2007). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and increased costs for equipment. FRA has determined that the current reporting threshold of $8,200, which applies to rail equipment accidents/incidents that occur during calendar year 2007, should increase by $300 to $8,500 for

equipment accidents/incidents occurring during calendar year 2008, effective January 1, 2008. The specific inputs to the equation set forth in appendix B (i.e., *Tnew* = *Tprior* * [1 + 0.4(*Wnew* − *Wprior*)/*Wprior* + 0.6(*Enew* − *Eprior*)/100]) to part 225 are:

Tprior	Wnew	Wprior	Enew	Eprior
$8,200	$21.50323	$21.45800	175.56667	169.7

Where: *Tnew* = New threshold; *Tprior* = Prior threshold (with reference to the threshold, "prior" refers to the previous threshold rounded to the nearest $100, as reported in the **Federal Register**); *Wnew* = New average hourly wage rate, in dollars; W*prior* = Prior average hourly wage rate, in dollars; *Enew* = New equipment average PPI value; *Eprior* = Prior equipment average PPI value. Using the above figures, the calculated new threshold, (Tnew) is $8,495.55, which is rounded to the nearest $100 for a final new reporting threshold of $8,500.

Notice and Comment Procedures

In this rule, FRA has recalculated the monetary reporting threshold based on the formula discussed in detail and adopted, after notice and comment, in the final rule published December 20, 2005, 70 FR 75414. FRA has found that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA has found that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, finding that notice and comment procedures are either impracticable, unnecessary, or contrary to the public interest, FRA is proceeding directly to the final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034 (Feb. 26, 1979)).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes "small entities" as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

About 680 of the approximately 718 railroads in the United States are considered small entities by FRA. FRA certifies that this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and therefore also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, current FRA data indicate that 3,379 rail equipment accidents/incidents were reported in 2004, with small railroads reporting 307 of them. In 2005, 3,252 rail equipment accidents/incidents were reported, and small railroads reported 321 of them. Data for 2006 show that 2,935 rail equipment accidents/incidents were reported, with small railroads reporting 345 of them. On average for those three calendar years, small railroads reported about 10% (ranging approximately from 9% to 12%) of the total number of rail equipment accidents/incidents. FRA notes that these data are accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting. Absent this rulemaking (i.e., any increase in the monetary reporting threshold), the number of reportable accidents/incidents would increase, as keeping the 2007 threshold in place would not allow it to keep pace with the increasing dollar amounts of wages and rail equipment repair costs. Therefore, this rule will be neutral in effect. Increasing the reporting threshold will slightly decrease the recordkeeping burden for railroads over time. Any recordkeeping burden will not be significant and will affect the large railroads more than the small entities, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

FRA has analyzed this rule in accordance with Executive Order 13132, which requires an agency to determine whether a rule will have a substantial direct effect on 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. FRA has determined that the rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with sections 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of [$132,300,000 or more (as adjusted for inflation)] in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of $132,300,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: That (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

Privacy Act

Anyone is able to search the electronic form of all our 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://www.regulations.gov*.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Amend § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.*, $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, and $8,500 for calendar year 2008) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

* * * * *

(e) The reporting threshold is $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007 and $8,500 for calendar year 2008. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

* * * * *

Issued in Washington, DC, on December 19, 2007.

Joseph H. Boardman,

Administrator.

[FR Doc. E7–24999 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 071221883–7885–01]

RIN 0648–XE66

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,939 nm^2 (6,650 km^2), south of Rockland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours December 30, 2007, through 2400 hours January 13, 2008.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded

from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On December 19, 2007, an aerial survey reported an aggregation of 30 right whales in the proximity of 43° 25′ N latitude and 68° 31′ W longitude. The position lies approximately 50nm south of Rockland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

43° 42′ N., 69° 04′ W. (NW Corner)
43° 42′ N., 68° 02′ W.
42° 59′ N., 68° 02′ W.
42° 59′ N., 69° 04′ W.
43° 42′ N., 69° 04′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/pot gear

Fishermen utilizing lobster trap/pot gear within portions of Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. The breaking strength of each net panel weak link must not exceed 1,100 lb (498.8 kg). The weak link requirements apply to all variations in net panel size. One weak link must be placed in the center of the floatline and one weak link must be placed in the center of each of the up and down lines at both ends of the net panel. Additionally, one weak link must be placed as close as possible to each end of the net panels on the floatline; or, one

weak link must be placed between floatline tie-loops between net panels and one weak link must be placed where the floatline tie-loops attach to the bridle, buoy line, or groundline at each end of a net string;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours December 31, 2007, through 2400 hours, January 14, 2008, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: December 21, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 07–6232 Filed 12–21–07; 2:53 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 071220869–7871–01]

RIN 0648–XE62

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,580 nm^2 (5,419 km^2), south of Portland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours December 30, 2007, through 2400 hours January 13, 2008.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On December 18, 2007, an aerial survey reported an aggregation of three right whales in the proximity of 42° 59′ N latitude and 70° 06′ W. longitude. The position lies south of Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

43° 21′ N., 70° 26′ W. (NW Corner)
43° 21′ N., 69° 42′ W.
42° 40′ N., 69° 42′ W.
42° 40′ N., 70° 35′ W.
43° 12′ N., 70° 35′ W. and follow the coastline north to
43° 13′ N., 70° 35′ W.
43° 16′ N., 70° 35′ W. and follow the coastline north and east to
43° 21′ N., 70° 26′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster trap/pot gear

Fishermen utilizing lobster trap/pot gear within the portions of Northern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, and the Stellwagen Bank/Jeffrey's Ledge Restricted Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of Other Northeast Gillnet Waters and the Stellwagen Bank/Jeffrey's Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. The breaking strength of each net panel weak link must not exceed 1,100 lb (498.8 kg). The weak link

requirements apply to all variations in net panel size. One weak link must be placed in the center of the floatline and one weak link must be placed in the center of each of the up and down lines at both ends of the net panel. Additionally, one weak link must be placed as close as possible to each end of the net panels on the floatline; or, one weak link must be placed between floatline tie-loops between net panels and one weak link must be placed where the floatline tie-loops attach to the bridle, buoy line, or groundline at each end of a net string;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours December 31, 2007, through 2400 hours January 14, 2008, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: December 20, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 07–6230 Filed 12–21–07; 2:53 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0612242964–7332–02; I.D. 080106C]

RIN 0648–AS84

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program

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

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements implementing the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific

halibut fishery and sablefish fishery. OMB assigned OMB Control Number 0648–0569 to the collection of information contained in these regulations. The intent of this final rule is to announce the effective date of these regulations is January 28, 2008.

DATES: The collection of information requirements in §§ 679.42(d) and 679.42(i), published on August 9, 2007 (72 FR 44795), are effective January 28, 2008.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and by email to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228 or e-mail at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: A final rule that modified the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut fishery and sablefish fishery was published in the **Federal Register** on August 9, 2007 (72 FR 44795), and most of the measures were effective September 10, 2007. However, because OMB approval of the reporting requirements contained in this final rule at 50 CFR parts 679.42(d) and 679.42(i) had not been received by the effective date of the rule, the effective date of these collection-of-information requirements were delayed. On October 31, 2007, NMFS received OMB approval for these collection-of-information requirements and assigned OMB Control Number 0648–0569 to them. Consequently, NMFS announces the effectiveness of these regulations relating to IFQ Medical Transfer Application, appeal, and proof-of-ownership documentation for the hired master changes.

A complete explanation of the requirements imposed by these regulations and the rationale for them was provided in the proposed rule (72 FR 64218, November 1, 2006), and the August 9, 2007 final rule (72 FR 44795).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of- information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA that have been approved by OMB under control number 0648–0569. Public reporting burden per response is estimated to average 2 hours for Application for Medical Transfer of IFQ; 4 hours for each letter of appeal if an application is denied by NMFS; and 1 hour for each proof-of-ownership document for the hired master changes.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 19, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–25076 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 248
Friday, December 28, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number AMS–TM–07–0124; TM–07–12]

RIN 0581–AC76

National Organic Program (NOP); Sunset Review (2008)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance notice of proposed rulemaking with request for comments.

SUMMARY: Sunset of the exempted or prohibited use of substances under the National Organic Program (NOP) is required by the Organic Foods Production Act of 1990 (OFPA). This ANPR announces the sunset of 11 exempted substances and 1 prohibited substance added to the National List on November 3 and 4, 2003. This ANPR establishes November 3, 2008, as the date by which the sunset review and renewal process must be concluded. This advance notice of proposed rulemaking (ANPR) also begins the public comment process on whether the identified existing exemptions or prohibitions should be continued. Finally, this ANPR discusses how the NOP will manage the sunset review and renewal process.

DATES: Comments must be submitted on or before January 28, 2008.

ADDRESSES: Interested persons may submit written comments on this ANPR using the following addresses:

- Mail: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Avenue., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.
- Internet: *www.regulations.gov.*

Written comments responding to this ANPR should be identified with the docket number AMS–TM–07–0124. You should clearly indicate your position to continue the allowance or prohibition of the substances identified in this ANPR and the reasons for your position. You should include relevant information and data to support your position (e.g., scientific, environmental, manufacturing, industry impact information, etc.). You should also supply information on alternative substances or alternative management practices, where applicable, that support a change from the current exemption or prohibition of the substance. Only the supporting material relevant to your position will be considered.

It is our intention to have all comments concerning this ANPR, including, names and addresses when provided, whether submitted by mail or internet available for viewing on the Regulations.gov (*www.regulations.gov*) internet site. Comments submitted in response to this ANPR will also be available for viewing in person at USDA–AMS, Transportation and Marketing Programs, National Organic Program, Room 4008–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday, (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this ANPR are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008–So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250. Phone: (202) 720–3252. Telephone: (202) 720–3252. E-mail: *Robert.pooler@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

Background

The OFPA, 7 U.S.C. 6501 *et seq.*, authorizes the establishment of the National List of exempted and prohibited substances. The National List identifies synthetic substances (synthetics) that are exempted (allowed) and nonsynthetic substances (nonsynthetics) that are prohibited in organic crop and livestock production. The National List also identifies nonsynthetics and synthetics that are exempted for use in organic handling.

The exemptions and prohibitions granted under the OFPA are required to be reviewed every 5 years by the National Organic Standards Board (NOSB). The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If they are not reviewed by the NOSB and renewed by the Secretary within 5 years of their inclusion on the National List, their authorized use or prohibition expires. This means that synthetic substances Copper sulfate, Ozone gas, Peracetic acid, and EPA List 3 Inerts, currently allowed for use in organic crop production, will no longer be allowed for use after November 3, 2008. Calcium chloride currently prohibited from use in organic crop production, except as a foliar spray to treat a physiological disorder associated with calcium uptake, will be allowed after November 3, 2008. This also means that Agar-agar, Carageenan, and Tartaric acid, currently allowed for use in organic handling, will be prohibited after November 3, 2008. Finally, Animal enzymes, Calcium sulfate, Glucono delta lactone, and Cellulose, currently allowed for use in organic handling, will no longer be allowed for use after November 4, 2008.

Expiration of the exempted or prohibited use of substances is provided for under the OFPA's sunset provision. This ANPR announces the sunset of 11 exempted substances and 1 prohibited substance added to the National List on November 3 and 4, 2003. This ANPR establishes November 3, 2008, as the date by which the sunset review and renewal process must be concluded. Substances not renewed will be removed from the National List. This ANPR also begins the public comment process on whether the existing specific exemptions or prohibitions on the National List should be continued. This ANPR discusses how the NOP will manage the sunset review and renewal process.

Because these substances may be critical to the production and handling of a wide array of raw and processed organic agricultural products, their expiration could cause disruption of well-established and accepted organic production, handling, and processing systems. Therefore, the NOP is initiating

the sunset review and renewal process now, in order to provide ample opportunity for you to make your views known.

Initially, Tartaric acid was inadvertently included in the 2007 sunset process (70 FR 35177, June 17, 2005) and recommended for renewal by the NOSB (November 17, 2005). However, because Tartaric acid was not scheduled to sunset until October 31, 2008, it was not included in the 2007 sunset proposed rule (72 FR 9872, March 6, 2007). Consequently, Tartaric acid will receive consideration under this sunset review and the NOSB will consider commenis previously submitted in response to the 2007 sunset ANPR.

DL-Methionine, DL-Methionine-hydroxyl analog, and DL-Methionine-hydroxyl analog calcium (CAS #—59–51–8; 63–68–3; 348–67–4) were added to the National List on November 3, 2003, for use in organic poultry production. Initially these substances carried an expiration date of October 21, 2005. Effective October 22, 2005, the expiration date was amended to October 1, 2008. Because these substances have an expiration date recommended by the NOSB and established by rulemaking, they are not included in this sunset review. The NOP National List petition process would have to be employed for these substances to be authorized for use after October 1, 2008.

The Sunset Process

As the first step in this process, we invite public comment on the specific exemptions or prohibitions currently on the National List that are described in this document. All substances currently on the National List have been previously evaluated and determined by the NOSB for consistency with OFPA and its implementing regulations. According to § 6517(e) of the OFPA, these substances must be reviewed by the NOSB and renewed by the Secretary for their use or prohibition to continue after 5 years of their addition to the National List which will be November 3, 2008. Public comments submitted will be considered in the review and renewal process.

The NOP will forward comments received under this ANPR to the NOSB for review. The NOSB will review the exemptions and prohibitions of the substances designated to sunset, including the public comments received during this review. The NOSB will review each of the substances listed in this ANPR and may determine that certain substances warrant a more in-depth review and require additional information or research that considers new scientific data and technological and market advances.

Following the NOSB's review, the NOSB will make a recommendation to the Secretary about the continuation of specific exemptions and prohibitions for the substances listed in this ANPR. After the Secretary receives the NOSB's recommendations, the NOP will publish a proposed rule based on the NOSB recommendations. This proposed rule will provide an additional opportunity for you to express your views. Comments received on the proposed rule will be used to develop a final rule. Because the sunset review and renewal process involves rulemaking, the NOP believes it is appropriate to initiate the process now with a thirty-day comment period.

Guidance on Submitting Your Comments

Comments That Support Existing Exemptions or Prohibitions

If you provide comments that support the renewal of any or all existing exemptions or prohibitions included within this ANPR, you should clearly indicate this and provide your reasons and any relevant documentation that supports your position.

Comments That Do Not Support Continuing an Existing Exemption

If you provide comments that do not support continuing an existing exemption, you should provide reasons why the use of the substance should no longer be allowed in organic agricultural production and handling. The current exemptions were originally recommended by the NOSB based on evidence available to the NOSB at the time of review which demonstrated that the substances were found to be: (1) Not harmful to human health or the environment, (2) necessary because of the unavailability of wholly nonsynthetic alternatives, and (3) consistent and compatible with organic practices. Therefore, comments against the continued exemption of a substance should demonstrate how the current substance is: (1) Harmful to human health or the environment, (2) not necessary to the production of the agricultural products because of the availability of wholly nonsynthetic substitute products, or (3) inconsistent with organic farming and handling.

An Appendix to this ANPR contains worksheets to assist you in gathering relevant information concerning these issues. These worksheets are not required to submit a comment. These worksheets are used by the NOSB to develop their recommendations to the Secretary to include an exempted or prohibited substance on the National List. You do not have to answer the questions on the worksheets; they are intended only to help you provide substantive comments to the NOSB when you provide comments on the specific substance.

In addition, comments that do not support the continued use of a substance(s) listed within this ANPR should also provide evidence concerning viable alternatives for the substance you believe should be discontinued. Viable alternatives include, but are not limited to: alternative management practices that would eliminate the need for the specific substance; other currently exempted substances that are on the National List which could eliminate the need for this specific substance; and other organic or nonorganic agricultural substances. Such evidence also should adequately demonstrate that the alternative has a function and effect that equals or surpasses the specific exempted substance that you do not want to be continued. Assertions about an alternative substance except for those alternatives that already appear on the National List should, if possible include the name and address of the manufacturer of the alternative. Further, your comments should include a copy or the specific source of any supportive literature, which could include product or practice descriptions; performance and test data; reference standards; name and address of producers who have used the alternative under similar conditions and the date of use; and an itemized comparison of the function and effect of the proposed alternative(s) with substance under review. The chart below can help you describe recommended alternatives for different types of organic operations in place of a current exempted substance that you do not want to be continued.

If the currently listed substance is used in...	And is a (an). . .	Then the recommended alternative should be a (an). . .
Crop or Livestock Production	Synthetic substance	—Another currently listed synthetic substance; —Nonsynthetic substance; or —Management practice.
Crop or Livestock Production	Synthetic inert substance (pesticidal).	—Another currently listed synthetic substance or; —Nonsynthetic substance.
Handling	Synthetic substance	—Another currently listed synthetic substance; —Nonsynthetic (non-ag) substance; or —Management practice.
Handling	Nonsynthetic (non-ag) substance	—Agricultural substance; or —Management practice.
Handling	Nonorganic agricultural product	—Organic agricultural product.

The NOP understands that supportive technical or scientific information for synthetic alternatives not currently on the National List may not be easily available to organic producers and handlers. Such information may, however, be available from the research community including universities, or other sources, including international organic programs.

Comments That Do Not Support Continuing an Existing Prohibition

If you provide comments against continuation of the prohibition on the use of Calcium chloride, you should specify how Calcium chloride is now consistent with the criteria in the OFPA and the NOP regulation. When this prohibition was originally recommended by the NOSB, it was accepted because the evidence available to the NOSB at the time of review demonstrated that the substance, except as annotated, was found to be harmful to human health or the environment and was inconsistent and not compatible with organic practices. Therefore, any comments against continuation of the prohibition on the use of Calcium chloride should provide new information, including a copy of the specific source of any supportive literatures showing that Calcium chloride is no longer harmful to human health or the environment and is consistent and compatible with organic practices.

An Appendix to this ANPR contains worksheets to assist you in gathering relevant information concerning these issues. These worksheets are not required for you to submit a comment. These worksheets are used by the NOSB to develop their recommendations to the Secretary to include an exempted or prohibited substance on the National List. You do not have to answer the questions on the worksheets; they are intended to help you provide substantive comments to the NOSB when you provide comments on the specific substance.

Request for Comments

The NOP requests that you comment whether the NOSB should continue to recommend the following exemptions and prohibition on the National List of Allowed and Prohibited Substances for organic agricultural production and handling:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

(a) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems.

(3) Copper sulfate—for use as an algicide in aquatic rice systems, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

(5) Ozone gas—for use as an irrigation system cleaner only.

(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material.

(e) As insecticides (including acaricides or mite control).

(3) Copper Sulfate—for use as tadpole shrimp control in aquatic rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

(i) As plant disease control.

(7) Peracetic acid—for use to control fire blight bacteria.

(m) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

(2) EPA List 3—Inerts of unknown toxicity allowed:

(ii) Inerts used in passive pheromone dispensers.

Section 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

(c) Calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake.

Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as "Organic" or "Made With Organic (Specified Ingredients or Food Groups(s))"

(a) *Nonsynthetics allowed:*

Agar-agar.

Animal enzymes—(Rennet—animals derived; Catalase—bovine liver; Animal lipase; Pancreatin; Pepsin; and Trypsin).

Calcium sulfate—mined.

Carageenan.

Glucono delta-lactone—production by the oxidation of D-glucose with bromine water is prohibited.

Tartaric acid

(b) *Synthetics allowed:*

Cellulose—for use in regenerative casings, as an anti-caking agent (non-chlorine bleached) and filtering aid.

Tartaric acid

All comments will be considered in the development of the NOSB's recommendations to the Secretary.

Authority: 7 U.S.C. 6501 *et seq.* and 7 CFR part 205.

Dated: December 21, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Appendix

This Appendix contains worksheets to assist you in gathering relevant information concerning the compatibility of substances with evaluation criteria of the OFPA. These worksheets are not required to submit a comment. These worksheets are used by the NOSB to develop their recommendations to the Secretary to include an exempted or

prohibited substance on the National List. You do not have to answer the questions on the worksheets; they are intended only to help you provide substantive comments to the NOSB when you provide comments on the specific substance.

Evaluation Criteria for Substances Added to the National List

Question	Yes	No	N/A[1]	Documentation (TAP; petition; regulatory agency; other)
Category 1. Adverse impacts on humans or the environment?				
1. Is there environmental contamination during manufacture, use, misuse, or disposal? [§ 6518 m.3]				
2. Is the substance harmful to the environment? [§ 6517c(1)(A)(i);6517(c)(2)(A)i]				
3. Does the substance contain List 1, 2, or 3 inerts? [§ 6517 c (1)(B)(ii)]				
4. Is there potential for detrimental chemical interaction with other materials used? [§ 6518 m.1]				
5. Are there adverse biological and chemical interactions in agro-ecosystem? [§ 6518 m.5]				
6. Are there detrimental physiological effects on soil organisms, crops, or livestock? [§ 6518 m.5]				
7. Is there a toxic or other adverse action of the material or its breakdown products? [§ 6518 m.2]				
8. Is there undesirable persistence or concentration of the material or breakdown products in environment?[§ 6518 m.2]				
9. Is there any harmful effect on human health? [§ 6517 c (1)(A)(i) ; 6517 c(2)(A)i; § 6518 m.4]				
Category 2. Is the Substance Essential for Organic Production?				
1. Is the substance formulated or manufactured by a chemical process? [6502 (21)]				
2. Is the substance formulated or manufactured by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral, sources? [6502 (21)]				
3. Is the substance created by naturally occurring biological processes? [6502 (21)]				
4. Is there a wholly natural substitute product? [§ 6517 c (1)(A)(ii)]				
5. Is the substance used in handling, not synthetic, but not organically produced? [§ 6517 c (1)(B)(iii)]				
6. Is there any alternative substances? [§ 6518 m.6]				
7. Is there another practice that would make the substance unnecessary? [§ 6518 m.6]				
Category 3. Is the substance compatible with organic production practices?				
1. Is the substance consistent with organic farming and handling? [§ 6517 c (1)(A)(iii); 6517 c (2)(A)(ii)]				
2. Is the substance compatible with a system of sustainable agriculture? [§ 6518 m.7]				
3. Is the substance used in production, and does it contain an active synthetic ingredient in the following categories:				
a. copper and sulfur compounds;				
b. toxins derived from bacteria;				
c. pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals?				
d. livestock parasiticides and medicines?				
e. production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleaners?				

[1] If the substance under review is for crops or livestock production, all of the questions from 205.600 (b) are N/A—not applicable.

[FR Doc. E7–25270 Filed 12–27–07; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. AO–214–A7; AMS–FV–07–0050; FV07–981–1]

Almonds Grown in California; Recommended Decision on Proposed Amendment of Marketing Order No. 981

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This is a recommended decision regarding proposed amendments to Marketing Order No. 981 (order), which regulates the handling of almonds grown in California. Two amendments were proposed by the Almond Board of California (Board), which is responsible for local administration of the order. These proposed amendments would: authorize the establishment of specific outgoing quality requirements for different markets; and authorize the establishment of container marking and labeling requirements. The proposals are intended to provide additional flexibility in administering the quality control provisions of the order and provide the industry with additional tools to aid in the marketing of almonds. This recommended decision invites written exceptions on the proposed amendments.

DATES: Written exceptions must be filed by January 17, 2008.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1081–S, Washington, DC 20250–9200, Fax: (202) 720–9776 or via the Internet at *http:\\www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http:\\www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; Telephone: (559) 487–5110, Fax: (559) 487–5906, or E-mail: *Martin.Engeler@usda.gov*; or Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–1509, Fax: (202) 720–8938, or E-mail: *Laurel.May@usda.gov*.

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

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing issued on June 29, 2007, and published in the July 6, 2007, issue of the **Federal Register** (72 FR 36900).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Order 981 regulating the handling of almonds grown in California, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Martin Engeler, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed amendments are based on the record of a public hearing held August 2, 2007, in Modesto, California. Notice of this hearing was published in the **Federal Register** on July 6, 2007 (72 FR 36900). The notice of hearing contained the two proposals submitted by the Board.

The proposed amendments were recommended by the Board following deliberations at public meetings on November 28, 2006, and February 27, 2007, and were submitted to the Agricultural Marketing Service (AMS) on March 12, 2007. After reviewing the recommendation and other information submitted by the Board, AMS determined to proceed with the formal rulemaking process and schedule the matter for hearing.

The Board's proposed amendments to the order would: (1) Authorize the establishment of different outgoing almond quality requirements for different markets; and (2) authorize the establishment of container marking and labeling requirements.

USDA also proposed to make such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Eleven industry witnesses testified at the hearing. These witnesses represented almond producers and handlers in the production area, as well as Board staff, and all were supportive of the proposed amendments. The witnesses emphasized the need to equip the industry with updated and more comprehensive tools for the marketing of California almonds, and testified that the two proposed amendments would assist in this matter.

Witnesses offered testimony in support of the Board's recommendation to add authority for different outgoing quality requirements for shipments to different markets. Under that authority, the Board could recommend the establishment of outgoing quality requirements to meet the specifications of particular markets. According to testimony, this would assure delivery of a consistent quality product, which would help maintain customer confidence and market share.

Witnesses also supported the recommendation to add general authority for container marking and labeling requirements. If implemented, this authority would enable the Board to recommend the establishment of container marking and labeling regulations to aid in the orderly marketing of almonds. Such container marking or labeling could include information about the product's origin, product handling instructions, or other information responsive to market demands.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of September 24, 2007, for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. The filing deadline was extended to September 26, 2007. Two briefs were filed during that period: one brief summarized witness testimony from the hearing and supported adoption of the proposed order amendments; and the second brief provided a brief history of the California almond industry, clarified the intent of the Board's proposed amendment regarding container

marking and labeling, and offered general support for both proposed amendments.

Material Issues

The material issues presented on the record of hearing are as follows:

(1) Whether to amend the order to authorize establishment of different outgoing quality requirements for different markets; and

(2) Whether to amend the order to authorize establishment of container marking and labeling requirements.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Authority To Establish Different Outgoing Quality Requirements for Different Markets

Section 981.42(b) of the order should be amended to authorize the establishment of specific outgoing quality requirements for different markets. That section currently authorizes the establishment of minimum outgoing quality requirements applicable to almonds to be handled or to be processed into manufactured products. However, it does not authorize different quality requirements for product shipped to different market destinations. Quality requirements authorized under § 981.42(b) may be established through informal rulemaking after recommendation by the Board and implementation by USDA. If authority to establish different outgoing quality requirements for different markets is added to this subsection in the order as proposed, implementation of such requirements would also require recommendation by the Board and subsequent establishment of regulations by USDA through informal rulemaking.

Witnesses testified that California almonds comprise approximately 80 percent of the world's almond production and that over two-thirds of California's almonds are exported to approximately 90 countries worldwide. According to record evidence, the 2007–08 crop is estimated to approximate 1.330 billion pounds, which would be the largest California almond crop ever produced. Witnesses testified that to ensure the industry can sustain adequate market demand for production at that level, it must be equipped with necessary tools that will allow it to respond to rapidly changing global market requirements.

Witnesses indicated that the California almond industry faces a wide array of market regulations and standards for such factors as appearance, aflatoxin levels, pesticide residues, organic standards, fumigation, and methods of testing for compliance with those standards. Many of these requirements are not harmonized across the different markets. Witnesses explained that there is a tendency for countries to adopt standards from other countries and then modify them, so that the standards and requirements proliferate and become increasingly complex. One witness suggested that a shipment of product could meet the requirements of one country but be rejected by another country.

Meeting the demands of increasingly diverse markets with substantially different standards and requirements is an ongoing challenge for the almond industry. However, witnesses testified that maintaining customer confidence in the quality of their product is essential for the economic well being of the industry; so the ability to meet those standards is crucial.

Currently, the order authorizes the establishment of outgoing quality regulations that are applicable to all almonds, regardless of their destination. Witnesses stated that handling all almonds in such a manner as to meet the requirements of one particular market may not always be practical for shipments to other destinations and could generate unnecessary costs for handlers. The industry desires to avoid the complication and expense of applying the quality standards of one market to shipments for other markets where they may not be required or appropriate.

However, at the same time, witnesses indicated that not making country and region-specific mandatory marketing requirements compulsory as part of outgoing quality regulations in the order is causing a disruption in the flow of almonds to specific markets, such as the European Union (EU). Witnesses explained that the EU has established a maximum tolerance for aflatoxin in almonds shipped to its member countries. Handlers who choose to ship almonds to the EU must comply with EU specifications. However, under the current order regulations, there are no mandatory requirements pertaining to aflatoxin for California almonds. Witnesses explained that, in the absence of the authority to establish specific outgoing quality requirements for shipments to the EU, the almond industry developed a voluntary aflatoxin testing protocol for handlers to follow when shipping almonds to the EU. The intent of the program was to ensure the product meets EU requirements before being shipped, therefore minimizing the number of rejected shipments and the expenses and delays associated with them. The industry also hoped to prevent the erosion of confidence in the overall quality of California almonds and the implementation of even tighter controls in the EU.

However, according to witness testimony, the voluntary nature of the industry's program did not sufficiently assure the EU that its requirements would be met. Beginning on September 1, 2007, EU officials implemented a program requiring mandatory aflatoxin testing of California almond shipments upon arrival in the EU. This program requires mandatory testing of five percent of shipments of almonds from California handlers participating in the voluntary California aflatoxin testing program, and mandatory testing of 100% of shipments of almonds from California handlers not participating in the voluntary program. One witness stated that similar controls mandated for other crops have resulted in increased rejections, costs to producers, market disruption, and loss of market share.

Testimony provided at the hearing shows that it is impractical to require aflatoxin testing for almond shipments to all markets, which is the only alternative available under the current order authority. To do so would impose unnecessary expenses for shipments to markets that do not require aflatoxin testing. Neither do witnesses want to risk unfavorable consequences to the entire industry, including the potential for even greater testing frequency by the EU, due to the failure of some shipments to meet import requirements. The authority to establish testing requirements for all shipments to the EU would reduce the risk that one shipment with aflatoxin levels exceeding the EU tolerance could compromise the industry's reputation and market position.

Witnesses testified that the authority to establish different requirements for different markets would prove useful in other domestic and international market situations that could arise. If the proposed amendment is adopted, the Board would be authorized to establish, with the approval of the Secretary, specific outgoing quality regulations to address critical market issues as they arise. Currently, handlers routinely meet individual market requirements as part of conducting business in those markets. However, witnesses stressed that the industry's reputation would be reinforced by implementation of mandatory, rather than voluntary,

compliance with certain market demands.

Establishing different requirements for different markets would help insure that substandard almonds do not find their way to the market and destroy consumer confidence and harm industry returns. Furthermore, the flexibility provided in this amendment would allow the application of such requirements to be limited to shipments destined for specified markets, saving handlers the additional burden or cost of meeting regulations other than those necessary for each market. Thus, it is recommended that § 981.42(b) be amended to include authority for the Board, with the approval of the Secretary, to establish different outgoing quality requirements for different markets. There was no testimony in opposition to this proposal.

Furthermore, USDA is recommending changes to the proposed language of the amendment to § 981.42(b) that was published in the notice of hearing. The word "recommend" would be changed to "establish" to harmonize and conform the proposed language with that already present in this subsection regarding the establishment of outgoing quality requirements. In addition, the proposed language in the amendment would be moved within the paragraph.

Material Issue Number 2—Authority To Establish Container Marking and Labeling Requirements

A new section 981.43 should be added to the order to authorize the establishment of marking and labeling requirements for bulk containers. A definition of "container" is included in the amendatory text for this section to clarify that the regulation would be applicable to receptacles used in the packaging or handling of almonds. Specifying that only bulk containers be included in this authority was not part of the Board's original proposal. However, proponents testified that it was their original intent.

Currently, very limited authority for marking and labeling requirements exists in this marketing program. Adding this section would provide for the establishment of general authority for making requirements for the marking or labeling of bulk almond containers as appropriate to meet industry and market needs. Such requirements could be established through informal rulemaking after recommendation by the Board and implementation by USDA and could be included in the order's administrative rules and regulations.

Proponents of the proposal testified that this amendment might be necessary as market requirements change. Witnesses cited several instances in which such authority would assist with the orderly marketing of California almonds. For instance, marking or labeling requirements could be implemented that would complement regulations implemented under the authority for different outgoing quality requirements described under Material Issue Number 1. In the case of aflatoxin testing for almond shipments to the EU, container labeling could be required to indicate that such testing requirements had been met.

One witness testified that product handling instructions in foreign languages might be appropriately applied to containers in export shipments. Other witnesses stated that labeling containers with proper handling and storage instructions could help maintain the quality of almonds, ensuring greater customer satisfaction.

The record shows that the lack of marking and labeling authority impeded the industry's efforts to restore customer confidence following recalls of California almonds in 2001 and 2004. As a precaution against *Salmonella* contamination, some handlers treated and/or reprocessed their almonds. Individual handlers were able to mark containers to indicate whether their almonds had been treated, but there was no standardized industry language to express a consistent message to consumers about such treatment. This left customers down the supply chain uncertain about the state of the almonds they received. Proponents stated that if they'd had the authority to recommend container marking and labeling regulations, the Board could have determined how best to mark containers of treated almonds in a consistent way to assure customers that the almonds had been treated.

Proponents of the proposed amendment also testified that adding authority to recommend container marking and labeling would be a useful tool that would allow the industry to respond to evolving market situations.

As mentioned above, witnesses testifying in support of the amendment suggested revising the proposal to include a reference to bulk containers. Proponents stated that they wanted to clarify that the authority to recommend container marking and labeling should apply only to bulk containers of almonds, and not to packages sold at the retail level. Although some handlers ship almonds in both bulk and retail or consumer packages, many do not. Witnesses stated that it has never been the industry's intent to regulate the marking or labeling of retail packages. Although the Board did not specify limiting authority for marking and labeling to bulk containers in their original proposal, witnesses testified that it was widely understood among industry members that only authority to recommend the marking and labeling of bulk containers was intended to be part of the proposal. Witnesses were asked whether the industry might prefer to retain greater flexibility to address needs that could arise in the future by preserving the language of their original proposal. However, witnesses confirmed that they wanted to specify more limited authority to regulate the marking and labeling of bulk containers only. All of the witnesses supported modifying the original proposed language in this regard. Further, other minor language changes are intended to conform with record evidence.

USDA recommends that § 981.43 authorizing the Board, with approval of the Secretary, to establish container marking and labeling requirements be added to the order. USDA further recommends that the language of the proposed amendment be modified to specify that such authority would apply only to bulk containers.

Furthermore, USDA is recommending a change to the proposed language of the new § 981.43 that was published in the notice of hearing. The word "recommend" would be changed to "establish" to harmonize and conform the proposed language with that already present in this subsection regarding the establishment of outgoing quality requirements.

Conforming Changes

AMS also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. Conforming changes are identified in the above discussion of the material issues.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural service firms, which include handlers regulated under

the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000. Small agricultural producers have been defined as those with annual receipts of less than $750,000.

There are approximately 104 handlers of almonds subject to regulation under the order and approximately 6,000 producers of almonds in the regulated area. Information provided at the hearing indicates that approximately 50 percent of the handlers would be considered small agricultural service firms. According to data reported by the National Agricultural Statistics Service (NASS), the two-year average crop value for 2005–06 and 2006–07 was $2.283 billion. Dividing that average by 6,000 producers yields average estimated producer revenues of $380,500, which suggests that the majority of almond producers would also be considered small entities according to the SBA's definition.

The order regulates the handling of almonds grown in the state of California. The California almond bearing acreage increased nearly 40 percent between 1996 and 2006, from 418,000 to 585,000 acres. Approximately 1.115 billion pounds (shelled basis) of almonds were produced during the 2006–07 season. Bearing acreage for the 2007–08 season is estimated to be 615,000 acres. NASS has forecasted that the 2007–08 crop will reach 1.330 billion pounds (shelled basis). More than two thirds of California's almond crop is exported to approximately 90 countries worldwide, and comprises nearly 80 percent of the world's almond supply.

Under the order, incoming and outgoing quality regulations are established, statistical information is collected, production research projects are conducted, and marketing research and generic promotion programs are sponsored. Program activities administered by the Board are designed to support large and small almond producers and handlers. The 10-member Board is comprised of both producer and handler representatives from the production area. Board meetings where regulatory recommendations and other decisions are made are open to the public. All members are able to participate in Board deliberations, and each Board member has an equal vote. Others in attendance at meetings are also allowed to express their views.

The Board's Food Quality and Safety Committee discussed the need for amendments to the order at meetings held on May 12, 2005; July 20, 2005; and November 1, 2006. The Board approved language for two proposed amendments to the order at their meeting on November 28, 2006. During a conference call on February 27, 2007, the Board confirmed that the two amendments should be proposed to USDA. The views of all participants were considered throughout this process.

In addition, the hearing to receive evidence on the proposed changes was open to the public and all interested parties were invited and encouraged to participate and provide their views.

The proposed amendments are intended to provide the Board and the industry with additional flexibility in the marketing of California almonds. Record evidence indicates that the proposals are intended to benefit all producers and handlers under the order, regardless of size. There would be no cost implications for handlers or growers from adding the proposed order authorities. Costs of implementation would be incurred only if specific additional requirements were established following future informal rulemaking. All grower and handler witnesses supported the proposed amendments and commented on the implications of implementing specific requirements in the future. In that context, witnesses stated that they expected the benefits to be substantial and the costs of any future requirements to be minimal.

A description of the proposed amendments and their anticipated economic impact on small and large entities is discussed below.

Proposal 1—Adding the Authority To Establish Different Outgoing Quality Requirements for Different Markets

The record shows that the proposal to add authority to establish different outgoing quality requirements for different markets would, in itself, have no economic impact on producers or handlers of any size. Regulations implemented under that authority could impose additional costs on handlers required to comply with them. However, witnesses testified that establishing mandatory regulations for different markets could increase the industry's credibility and reduce the risk that shipments of substandard product could jeopardize the entire industry's reputation. Record evidence shows that any additional costs are likely to be offset by the benefits of complying with those requirements.

Witnesses cited decreased delays and demurrage charges, as well as fewer rejected loads and increased customer confidence, as expected benefits. Recently, almonds have been rejected in the EU due to aflatoxin levels exceeding its importing tolerances. Information provided at the hearing shows that the rejection of a 44,000 pound container of almonds in the EU costs about $10,000, or 22.7 cents per pound. The cost includes demurrage for unanticipated delays at port, warehousing product while awaiting official import testing results, shipping rejected almonds back to the U.S., and shipping a replacement container back to the EU.

To reduce the risk of rejections, the California almond industry developed a voluntary aflatoxin testing protocol. Witnesses estimated that the cost of the pre-export testing, including the value of the sample, analytical fees, courier fees, and sampling labor is less than 2 cents per pound, which is less than 10 percent of the cost associated with a rejection. Proponents testified that if a requirement that all almonds destined for the EU be tested prior to shipment was established under authority provided by the proposed order amendment, handlers would incur the cost of testing, but those costs would be expected to be more than offset by the reduced risk of rejections.

It's likely that most handlers are already complying with their customers' specific market requirements on a voluntary basis as a part of doing business, but witnesses explained that mandatory requirements lend credibility to the entire industry. In addition, such requirements could reduce the risk that one shipment of substandard product would jeopardize the entire industry's reputation.

Currently, outgoing quality requirements established under the order apply to all handler entities regardless of size. If the proposed amendment and subsequent regulations established thereunder are implemented, distribution of any increased costs between small and large entities would depend on the requirements established for the markets to which individual handlers shipped their almonds as well as the volume of almonds shipped to those markets. But increases in cost would be equitable to all entities because requirements for each market would be imposed uniformly on all handlers shipping to that market.

Witnesses explained that almonds are used in many different ways by the various markets. In Europe, almonds are widely used as marzipan and ingredients for baked goods, candy, and other dishes. In India and the Middle East, almonds are presented as gifts at holidays and weddings, and play a part in other cultural traditions. India imports large quantities of inshell

almonds that are then processed by hand. The wide range of uses leads to a similarly wide array of customer requirements.

According to record testimony, handlers adapt their export methods to satisfy customer requirements. One witness explained that it is often difficult for smaller handlers to stay informed of rapidly changing import regulations. The witness stated that small handlers in particular would benefit from the proposed authority to establish different requirements for different markets by avoiding costly mistakes that could be associated with not understanding various market and import requirements. If regulations were established under the proposed authority, the Board would provide information about updated requirements to the industry.

Finally, one witness explained that having the ability under the order to establish different outgoing quality requirements for different markets would not restrict handlers' choices regarding which markets to supply. Rather, the provision would ensure that the important standards that differentiate markets would be consistently met by all handlers shipping to those markets.

Proposal 2—Adding the Authority To Establish Container Labeling and Marking Requirements

The proposal described in Material Issue No. 2 would add § 981.43 to the order to provide general authority to establish container and marking requirements. If implemented, the proposed amendment would allow the Board, through the informal rulemaking process, to recommend and establish uniform container marking and labeling regulations in response to evolving market requirements. Under current order provisions, there is only very limited authority for container marking and labeling requirements.

Witnesses testified that the lack of this authority has hindered them from adapting quickly and appropriately to recent market situations. In one case described at the hearing, the industry was unable to implement container marking or labeling following recalls for possible *Salmonella* contamination. Witnesses stated that customer confidence in almond quality could have been reinforced if the necessary authority to establish marking and labeling requirements had been available. Such authority would have allowed the industry to prescribe labeling to clearly indicate which almonds had been produced and handled or treated to reduce risk of contamination.

The proposed amendment would allow the industry to respond to evolving market needs as they develop by establishing uniform and consistent marking and labeling requirements. According to proponents, the ability to communicate important product information to customers in a uniform and consistent manner will be essential as the industry strives to maintain its position in the expanding global marketplace.

If the proposed amendment is implemented, costs of complying with any regulations established thereunder would not be disproportionate to small businesses. Witnesses testified that applying labels and marks to almond containers is currently a common practice, and industry handlers already have container marking processes and equipment in place. Therefore, the costs associated with the addition of uniform marking or labeling requirements would be minimal for both small and large entities. The record shows that any costs would likely be offset by the benefits derived from being more responsive to market demands.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence is that while there will be no economic impact from the implementation of the two proposed amendments, some costs may be associated with regulation that may be established under the authority of the amendments. However, the record indicates that the costs would be outweighed by the benefits expected to accrue to the California almond industry.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the order to the benefit of the industry.

Board meetings regarding these proposals as well as the hearing date and location were widely publicized throughout the almond industry, and all interested persons were invited to attend the meetings and the hearing, and to participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

Paperwork Reduction Act

Information collection requirements for Part 981 are currently approved by the Office of Management and Budget (OMB), under OMB Number 0581–0178, Vegetable and Specialty Crops. Implementation of these proposed amendments would not trigger any changes to those requirements. Should any such changes become necessary in the future, they would be submitted to OMB for approval.

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.

Civil Justice Reform

The amendments to Marketing Order 981 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United Sates in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons

are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

One motion and a brief supporting the motion were submitted requesting that the Secretary expedite the formal rulemaking process by omitting this recommended decision and the period allowed for the filing of exceptions to AMS' findings herein. The motion was filed on October 3, 2007, and the brief supporting the motion was filed on October 12, 2007. The Rules of Practice allow omission of a recommended decision only when the Secretary finds, on the basis of the record, due and timely execution of his functions imperatively and unavoidably require such omission. No such finding may be made in this instance. Absent from the hearing record is testimony or other evidence that would form a basis to make such a determination. Further, interested persons would have no opportunity to comment on this request to omit the recommended decision. Therefore, this motion is denied.

A second motion, also filed on October 3, 2007, requested that four corrections be made to one of the exhibits presented at the hearing, although the hearing transcript and all exhibits were certified by the Administrative Law Judge on October 1, 2007. Nevertheless, AMS is granting the first three of those corrections as such corrections would make references in exhibits and testimony uniform. However, the fourth correction is denied. The requested change would make the result of the calculation in the exhibit incorrect, and it would be in conflict with testimony in the hearing transcript, which is correct.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of almonds grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of almonds grown in the production area; and

(5) All handling of almonds grown in the production area as defined in the marketing order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because these proposed changes have been widely publicized and implementation of the changes, if adopted, would be desirable to benefit the industry as soon as possible. All written exceptions timely received will be considered and a grower referendum will be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 981

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

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

2. Amend paragraph (b) of § 981.42 by adding the following sentence before the last sentence to read as follows:

§ 981.42 Quality Control.

* * * * *

(b) * * * The Board may, with the approval of the Secretary, establish different outgoing quality requirements for different markets. * * *

3. Add a new § 981.43 to read as follows:

§ 981.43 Marking or Labeling of Containers.

The Board may, with the approval of the Secretary, establish regulations to require handlers to mark or label their containers that are used in packaging or handling of bulk almonds. For purposes of this section, *container* means a box, bin, bag, carton, or any other type of receptacle used in the packaging or handling of bulk almonds.

Dated: December 21, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–25162 Filed 12–27–07; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM–2–13]

Lincoln County, Nevada; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of Petition for rulemaking.

SUMMARY: The NRC is denying a petition for rulemaking submitted March 23, 2007, by Lincoln County, Nevada, related to its potential participation as an affected unit of local government (AULG) in the NRC proceeding concerning the Department of Energy's proposed repository for high-level radioactive waste at Yucca Mountain, Nevada. Lincoln County desires an amendment to 10 CFR 2.314(b) to allow it and other AULGs to be represented in the proceeding by any duly authorized individual, including a non-attorney consultant. The Commission is denying the petition as unnecessary because the current regulations allow Lincoln County the representation it seeks.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking and the NRC's letter of denial to the petitioner, are available for public inspection or copying in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These documents are also available on the NRC's Electronic Reading Room at *http://www.nrc.gov/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. The ADAMS accession numbers for the

rulemaking petition and the letter of denial sent to the petitioner are ML070930363 and ML073390550, respectively. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael A. Spencer, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Telephone: (301) 415–4073.

SUPPLEMENTARY INFORMATION:

The Petitioner

Lincoln County states that, according to the 2000 census, approximately 4,165 people, 1,540 families, and 1,010 households reside in the County. The average annual per capita income is approximately $17,000, and the primary occupations of the people of Lincoln County are cattle ranching, agriculture, government services, and small-scale mining.

Background

I. The Yucca Mountain Repository and Its Relationship to Lincoln County

The Nuclear Waste Policy Act of 1982, as amended (NWPA) [1] established a national program for the management and permanent disposal of high-level radioactive waste (HLW). In 1987, the NWPA was amended to direct the Department of Energy (DOE) to focus its site characterization activities only on Yucca Mountain. The NWPA provides that if the President recommends the site to Congress and this recommendation is disapproved according to sections 116 or 118 of the NWPA (42 U.S.C. 10136 and 10138), the site will be disapproved unless Congress passes a resolution of repository siting approval.[2] After the President's recommendation of Yucca Mountain as the site for the repository and the State of Nevada's disapproval of this recommendation, Congress passed a resolution approving Yucca Mountain as the repository site.[3] Because of Congress's approval, DOE will submit an application to the NRC for a repository at Yucca Mountain, which application will be reviewed according to the NRC's regulations in 10 CFR Part 63. In addition, a public hearing regarding the HLW repository application (HLW proceeding) will be conducted under Subparts C and J of Part 2 of the NRC's regulations. DOE expects to submit this application in 2008.

The NWPA also provides, in 42 U.S.C. 10136(c) and 10222(d), that DOE will provide grants to States and affected units of local government (AULGs) from the Nuclear Waste Fund to assist them in undertaking certain specified activities related to the Yucca Mountain repository. DOE has designated several counties as AULGs,[4] and Lincoln County, which is adjacent to the county where the proposed repository would be located, states that it is an AULG that receives DOE grants from the Nuclear Waste Fund. According to Lincoln County, these grants are subject to Congressional appropriations. AULGs also have status under Commission regulations, being recognized as potential parties to the HLW proceeding.[5] Although an application has yet to be submitted, NRC adjudicatory activities such as document disclosures are already underway. Prior to the docketing of DOE's application, adjudicatory activities in the HLW proceeding related to document access, discovery, and the Licensing Support Network (LSN) are under the jurisdiction of the Pre-License Application Presiding Officer (PAPO).

II. The Basis for the Petition

On October 27, 2005, the PAPO issued a notice informing potential parties and interested government participants of an upcoming tour of the Yucca Mountain repository. Space for this tour was limited, however, so only representatives of potential parties or interested government participants who had filed a notice of appearance under 10 CFR 2.314(b) were permitted to join the tour.

A non-attorney consultant contacted the Atomic Safety and Licensing Board Panel (ASLBP) requesting permission to join the tour as the representative of both Lincoln County and White Pine County, Nevada, but he was informed that neither county had filed a notice of appearance in the proceeding.[6] White Pine County, then timely filed a notice of appearance, designating the non-attorney consultant as its representative. A majority of the PAPO did not deem this representation proper, however, because the majority believed that government entities are limited by 10 CFR 2.314(b) to attorney representation only.[7] The members of the PAPO did not provide any analysis or otherwise state the bases for their conclusions. Because of the lack of briefing and lack of unanimity on the issue, the PAPO allowed the consultant to participate in that particular trip as a matter of the PAPO's discretion, leaving resolution of the representation issue for "another day." [8]

This representation issue is at the heart of the petition. Lincoln County desires the option of being represented through non-attorney "consultants or other duly authorized representatives." Lincoln County states that it is a small county with few resources that is entirely dependent on DOE grants from the Nuclear Waste Fund to participate in NRC proceedings. Lincoln County further states that the grants may only be used for participation in licensing proceedings if expressly appropriated by Congress and that such appropriations have been made only since FY 2006. According to Lincoln County, the amount of funding (if any) is variable and unpredictable because it depends on an annual decision of Congress, which may change from year to year. Further, Lincoln County claims that the DOE grants, which have totaled $5.3 million for Lincoln County over the last eight years, are used for diverse purposes, such as operating its Nuclear Waste Oversight Office, conducting public information activities, and retaining expert consultants. Lincoln County, therefore, believes that it cannot afford to retain experienced counsel for the purpose of representing it on a daily basis in the HLW proceeding, which Lincoln County expects to "entail literally hundreds of days of hearings." Lincoln County also claims that its District Attorney's office will not be able to regularly participate in the HLW proceeding because the office has only one attorney, the District Attorney, who is responsible for both criminal and civil matters.

At the time the petition was filed in March of this year, the representation issue had yet to be resolved by the PAPO, and still has yet to be resolved. At a case management conference only a couple of weeks prior to the filing of the rulemaking petition, the PAPO recognized that the issue remained to be decided, but thought resolution might

[1] 42 U.S.C. 10101 et. seq.

[2] 42 U.S.C. 10135(c).

[3] Pub. L. No. 107–200 (2002).

[4] U.S. Dep't of Energy, Office of Civilian Radioactive Waste Management, *Annual Report to Congress for Fiscal Year 2002*, at 23 (Sept. 2003), available at *http://www.ocrwm.doe.gov/info_library/program_docs/annualreports/02ar/fy_2002.pdf*.

[5] *See* 10 CFR 2.1001 (definition of "potential party"). An AULG may become a party upon submission of an admissible contention related to the application. *Id.*

[6] *United States Dep't of Energy* (High Level Waste Repository: Pre-Application Matters), No. PAPO–00, 2005 WL 4799369, at *1 (LBP Dec. 2, 2005) (unpublished order).

[7] *Id.*

[8] *Id.*

await a "concrete set of facts." [9] Lincoln County believes that this issue must be resolved quickly because DOE's license application is expected in 2008, and it can come as early as six months after DOE certifies that its document collection is available on the Licensing Support Network.[10] DOE certified its document collection on October 19, 2007.[11] Also, the application is expected "not later than June 30, 2008." [12] Lincoln County believes that it is unclear when the PAPO may deem the representation issue ripe enough to rule on it, and that the disposition of any appeal of such a ruling might not come well enough in advance of the hearings to allow Lincoln County and other AULGs to effectively plan for them. In its petition for rulemaking, Lincoln County "is requesting that the Commission directly and authoritatively clarify this issue * * * to allow AULGs sufficient time to plan their participation" in the HLW proceeding.

III. Lincoln County's Requested Relief

Lincoln County states that it has not discovered a judicial or NRC decision squarely on point and that it is unclear whether an AULG may be represented by a non-attorney in the HLW proceeding under the current regulations. Lincoln County does believe that it is unreasonable to allow partnerships, corporations, and unincorporated associations to be represented by non-attorney members or officers, as provided by § 2.314(b), but to disallow such representation for AULGs. Lincoln County, however, wishes to have greater representation options than these private entities because County Commissioners serve voluntarily and have other jobs, while "full-time government officials and officers cannot reasonably be expected to vacate their daily public duties to the taxpayers in order to participate in NRC licensing proceedings." Lincoln County requests that the following language be added to § 2.314(b):

> In any adjudicatory proceeding concerning an application for a license to construct a geological repository for high-level radioactive waste pursuant to the Nuclear Waste Policy Act, as amended, an affected unit of local government (as designated by the Secretary of Energy pursuant to 42 U.S.C. § 10136(c)) may be represented by any duly authorized representative and/or an attorney-at-law.

Analysis of the Petition

Lincoln County wishes to have the option of being represented in the HLW proceeding through non-attorney "consultants or other duly authorized representatives" and has submitted the instant petition to achieve that result through rulemaking. If the current regulations do not proscribe such representation, however, then no relief through rulemaking is necessary. Before considering Lincoln County's proposed modification, therefore, it must first be ascertained whether the current regulations do, in fact, pose such a bar. Resolution of this issue depends on answers to the following questions:

(1) May a county be represented in an adjudication by a non-attorney?

(2) If representation by a non-attorney is allowed, may any duly authorized individual, including a non-attorney consultant, represent a county?

Section 2.314(b), which contains the representation provision for NRC proceedings, is the primary source for answering these questions. Also relevant, however, are the provisions in §§ 2.309(d)(2) and 2.315(c) relating to participation by a State or local government body (defined in these sections as a "county, municipality, or other subdivision") and other expressions of Commission policy and practice.

As explained below, a local government body may be represented under the current regulations by any individual, including a non-attorney consultant, if the individual is duly authorized. For this reason, the Commission is denying the petition as unnecessary.

I. A State or Local Government Body May Appear on Its Own Behalf, as Well as Be Represented by an Attorney

A. States and local government bodies are "persons" under § 2.314(b).

Representation in NRC proceedings is governed by 10 CFR 2.314(b), which provides the following:

> *A person may appear in an adjudication on his or her own behalf or by an attorney-at-law.* A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States.

(emphasis added).

In addition to representation by an attorney, § 2.314(b) expressly provides the option of self-representation for a "person," and the word "person" is defined in § 2.4 very broadly to cover many entities, including "any State or any political subdivision of, or any political entity within a State." A State or local government body, therefore, is a "person" under Part 2 and has the option under § 2.314(b) either to be represented by an attorney or to appear on its own behalf and be represented by one other than an attorney. The rule text, however, does not specify who may represent a government body appearing on its own behalf. This issue will be the subject of Section II of this document.

B. The regulatory history of the representation provision and Commission practice favor a broad reading of "person."

The language in § 2.314(b) derives from two rulemakings, the first in 1962 and the second in 1980. The 1962 rulemaking was a major revision to Part 2 that substantially revised and simplified the representation provision. After the 1962 revisions, former § 2.713(a) read as follows:

> A person may appear in an adjudication on his own behalf or by an attorney-at-law in good standing admitted to practice before any court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States.[13]

Although the word "person" was not explicitly defined in the regulations at that point, § 2.4 in the same rulemaking provided that "[w]ords or phrases which are defined in the Atomic Energy Act of 1954, as amended, and in this chapter have the same meaning when used in this part." [14] Section 11 of the Atomic Energy Act of 1954 (AEA) had already defined "person" broadly to include "any State or any political subdivision of, or any political entity within a State," among other entities.[15]

The 1980 amendments, which moved the representation provision from § 2.713(a) to § 2.713(b), added the provision for partnerships, corporations, and unincorporated associations that is still found in current § 2.314(b). This addition was characterized in the proposed rule as "clarify[ing] who may

[9] Transcript at 954–55 (March 5, 2007).

[10] *See* 10 CFR 2.1003(a).

[11] DOE's certification came in a filing in the PAPO proceeding styled "The Department of Energy's Certification of Compliance." This certification has been challenged in the PAPO proceeding by the State of Nevada in a "Motion to Strike DOE's October 19, 2007 LSN Recertification and to Suspend Certification Obligations of Others until DOE Validly Recertifies," (Oct. 29, 2007).

[12] "The Department of Energy's Thirtieth Monthly Status Report Regarding LSN Certification and License Application Submittal," (November 1, 2007).

[13] "Revision of Rules," (27 FR 377, 383; Jan. 13, 1962). The representation provision was moved to its current home in § 2.314(b) during the major Part 2 revisions of 2004. See "Changes to Adjudicatory Process," (69 FR 2182; Jan. 14, 2004). The original "representation" provision was found in § 2.704, as issued in 1956. (21 FR 804, 806; Feb. 4, 1956).

[14] 27 FR 377, 378.

[15] 42 U.S.C. 2014, Pub. L. No. 83–703, 68 Stat. 919, 922 (1954).

appear before NRC in a representative capacity." [16] Although the proposed rule change spoke to representation of partnerships, corporations, and unincorporated associations only by members, the final rule added representation by officers. This addition was described in the final rule as "mak[ing] clear that a partnership, corporation or unincorporated association may be represented by a duly authorized officer, as well as by a member or attorney, and reflects both actual practice and the intent of the rule." [17]

The Commission, therefore, in issuing the 1980 amendment to the representation provision, viewed the amendment as a clarification of the older representation provision for "persons" and not as a substantive change or addition. The Commission also recognized that representation of certain entities by non-attorneys was occurring in Commission proceedings, but gave no indication that this practice was in any way contrary to the regulations.[18] The representation rights specified in the 1980 amendment, therefore, should be seen as inherent in the concept of self-representation in former § 2.713(a), even if the former provision did not express these rights in their precise contours. "Person" in § 2.314(b), therefore, should be read broadly to include States and local government bodies, which would allow government bodies to appear on their own behalf through a non-attorney.

II. Any Duly Authorized Individual May Represent a State or Local Government Body

As explained above, § 2.314(b) does not specify who may represent a State or local government body appearing on its own behalf. To resolve this petition, the question whether a non-attorney consultant may serve as such a representative must also be answered. In deciding the question, the Commission has considered its policy and practice, the interests of comity, and the distinct interests that government bodies represent.[19] As explained below, Commission policy and practice favor deference to State law and government choice on the question of representation. The Commission, therefore, concludes that States and local government bodies may be represented by anyone duly authorized to represent the government body in question.[20]

"[T]he Commission has long recognized the benefits of participation in [its] proceedings by representatives of interested states, counties, municipalities, etc." [21] The Commission put this policy into practice, in part, through § 2.315(c), which allows interested States and local government bodies a special opportunity to participate in NRC hearings that is unavailable to private individuals or entities.[22] A narrow reading of § 2.314(b) with respect to government bodies, however, could hinder the participation of smaller government bodies, such as Lincoln County, who lack the resources and flexibility to fully participate solely through attorneys, elected officials, or full-time government officials or officers. A narrow reading, moreover, would not produce any countervailing benefit because the Commission has no interest in telling governments which types of non-attorneys may represent them. Because Commission policy clearly favors government participation, a rule interpretation limiting such participation should be disfavored if it produces no benefit and is not required by the text of the rule.

The Commission is also persuaded that it would be misguided to impose on government bodies representation choices analogous to the § 2.314(b) representation choices for partnerships, corporations, and unincorporated associations. First, such an attempt ignores that government bodies and private entities are different creatures with different powers serving different interests, which is why they are treated differently regarding nonparty participation. Second, choosing an analogous government version of a private entity member or officer might prove difficult and result in unfairness. If government lay representation were limited to elected officials, for example, government bodies would have much less flexibility in their representation than unincorporated associations, who may be represented by anyone who joins the association.

Instead of imposing representation limits on government bodies, therefore, the Commission broadly reads § 2.314(b) to allow government bodies to choose their representatives, as long as these choices comport with State law and any applicable local government charter. The Commission adopts this broad reading because it recognizes that government bodies serve the public interest and because it respects their choices regarding their own representation. This broad reading, in its deference to State law and government choice, also accords with Commission practice. For instance, in the major 2004 revisions to part 2, the new §§ 2.309(d) and 2.315(c) limited State and local government body participation to a single representative.[23] According to the statement of considerations for the rule, however, "[w]here a State's constitution provides that both the Governor and another State official or State governmental body may represent the interests of the State in a proceeding," the governor and other official/body could participate as distinct parties, each with a single representative.[24]

Similar concern for State law and government choice was also expressed by the former Atomic Safety and Licensing Appeal Board (Appeal Board), which faced the issue whether a Congressman from New Hampshire, in addition to the Attorney General, could serve as a representative of New Hampshire participating as an interested government under former § 2.715(c).[25] In deciding that only the Attorney General could represent the State, the Appeal Board rested its decision on State law because it was "persuaded

[16] "Changes in Rules of Practice Governing Discipline in Adjudicatory Proceedings," (45 FR 3594, 3594; Jan. 18, 1980).

[17] Final Rule, "Changes in Rules of Practice Governing Discipline in Adjudicatory Proceedings," 45 FR 69877, 69878.

[18] For examples of Commission practice prior to the 1980 amendment, see *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP–73–28, 6 AEC 666, 678–80 (1973), (specifically noting the broad AEA definition of "person" in concluding that representation of an organization by a non-attorney member was consonant with Commission regulations, the APA, and the AEA), *aff'd*, ALAB–150, 6 AEC 811, *clarification denied*, ALAB–155, 6 AEC 829; and *General Electric Co.* (GE Test Reactor, Vallecitos Nuclear Center), LBP–79–28, 10 NRC 578, 583–84 (1979) (distinguishing representation of organizations by non-attorney members from representation of a U.S. congressman by a non-attorney by pointing out that the non-attorney organization members were "appear[ing] as the 'person * * * on his own behalf,' and not as a representative of that person").

[19] The practice of the federal courts is not dispositive of the outcome of this question because, as opposed to Commission practice, federal courts generally forbid non-attorney representation of entities. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201–02 (1993) (stating that in federal practice, corporations and other artificial entities "may appear in the federal courts only through licensed counsel").

[20] To be clear, this response to the petition addresses only the representation of State and local government bodies, as defined in § 2.309(d)(2), and does not address the representation of any other type of entity.

[21] *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI–99–30, 50 NRC 333, 344 (1999).

[22] Affected, Federally-recognized Indian Tribes also enjoy § 2.315(c) non-party participant rights.

[23] "Changes to Adjudicatory Process," (69 FR 2182; Jan. 14, 2004).

[24] *Id.* at 2222.

[25] *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB–862, 25 NRC 144 (1987).

that considerations of comity dictate that [it] defer to New Hampshire law on the matter of what person or persons should be deemed to speak for the state in [NRC] licensing proceedings."[26] The Appeal Board went on to point out that since § 2.715(c) was issued in response to § 274l. of the AEA, which section had the stated purpose of furthering cooperation between the Commission and the states, "[i]t is reasonable to assume that the legislative contemplation was that the concerned state, and not this agency, would make the decision respecting who is to serve as its spokesman."[27] Although the original version of § 2.715(c) was directed only to States, its reach was expanded in 1978 to political subdivisions of a State to "improve coordination with States, counties, and municipalities."[28] The Appeal Board's reasoning, with which the Commission agrees, also applies to local government bodies because restricting the representation choices of local government bodies does little to "improve coordination" with them.

This Appeal Board decision is especially persuasive because, under both current § 2.315(c) and the former § 2.715(c), interested government participants have rights similar in many important respects to the rights of those participating as parties. These rights include the opportunity to introduce evidence, interrogate witnesses, file proposed findings, and petition for review. Given this level of participation, it would seem that interested government participants are, in fact, "appearing" in NRC adjudications, which arguably puts decisions respecting their representation under the umbrella of § 2.314(b).[29] In any event, it would make little sense to impose representation choices on government bodies participating as parties that are different from the choices available to interested government participants.

In light of the above, the Commission sees no need to put conditions on the representation of a government body that neither State law nor the governing charter of the body see fit to impose. To do so could only serve to limit government participation and would be contrary to the interests of comity. So long as a person is duly authorized to represent the government body in question, in conformity with State law and any applicable local government charter, that person, whether an attorney or not, may represent that government body in NRC proceedings.

[26] *Id.* at 148.

[27] 25 NRC 144, 148–49.

[28] "Miscellaneous Amendments," (43 FR 17798, 17798; Apr. 26, 1978).

[29] Section 2.314(b) governs who "may appear in an adjudication."

Conclusion

Lincoln County petitioned for a rule amendment that would allow AULGs to participate in NRC proceedings through any duly-authorized representative, which could include a non-attorney consultant. As explained above, however, Lincoln County's desired outcome is already provided for in the current regulations, making Lincoln County's desired rulemaking unnecessary. For this reason, Lincoln County's petition for rulemaking is denied.

Dated at Rockville, Maryland this 20th day of December 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–25299 Filed 12–27–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104946–07]

RIN 1545–BG36

Hybrid Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance relating to sections 411(a)(13) and 411(b)(5) of the Internal Revenue Code (Code) concerning certain hybrid defined benefit plans. These regulations provide guidance on changes made by the Pension Protection Act of 2006. These regulations affect sponsors, administrators, participants. and beneficiaries of hybrid defined benefit plans.

DATES: Written or electronic comments and requests for a public hearing must be received by March 27, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104946–07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–104946–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–104946–07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauson C. Green or Linda S. F. Marshall at (202) 622–6090; concerning submissions of comments or to request a public hearing, Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 411(a)(13) and 411(b)(5) of the Code. Generally, a defined benefit pension plan must satisfy the minimum vesting standards of section 411(a) and the accrual requirements of section 411(b) in order to be qualified under section 401(a) of the Code. Sections 411(a)(13) and 411(b)(5), which were added to the Code by section 701(b) of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA '06), modify the minimum vesting standards of section 411(a) and the accrual requirements of section 411(b).

Section 411(a)(13)(A) provides that an applicable defined benefit plan (which is defined in section 411(a)(13)(C)) is not treated as failing to meet either (i) The requirements of section 411(a)(2) (subject to a special vesting rule in section 411(a)(13)(B) with respect to benefits derived from employer contributions) or (ii) The requirements of section 411(c) or 417(e) with respect to contributions other than employee contributions, merely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in a hypothetical account or as an accumulated percentage of the participant's final average compensation. Section 411(a)(13)(B) requires an applicable defined benefit plan to provide that an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

Under section 411(a)(13)(C)(i), a plan is an applicable defined benefit plan if the plan is a defined benefit plan under which the accrued benefit (or any portion thereof) of a participant is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation. Under section

411(a)(13)(C)(ii), the Secretary of the Treasury is to issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or portion of such a plan) which has an effect similar to a plan described in section 411(a)(13)(C)(i).

Section 411(b)(1)(H)(i) provides that a defined benefit plan fails to comply with section 411(b) if, under the plan, an employee's benefit accrual is ceased, or the employee's rate of benefit accrual is reduced, because of the attainment of any age. Section 411(b)(5), which was added to the Code by section 701(b)(1) of PPA '06, provides additional rules related to section 411(b)(1)(H)(i). Section 411(b)(5)(A) generally provides that a plan is not treated as failing to meet the requirements of section 411(b)(1)(H)(i) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated younger individual who is or could be a participant. Section 411(b)(5)(G) provides that, for purposes of section 411(b)(5), any reference to the accrued benefit of a participant shall be a reference to the participant's benefit accrued to date. For purposes of section 411(b)(5)(A), section 411(b)(5)(A)(iv) provides that the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

Section 411(b)(5)(B) imposes several requirements on an applicable defined benefit plan as a condition of the plan satisfying section 411(b)(1)(H). Section 411(b)(5)(B)(i) provides that such a plan is treated as failing to meet the requirements of section 411(b)(1)(H) if the terms of the plan provide for an interest credit (or an equivalent amount) for any plan year at a rate that is greater than a market rate of return. Under section 411(b)(5)(B)(i)(I), a plan is not treated as having an above-market rate merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return. Section 411(b)(5)(B)(i)(II) provides that an interest credit (or an equivalent amount) of less than zero can in no event result in the hypothetical account balance or similar amount being less than the aggregate amount of contributions credited to the account. Section 411(b)(5)(B)(i)(III) specifies that the Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of section 411(b)(5)(B)(i)(I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of section 411(b)(5)(B)(i)(I).

Section 411(b)(5)(B)(ii), (iii), and (iv) contain minimum benefit rules that apply if, after June 29, 2005, an applicable plan amendment is adopted. Section 411(b)(5)(B)(v)(I) defines an applicable plan amendment as an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan. Under section 411(b)(5)(B)(ii), if, after June 29, 2005, an applicable plan amendment is adopted, the plan is treated as failing to meet the requirements of section 411(b)(1)(H) unless the requirements of section 411(b)(5)(B)(iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment. Section 411(b)(5)(B)(iii) specifies that, subject to section 411(b)(5)(B)(iv), the requirements of section 411(b)(5)(B)(iii) are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of: (I) The participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment; plus (II) The participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment. Section 411(b)(5)(B)(iv) provides that, for purposes of section 411(b)(5)(B)(iii)(I), the plan must credit the participant's account or similar amount with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

Section 411(b)(5)(B)(v) sets forth certain provisions related to an applicable plan amendment. Section 411(b)(5)(B)(v)(II) provides that if the benefits under two or more defined benefit plans of an employer are coordinated in such a manner as to have the effect of adoption of an applicable plan amendment, the plan sponsor is treated as having adopted an applicable plan amendment as of the date the coordination begins. Section 411(b)(5)(B)(v)(III) directs the Secretary of the Treasury to issue regulations to prevent the avoidance of the purposes of section 411(b)(5)(B) through the use of two or more plan amendments rather than through a single plan amendment.

Section 411(b)(5)(B)(vi) provides a special rule for converting a variable interest crediting rate to a fixed rate for purposes of determining plan benefits in the case of a terminating applicable defined benefit plan.

Section 411(b)(5)(C) provides that a plan is not treated as failing to meet the requirements of section 411(b)(1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent the offsets are allowable in applying the requirements of section 401(a). Section 411(b)(5)(D) provides that a plan is not treated as failing to meet the requirements of section 411(b)(1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) (relating to permitted disparity for Social Security benefits and related matters) are met.

Section 411(b)(5)(E) provides that a plan is not treated as failing to meet the requirements of section 411(b)(1)(H) solely because the plan provides for indexing of accrued benefits under the plan. Under section 411(b)(5)(E)(iii), indexing means the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology. Section 411(b)(5)(E)(ii) requires that, except in the case of a variable annuity, the indexing not result in a smaller benefit than the accrued benefit determined without regard to the indexing.

Section 701(a) of PPA '06 added provisions to the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829) (ERISA), that are parallel to the above-described sections of the Code that were added by section 701(b) of PPA '06. The guidance provided in these proposed regulations with respect to the Code would also apply for purposes of the parallel amendments to ERISA made by section 701(a) of PPA '06.[1]

Section 701(c) of PPA '06 added provisions to the Age Discrimination in Employment Act of 1967, Public Law 90–202 (81 Stat. 602) (ADEA), that are parallel to section 411(b)(5) of the Code. Executive Order 12067 requires all Federal departments and agencies to advise and offer to consult with the Equal Employment Opportunity Commission (EEOC) during the development of any proposed rules,

[1] Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed by these proposed regulations for purposes of ERISA, as well as the Code.

regulations, policies, procedures or orders concerning equal employment opportunity. The IRS and the Treasury Department have consulted with the EEOC prior to the issuance of these proposed regulations.

Section 701(d) of PPA '06 provides that nothing in the amendments made by section 701 should be construed to create an inference concerning the treatment of applicable defined benefit plans or conversions of plans into applicable defined benefit plans under section 411(b)(1)(H), or concerning the determination of whether an applicable defined benefit plan fails to meet the requirements of section 411(a)(2), 411(c), or 417(e) as in effect before such amendments solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in a hypothetical account or as an accumulated percentage of the participant's final average compensation.

Section 701(e) of PPA '06 sets forth the effective date provisions with respect to amendments made by section 701 of PPA '06. Section 701(e)(1) specifies that the amendments made by section 701 generally apply to periods beginning on or after June 29, 2005. Thus, the age discrimination safe harbors under section 411(b)(5)(A) and section 411(b)(5)(E) are effective for periods beginning on or after June 29, 2005. Section 701(e)(2) provides that the special present value rules of section 411(a)(13)(A) are effective for distributions made after August 17, 2006.

Under section 701(e)(3) of PPA '06, in the case of a plan in existence on June 29, 2005, the 3-year vesting rule under section 411(a)(13)(B) and the market rate of return limitation under section 411(b)(5)(B)(i) are generally effective for years beginning after December 31, 2007. In the case of a plan not in existence on June 29, 2005, those sections are effective for periods beginning on or after June 29, 2005. Section 701(e)(4) of PPA '06 contains special effective date provisions for collectively bargained plans that modify these effective dates.

Under section 701(e)(5) of PPA '06, sections 411(b)(5)(B)(ii), (iii), and (iv) apply to a conversion amendment that is adopted after, and takes effect after, June 29, 2005.

Section 702 of PPA '06 provides for regulations to be prescribed by August 16, 2007, addressing the application of rules set forth in section 701 of PPA '06 where the conversion of a defined benefit pension plan into an applicable defined benefit plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction.

Proposed regulations (EE–184–86) under sections 411(b)(1)(H) and 411(b)(2) were published by the Treasury Department and the IRS in the **Federal Register** on April 11, 1988 (53 FR 11876), as part of a package of regulations that also included proposed regulations under sections 410(a), 411(a)(2), 411(a)(8), and 411(c) (relating to the maximum age for participation, vesting, normal retirement age, and actuarial adjustments after normal retirement age, respectively).[2]

Notice 96–8 (1996–1 CB 359), see § 601.601(d)(2)(ii)(b) of this chapter, described the application of sections 411 and 417(e) to a single sum distribution under a cash balance plan where interest credits under the plan are frontloaded (that is, where future interest credits to an employee's hypothetical account balance are not conditioned upon future service and thus accrue at the same time that the benefits attributable to a hypothetical allocation to the account accrue). Under the analysis set forth in Notice 96–8, in order to comply with sections 411(a) and 417(e) in calculating the amount of a single sum distribution under a cash balance plan, the balance of an employee's hypothetical account must be projected to normal retirement age and converted to an annuity under the terms of the plan, and then the employee must be paid at least the present value of the projected annuity, determined in accordance with section 417(e). Under that analysis, where a cash balance plan provides frontloaded interest credits using an interest rate that is higher than the section 417(e) applicable interest rate, payment of a single sum distribution equal to the current hypothetical account balance as a complete distribution of the employee's accrued benefit may result in a violation of section 417(e) or a forfeiture in violation of section 411(a). In addition, Notice 96–8 proposed a safe harbor which provided that, if frontloaded interest credits are provided under a plan at a rate no greater than the sum of identified standard indices and associated margins, no violation of section 411(a) or 417(e) would result if the employee's entire accrued benefit is distributed in the form of a single sum distribution equal to the employee's hypothetical account balance, provided the plan uses appropriate annuity conversion factors. Since the issuance of Notice 96–8, four federal appellate courts have followed the analysis set out in the Notice: *Esden* v. *Bank of Boston*, 229 F.3d 154 (2d Cir. 2000), *cert. dismissed*, 531 U.S. 1061 (2001); *West* v. *AK Steel Corp. Ret. Accumulation Pension Plan*, 484 F.3d 395 (6th Cir. 2007), *reh'g and reh'g en banc denied*, No. 06–3442, 2007 U.S. App. LEXIS 20447 (6th Cir. Aug. 8, 2007); *Berger* v. *Xerox Corp. Ret. Income Guarantee Plan*, 338 F.3d 755 (7th Cir. 2003), *reh'g and reh'g en banc denied*, No. 02–3674, 2003 U.S. App. LEXIS 19374 (7th Cir. Sept. 15, 2003); *Lyons* v. *Georgia-Pacific Salaried Employees Ret. Plan*, 221 F.3d 1235 (11th Cir. 2000), *cert. denied*, 532 U.S. 967 (2001).

Notice 2007–6, 2007–3 IRB 272 (January 16, 2007), see § 601.601(d)(2)(ii)(*b*) of this chapter, provides transitional guidance with respect to certain requirements of sections 411(a)(13) and 411(b)(5) and section 701(b) of PPA '06. Notice 2007–6 includes certain special definitions, including: *accumulated benefit*, which is defined as a participant's benefit accrued to date under a plan; *lump sum-based plan*, which is defined as a defined benefit plan under the terms of which the accumulated benefit of a participant is expressed as the balance of a hypothetical account maintained for the participant or as the current value of the accumulated percentage of the participant's final average compensation; and *statutory hybrid plan*, which is a lump sum-based plan or a plan which has an effect similar to a lump sum-based plan. Notice 2007–6 provides guidance on a number of issues, including a rule under which a plan that provides for indexed benefits described in section 411(b)(5)(E) is a statutory hybrid plan (because it has an effect similar to a lump sum-based plan), unless the plan either solely provides for post-retirement adjustment of the amounts payable to a participant or is a variable annuity plan under which the assumed interest rate used to determine adjustments is at least 5 percent. The Notice provides a safe

[2] On December 11, 2002, the Treasury Department and the IRS issued proposed regulations regarding the age discrimination requirements of section 411(b)(1)(H) that specifically addressed cash balance plans as part of a package of regulations that also addressed section 401(a)(4) nondiscrimination cross-testing rules applicable to cash balance plans (67 FR 76123). The 2002 proposed regulations were intended to replace the 1988 proposed regulations. In Ann. 2003–22 (2003–1 CB 847), see § 601.601(d)(2)(ii)(*b*) of this chapter, the Treasury Department and the IRS announced the withdrawal of the 2002 proposed regulations under section 401(a)(4), and in Ann. 2004–57 (2004–2 CB 15), see § 601.601(d)(2)(ii)(*b*) of this chapter, the Treasury Department and the IRS announced the withdrawal of the 2002 proposed regulations relating to age discrimination.

harbor for applying the rules set forth in section 701 of PPA '06 where the conversion of a defined benefit pension plan into an applicable defined benefit plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction. This transitional guidance, along with other guidance provided in Part III of Notice 2007–6, applies pending the issuance of further guidance and, thus, will cease to apply when these regulations are finalized and become effective.

Explanation of Provisions

Overview

In general, these proposed regulations would incorporate the transitional guidance provided under Notice 2007–6. However, the proposed regulations would utilize new terminology (such as statutory hybrid benefit formula and lump sum-based benefit formula) to take into account situations where plans provide more than one benefit formula. These proposed regulations would also provide additional guidance with respect to sections 411(a)(13) and 411(b)(5), taking into account comments received in response to Notice 2007–6.

Section 411(a)(13): Special Vesting Rules for Applicable Defined Benefit Plans and Applicable Definitions

The proposed regulations would reflect new section 411(a)(13)(A) by providing that an applicable defined benefit plan does not violate the requirements of section 411(a)(2), or the requirements of section 411(c) or 417(e), with respect to a participant's accrued benefit derived from employer contributions, merely because the plan determines the present value of benefits determined under a lump sum-based benefit formula as the amount of the hypothetical account maintained for the participant or as the current value of the accumulated percentage of the participant's final average compensation under that formula. However, section 411(a)(13) does not alter the definition of an accrued benefit under section 411(a)(7)(A) (which generally defines a participant's accrued benefit as the annual benefit commencing at normal retirement age), nor does it alter the definition of a normal retirement benefit under section 411(a)(9) (which generally defines a participant's normal retirement benefit as the benefit under the plan commencing at normal retirement age).

Section 411(b)(5)(G) provides that, for purposes of section 411(b)(5), any reference to the accrued benefit means the benefit accrued to date. The proposed regulations refer to this as the accumulated benefit, which is distinct from the participant's accrued benefit under section 411(a)(7) (an annuity beginning at normal retirement age that is actuarially equivalent to the participant's accumulated benefit).

The regulations define a lump sum-based benefit formula as a benefit formula used to determine all or any part of a participant's accumulated benefit under which the benefit provided under the formula is expressed as the balance of a hypothetical account maintained for the participant or as the current value of the accumulated percentage of the participant's final average compensation. Under the proposed regulations, whether a benefit formula is a lump sum-based benefit formula would be determined based on how the accumulated benefit of a participant is expressed under the terms of the plan, and would not depend on whether the plan provides an optional form of benefit in the form of a single sum payment. Similarly, a formula would not fail to be a lump sum-based benefit formula merely because the plan's terms state that the accrued benefit is an annuity at normal retirement age that is actuarially equivalent to a hypothetical account balance. In addition, the regulations would provide that a participant is not treated as having a lump sum-based benefit formula merely because the participant is entitled to a benefit under a defined benefit plan that is not less than the benefit properly attributable to after-tax employee contributions.

Section 411(a)(13)(A) applies only with respect to a benefit provided under a lump sum-based benefit formula. Accordingly, if the present value rules of section 417(e) apply to a form of benefit under a plan and the plan provides benefits under a benefit formula that is not a lump sum-based benefit formula (including, for example, a plan that provides for indexing as described in section 411(b)(5)(E)), then the plan must set forth a methodology to determine the projected benefit under that formula at normal retirement age for purposes of applying the rules of section 417(e), as described in the "Analysis" section of Notice 96–8.

The proposed regulations use the term *statutory hybrid benefit formula* to describe the portion of a defined benefit plan that is an applicable defined benefit plan described in section 411(a)(13)(C)(i) or the portion of the plan that has a similar effect. Specifically, the proposed regulations would define a statutory hybrid benefit formula as a benefit formula that is either a lump sum-based benefit formula or a formula that has an effect similar to a lump sum-based benefit formula. For this purpose, under the proposed regulations, a benefit formula under a defined benefit plan has an effect similar to a lump sum-based benefit formula if the formula provides that a participant's accrued benefit payable at normal retirement age (or at benefit commencement, if later) is expressed as a benefit that includes periodic adjustments (including a formula that provides for indexed benefits described in section 411(b)(5)(E)) that are reasonably expected to result in a larger annual benefit at normal retirement age (or at commencement of benefits, if later) for the participant, when compared to a similarly situated, younger individual who is or could be a participant in the plan. Thus, a benefit formula under a plan has an effect similar to a lump sum-based benefit formula if the right to future adjustments accrues at the same time as the benefit that is subject to the adjustments.

The proposed regulations would set forth certain additional rules that are used in determining whether a benefit formula has an effect similar to a lump sum-based benefit formula. For example, the proposed regulations provide that a benefit formula that does not include periodic adjustments is treated as a formula with an effect similar to a lump sum-based benefit formula if the formula is otherwise described in the preceding paragraph and the adjustments are provided pursuant to a pattern of repeated plan amendments. See § 1.411(d)–4, A–1(c)(1). The proposed regulations would provide that, for purposes of determining whether a benefit formula has an effect similar to a lump sum-based benefit formula, indexing that applies to adjust benefits after the annuity starting date (for example, cost-of-living increases) is disregarded. In addition, the proposed regulations would provide that a benefit formula under a defined benefit plan that provides for a benefit properly attributable to after-tax employee contributions does not have an effect similar to a lump sum-based benefit formula. The proposed regulations would also provide that adjustments under a variable annuity do not have an effect similar to a lump sum-based benefit formula if the assumed interest rate used to determine the adjustments is at least 5 percent. Such an annuity does not have an effect similar to a lump sum-based benefit formula even if post-annuity starting date adjustments are

made using a specified assumed interest rate that is less than 5 percent.

Pursuant to new section 411(a)(13)(B), the proposed regulations would provide that, in the case of a participant whose accrued benefit (or any portion thereof) under a defined benefit plan is determined under a statutory hybrid benefit formula, the plan is not treated as meeting the requirements of section 411(a)(2) unless the plan provides that the participant has a nonforfeitable right to 100 percent of the participant's accrued benefit if the participant has 3 or more years of service. This requirement would apply on a participant-by-participant basis and would apply to the participant's entire benefit (not just the portion of the participant's benefit that is determined under a statutory hybrid benefit formula). Furthermore, if the participant is entitled to the greater of two benefits under a plan, one of which is a benefit calculated under a statutory hybrid benefit formula, the proposed regulations would provide that the 3-year vesting requirement applies to that participant even if the participant's benefit under the statutory hybrid benefit formula is ultimately smaller than under the other formula. The proposed regulations do not address how the 3-year vesting requirement applies in the case of floor-offset arrangements.[3] See the discussion in this preamble under the heading "Comments and Requests for Public Hearing."

Section 411(b)(5): Safe Harbor for Age Discrimination, Conversion Protection, and Market Rate of Return Limitation

A. Safe Harbor for Age Discrimination

The proposed regulations under new section 411(b)(5)(A) would provide that a plan is not treated as failing to meet the requirements of section 411(b)(1)(H)(i) with respect to certain benefit formulas if, as determined as of any date, a participant's accumulated benefit expressed under one of those formulas would not be less than any similarly situated, younger participant's accumulated benefit expressed under the same formula. A plan that does not satisfy this test is required to satisfy the general nondiscrimination test of section 411(b)(1)(H)(i).

Under the proposed regulations, the safe harbor standard for satisfying section 411(b)(5)(A) would be available only where a participant's accumulated benefit under the terms of the plan is expressed as an annuity payable at normal retirement age (or current age, if later), the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation. For this purpose, if the accumulated benefit of a participant is expressed as an annuity payable at normal retirement age (or current age, if later) under the plan terms, then the comparison of benefits is made using such an annuity. If the accumulated benefit of a participant is expressed under the plan terms as the balance of a hypothetical account or the current value of an accumulated percentage of the participant's final average compensation, then the comparison of benefits is made using the balance of a hypothetical account or the current value of the accumulated percentage of the participant's final average compensation, respectively.

The proposed regulations would require a comparison of the accumulated benefit of each possible participant in the plan to the accumulated benefit of each other similarly situated, younger individual who is or could be a participant in the plan. For this purpose, the proposed regulations would provide that an individual is similarly situated to another individual if the individual is identical to that other individual in every respect that is relevant in determining a participant's benefit under the plan (including but not limited to period of service, compensation, position, date of hire, work history, and any other respect) except for age.[4] In determining whether an individual is similarly situated to another individual, any characteristic that is relevant for determining benefits under the plan and that is based directly or indirectly on age is disregarded. For example, if a particular benefit formula applies to a participant on account of the participant's age, an individual to whom the benefit formula does not apply and who is identical to a participant in all respects other than age is similarly situated to the participant. By contrast, an individual is not similarly situated to a participant if a different benefit formula applies to the individual and the application of the different formula is based neither directly nor indirectly on age.

The comparison of accumulated benefits is made without regard to any subsidized portion of any early retirement benefit that is included in a participant's accumulated benefit. For this purpose, the subsidized portion of an early retirement benefit is the retirement-type subsidy within the meaning of § 1.411(d)-3(g)(6) that is contingent on a participant's severance from employment and commencement of benefits before normal retirement age.

In addition, the comparison of accumulated benefits generally must be made using the same form of benefit. Thus, the safe harbor is not available for comparing the accumulated benefit of a participant expressed as an annuity at normal retirement age with the accumulated benefit of a similarly situated, younger participant expressed as a hypothetical account balance. Nevertheless, the proposed regulations would permit a plan that provides the sum of benefits that are expressed in two or more different forms of benefit to satisfy the safe harbor if the plan would separately satisfy the safe harbor for each separate form of benefit. Similarly, the proposed regulations would permit a plan that provides the greater of benefits that are expressed in two or more different forms of benefit to satisfy the safe harbor if the plan would separately satisfy the safe harbor for each separate form of benefit. For this purpose, a similarly situated, younger participant is treated as having an accumulated benefit of zero with respect to a benefit formula that does not apply to the participant. Thus, the safe harbor would be available if an older participant is entitled to benefits under more than one type of benefit formula, even if not all of those types of benefit formulas are available to every similarly situated participant who is younger.

The proposed regulations would reflect new section 411(b)(5)(C), which provides that a plan is not treated as failing to meet the requirements of section 411(b)(1)(H) solely because the plan provides offsets of benefits under the plan to the extent such offsets are allowable in applying the requirements under section 401 and the applicable requirements of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829) (ERISA) and the Age Discrimination in Employment Act of 1967, Public Law 90–202 (81 Stat. 602) (ADEA). The proposed regulations incorporate the provisions of section 411(b)(5)(D) (relating to permitted disparity under section 401(l)) without providing additional guidance.

The proposed regulations would reflect new section 411(b)(5)(E), which

[3] See Rev. Rul. 76–259 (1976–2 CB 111), see § 601.601(d)(2)(ii)(*b*) of this chapter, for certain standards applicable to floor-offset arrangements.

[4] For example, if a plan provides for an election extended to all participants that affects a participant's accumulated benefit, then someone who makes such an election is similarly situated to a participant who makes such an election, and someone who does not make an election is similarly situated to a participant who does not make such an election.

provides for the disregard of certain indexing of benefits for purposes of the age discrimination rules of section 411(b)(1)(H). The proposed regulations limit the disregard of indexing to formulas under defined benefit plans other than lump sum-based formulas. In addition, the proposed regulations limit the disregard of indexing to situations in which the extent of the indexing for a participant would not be less than the indexing applicable to a similarly situated, younger participant. Thus, the disregard of indexing is only available if the indexing is neither terminated nor reduced on account of the attainment of any age.

Section 411(b)(5)(E) requires that the indexing methodology be a recognized methodology. The proposed regulations would treat only the following indexing methodologies as recognized for this purpose: indexing using an eligible cost-of-living index as described in § 1.401(a)(9)–6, A–14(b); indexing using the rate of return on the aggregate assets of the plan; and indexing using the rate of return on the annuity contract for the employee issued by an insurance company licensed under the laws of a State.

Under the proposed regulations, the section 411(b)(5)(E)(ii) protection against loss ("no-loss") requirement for an indexed plan (which provides that the indexing not result in a smaller accrued benefit) would be implemented by applying the "preservation of capital" rule of section 411(b)(5)(b)(i)(II) to indexed plans. (The preservation of capital rule is discussed in this preamble paragraph heading "C. Market rate of return limitation.") For this purpose, the exemption from the application of the no-loss rule for variable annuities would be limited to situations in which the variable annuity adjustment is based on the rate of return on the aggregate assets of the plan or the annuity contract. Thus, the exemption from the application of the no-loss rule would not apply if the variable annuity adjustment is based on the rate of return of a portion of the assets of the plan. In addition, this exemption would also apply for purposes of the preservation of capital requirement that applies to statutory hybrid plans.

B. Conversion Protection

The regulations would provide guidance on the new conversion protections under section 411(b)(5)(B)(ii), (iii), and (iv). Under the proposed regulations, a participant whose benefits are affected by a conversion amendment which occurred after June 29, 2005, must generally be provided with a benefit after the conversion that is at least equal to the sum of the benefits accrued through the date of the conversion and benefits earned after the conversion, with no permitted interaction between these two portions. This would assure participants that there will be no "wear-away" as a result of a conversion, both with respect to the participant's accrued benefits and any early retirement subsidy to which the participant is entitled based on the pre-conversion benefits.

The proposed regulations would provide an alternative mechanism under which the plan provides for the establishment of an opening hypothetical account balance as part of the conversion and keeps separate track of (1) The opening hypothetical account balance and interest credits attributable thereto, and (2) The post-conversion hypothetical contributions and interest credits attributable thereto. Under this alternative, the plan must provide that, when a participant commences benefits, the plan will determine whether the benefit attributable to the opening hypothetical account payable in the particular optional form of benefit selected is greater than or equal to the benefit accrued under the plan prior to the date of conversion and payable in the same generalized optional form of benefit (within the meaning of § 1.411(d)–3(g)(8)) at the same annuity starting date. For example, if a participant elects a straight life annuity payable at age 60, the plan must determine if the straight life annuity payable at age 60 that is attributable to the opening hypothetical account balance is greater than or equal to the straight life annuity payable at age 60 based on service prior to the conversion and determined under the terms of the pre-conversion plan. If the benefit attributable to the opening hypothetical account balance is greater, then the plan must provide that such benefit is paid in lieu of the pre-conversion benefit together with the benefit attributable to post-conversion contribution credits. If the benefit attributable to the opening hypothetical account balance is less, then the plan must provide that such benefit will be increased sufficiently to provide the pre-conversion benefit. In such a case, the participant must also be entitled to the benefit attributable to post-conversion contribution credits.

The proposed regulations would provide that, if an optional form of benefit is available on the annuity starting date with respect to the benefit attributable to the opening hypothetical account balance or opening accumulated percentage, but no optional form within the same generalized optional form of benefit was available at that annuity starting date under the terms of a plan as in effect immediately prior to the effective date of the conversion amendment, then the comparison must still be made by assuming that the pre-conversion plan had such an optional form of benefit. For example, if the pre-conversion plan did not provide for a single sum distribution option, the alternative would require that any single sum distribution option that is attributable to the opening hypothetical account balance be greater than or equal to the present value of the pre-conversion benefit, where present value is determined in accordance with section 417(e).

The IRS and the Treasury Department are seeking comments on another alternative means of satisfying the conversion requirements that would involve establishing an opening hypothetical account balance, but in limited situations would not require the subsequent comparison. Any such alternative would be permitted only if it were designed to provide adequate protection to participants in plans that adopt conversion amendments. For example, such an alternative might be limited to situations in which the participant elects a single sum distribution, and where the pre-conversion plan either did not provide a single sum option or had a single sum option that was based on the benefit payable at normal retirement age (rather than the benefit payable at early retirement age). In those situations, the alternative might provide that the comparison is not necessary if (1) The opening hypothetical account balance is equal to the present value of the pre-conversion benefit determined in accordance with section 417(e), (2) The interest credits on the opening hypothetical account balance are reasonably expected to be no lower than the interest rate used to determine the opening hypothetical account balance, and (3) Either the plan provides a death benefit equal to the hypothetical account balance or no pre-retirement mortality decrement is applied in establishing the opening hypothetical account balance. Such an alternative could result in a single sum distribution attributable to the pre-conversion benefit that is lower, or higher, than the present value of the pre-conversion benefit, depending on whether the actual interest credits applicable to the opening hypothetical account balance during the interim are lower, or higher, than the interest rate used in determining the opening hypothetical account balance and whether the

applicable interest rate and applicable mortality table under section 417(e)(3) have changed in the interim.

The proposed regulations also would provide guidance on what constitutes a conversion amendment under section 411(b)(5)(B)(v). Under the proposed regulations, whether an amendment is a conversion amendment is determined on a participant-by-participant basis. The proposed regulations would provide that an amendment (or amendments) is a conversion amendment with respect to a participant if it meets two criteria: (1) The amendment reduces or eliminates the benefits that, but for the amendment, the participant would have accrued after the effective date of the amendment under a benefit formula that is not a statutory hybrid benefit formula and under which the participant was accruing benefits prior to the amendment, and (2) After the effective date of the amendment, all or a portion of the participant's benefit accruals under the plan are determined under a statutory hybrid benefit formula.

The proposed regulations would provide that only amendments that reduce or eliminate accrued benefits described in section 411(a)(7), or retirement-type subsidies described in section 411(d)(6)(B)(i), that would otherwise accrue as a result of future service are treated as amendments that reduce or eliminate the participant's benefits that would have accrued after the effective date of the amendment under a benefit formula that is not a statutory hybrid benefit formula. Under the proposed regulations, a plan is treated as having been amended for this purpose if, under the terms of the plan, a change in the conditions of a participant's employment results in a reduction or elimination of the benefits that the participant would have accrued in the future under a benefit formula that is not a statutory hybrid benefit formula (for example, a job transfer from an operating division covered by a non-statutory hybrid defined benefit plan to an operating division that is covered by a cash balance formula). However, in the absence of coordination between the formulas, the special requirements for conversion amendments typically will be satisfied automatically.

The proposed regulations would provide rules prohibiting the avoidance of the conversion protections through the use of multiple plans or multiple employers. Under the proposed regulations, an employer is treated as having adopted a conversion amendment if the employer adopts an amendment under which a participant's benefits under a plan that is not a statutory hybrid plan are coordinated with a separate plan that is a statutory hybrid plan, such as through a reduction (offset) of the benefit under the plan that is not a statutory hybrid plan. In addition, if an employee's employer changes as a result of a merger, acquisition, or other transaction described in § 1.410(b)–2(f), then the two employers would be treated as a single employer for this purpose. Thus, for example, in an acquisition, if the buyer adopts an amendment to its statutory hybrid plan under which a participant's benefits under the seller's plan (that is not a statutory hybrid plan) are coordinated with benefits under the buyer's plan, such as through a reduction (offset) of the buyer's plan benefits, the seller and buyer would be treated as a single employer and as having adopted a conversion amendment. However, if there is no coordination between the plans, there is no conversion amendment.

The proposed regulations would provide that a conversion amendment also includes multiple amendments that result in a conversion amendment, even if the amendments would not be conversion amendments individually. Under the proposed regulations, if an amendment to provide a benefit under a statutory hybrid benefit formula is adopted within 3 years after adoption of an amendment to reduce non-statutory hybrid benefit formula benefits, then those amendments would be consolidated in determining whether a conversion amendment has been adopted. In the case of an amendment to provide a benefit under a statutory hybrid benefit formula that is adopted more than 3 years after adoption of an amendment to reduce non-statutory hybrid benefit formula benefits, there would be a presumption that the amendments are not consolidated unless the facts and circumstances indicate that adoption of an amendment to provide a statutory hybrid benefit formula was intended at the time of the reduction in the non-statutory hybrid benefit formula.

The proposed regulations would provide that the effective date of a conversion amendment is, with respect to a participant, the date as of which the reduction occurs of the benefits that the participant would have accrued after the effective date of the amendment under a benefit formula that is not a statutory hybrid benefit formula. In accordance with section 411(d)(6), the proposed regulations would provide that the date of a reduction of those benefits cannot be earlier than the date of adoption of the conversion amendment.

C. Market Rate of Return Limitation

The proposed regulations would reflect the rule in section 411(b)(5)(B)(i)(I) under which a statutory hybrid plan is treated as failing to satisfy section 411(b)(1)(H) if it provides an interest crediting rate that is in excess of a market rate of return. The proposed regulations would define an interest crediting rate as the rate by which a participant's benefit is increased under the ongoing terms of a plan to the extent the amount of the increase is not conditioned on current service, regardless of how the amount of that increase is calculated. Thus, whether the amount is an interest credit for this purpose is determined without regard to whether the amount is calculated by reference to a rate of interest, a rate of return, an index, or otherwise.

The proposed regulations would require a plan to specify the timing for determining the plan's interest crediting rate that will apply for each plan year (or portion of a plan year) using one of two permitted methods—either pursuant to a daily interest crediting rate based on permissible interest crediting rates specified in the proposed regulations, or pursuant to a specified lookback month and stability period. For this purpose, the plan's lookback month and stability period must satisfy the rules for selecting the lookback month and stability period under § 1.417(e)–1(d)(4). However, the stability period and lookback month need not be the same as those used under the plan for purposes of section 417(e)(3).

In addition, the proposed regulations would require a plan to specify the periodic (at least annual) frequency at which interest credits are made under the plan. If, under a plan, interest is credited more frequently than annually (for example, monthly or quarterly), then the interest credit for that period must be a pro rata portion of the annual interest credit. Thus, for example, in the case of a plan the terms of which provide for interest to be credited at an interest crediting rate that would be permitted under the proposed regulations, if the plan provides for monthly interest credits and if the interest rate for a plan year has a value of 6 percent, then the accumulated benefits at the beginning of each month would be increased by 0.5 percent per month during the plan year. The proposed regulations would provide that interest credits are not treated as creating an effective rate of return in excess of a market rate of return merely because an otherwise permissible

interest crediting rate is compounded more frequently than annually.

The proposed regulations would provide that an interest crediting rate for a plan year is not in excess of a market rate of return if it is based on specified indices. As in Notice 2007–6, these include the safe harbor rates described in Notice 96–8, the interest rates on 30-Year Treasury securities, and the rate of interest on long-term investment grade corporate bonds (as described in section 412(b)(5)(B)(ii)(II) prior to amendment by PPA '06 for plan years beginning before January 1, 2008, and the third-segment bond rate used under section 430 for subsequent plan years). For this purpose, the third-segment bond rate is permitted to be determined with or without regard to the transition rules of section 430(h)(2)(G).

These rates would be required to change on at least an annual basis.[5] These rates are market yields to maturity on outstanding bonds and do not reflect the change in the market value of an outstanding bond as a result of future changes in the interest rate environment or in a bond issuer's risk profile.[6] As noted in the preceding paragraph, the proposed rules generally are similar to those described in Notice 2007–6 but do not provide guidance on a number of issues related to market rate of return. It is expected that these issues will be addressed in the first part of 2008.

The proposed regulations would reflect the preservation of capital rule in section 411(b)(5)(B)(i)(II) that requires a statutory hybrid plan to provide that interest credits will not result in a hypothetical account balance (or similar amount) being less than the aggregate amount of the hypothetical allocations. Under the proposed regulations, this requirement would be applied at the participant's annuity starting date. In addition, the proposed regulations would provide that the combination of this preservation of capital protection with a rate of return which otherwise satisfies the market rate of return limitation will not result in an effective interest crediting rate that is in excess of a market rate of return.

While the second sentence of section 411(b)(5)(B)(i)(I) provides that a statutory hybrid plan is not treated as having an above-market rate merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return, these proposed regulations do not provide guidance for these alternatives. Moreover, the presence of a preservation of capital requirement indicates that Congress considered that a rate of return that could be negative in some years (such as a rate of return on an equity portfolio) could be permissible. However, as discussed in the following paragraphs, the Treasury Department and the IRS have concerns that the use of a minimum guaranteed rate of return or the use of the greater of a fixed and a variable rate could result in effective interest crediting rates that are above market rates of return and are soliciting comments on how to avoid that result.

Some commentators have suggested that it should be acceptable for a plan to adopt a fixed interest crediting rate that would apply without regard to changes in the interest rate environment. This is particularly important where the plan provides for hypothetical contributions that increase with age or service and the plan needs a minimum interest crediting rate in order to satisfy the accrual rules of section 411(b). While this issue is reserved under these proposed regulations, the approach suggested by commentators could be accomplished in two different ways. Under one possibility, the regulations might set forth a specific interest crediting rate (such as 4 percent or 5 percent) that a plan may be permitted to use. Under an alternative approach, the regulations might set forth a permitted methodology under which a plan would be permitted to establish a fixed interest crediting rate based on the then-applicable level of a permissible rate, such as the 3rd segment rate. For example, if the 3rd segment rate were 5.5 percent at the time the fixed rate is established under the plan, then under the alternative approach the plan might be permitted to fix the interest crediting rate at 5.5 percent. Comments are requested on these alternatives. In particular, comments are requested as to rules that the regulations could set forth that would avoid the potential for the fixed rate to be established at a time when interest rates are unusually high, such as occurred in the early 1980s.

With respect to the option for a plan to use an interest crediting rate that is the greater of a fixed or variable interest rate, the Treasury Department and the IRS believe that the interaction between the two interest rates must be taken into account in determining whether the effective interest crediting rate under a plan which provides an interest crediting rate that is equal to the greater of a fixed or variable interest rate is above a market rate of return. Whether a statutory hybrid plan that is providing interest credits based on the greater of a fixed or variable interest rate effectively provides an interest crediting rate that exceeds a market rate of return depends on a number of factors, including how high the fixed interest rate is, how frequently the "greater of" determination is applied, and the volatility of the variable interest rate.

As noted earlier, the proposed regulations would provide that including the preservation of capital rule does not cause the plan's effective interest crediting rate to be in excess of a market rate of return. This rule reflects the fact that the minimum rate under the preservation of capital rule is an interest rate of 0 percent which is applied on a one-time basis at the annuity starting date, and is premised on the expectation that the variable rate would rarely be negative for extended periods of time (so that the inclusion of the capital preservation rule should not significantly increase the effective rate of return under the plan). If the variable rate is the rate of interest on bonds that would be permitted under the proposed regulations, then that expectation is easily met.

By contrast, if the variable interest rate is the rate of return on an equity investment, the expectation that the capital preservation rule does not significantly increase the effective interest crediting rate is only applicable if the equity investment is a well-diversified portfolio. This is because a well-diversified portfolio should have sufficiently limited volatility so that the inclusion of the preservation of capital rule should not significantly increase the effective rate of return resulting from interest credits that are based on that portfolio. Accordingly, if the regulations were to permit the use of an interest crediting rate based on an asset portfolio as an interest credit, the regulations might limit the choice of portfolio to the actual plan assets (relying on the fiduciary rules to ensure that the portfolio is adequately diversified). Of course, any such regulations would only permit the use of an interest crediting rate based on an asset portfolio if the use of such a rate is prospective and is selected before the period during which the rate is determined.

[5] The requirement that an interest crediting rate change not less frequently than annually is intended to distinguish these rates from fixed rates, which are discussed later in this preamble. See also § 31.3121(v)(2)–1(d)(2)(i)(C)(*2*) of the Employment Tax Regulations, which permits a rate to be fixed for up to 5 years.

[6] Because this interest rate does not reflect the change in the market value of an outstanding bond when an issuer becomes higher risk or the bond goes into default, the bonds have been limited to investment grade bonds in the top three quality levels where the risk of default is small.

Comments are requested on what other asset portfolios have sufficiently constrained volatility that they should be permitted to form the basis of a market rate of return for interest crediting under a statutory hybrid plan and whether it is appropriate to base an interest crediting rate on the value of an index. For example, are the assets under a regulated investment company (RIC) described in section 851 sufficiently diversified such that a statutory hybrid plan will not be treated as providing an effective interest crediting rate in excess of a market rate of return where it credits interest based on the rate of return on the RIC and also provides for the preservation of capital (as required for a statutory hybrid plan under section 411(b)(5)(B)(i)(II))? Similarly, if a statutory hybrid plan credits interest based on the rate of return on an equity index that is not a narrow-based equity index (as defined under section 3(a)(55) of the Securities Exchange Act of 1934) and which also provides for the preservation of capital, is the plan providing an interest crediting rate that is not in excess of a market rate of return?

If the determination of the greater of a fixed interest crediting rate and a variable interest crediting rate is made more frequently than required to comply with the capital preservation rule, the added frequency is more likely to result in an effective interest crediting rate that is in excess of a market rate of return. For example, if a statutory hybrid plan were to credit interest each day based on the greater of the actual rate of return on the plan assets for that day or 0 percent, the effective interest crediting rate would be far in excess of a market rate of return.

The Treasury Department and the IRS are considering providing that a plan will not have an effective interest crediting rate in excess of a market rate of return merely because it provides annual interest credits based on the greater of a reasonable fixed rate (such as 3 percent or 4 percent) and one of the rates of interest set forth in the proposed regulations. However, if a statutory hybrid plan were to provide interest credits based on the greater of a fixed rate (including a fixed rate of 0 percent) and the rate of return on plan assets or the value of an equity-based index, determined on an annual basis, then the effective interest crediting rate would typically be in excess of a market interest rate. Comments are requested on what types of reductions to the variable rate would be appropriate in order to ensure that the effective interest crediting rate under these situations does not exceed a market rate of return. In addition, comments are requested on whether regulations should establish reductions in these situations where the determination of whether the fixed or variable interest crediting rate is greater is made more frequently than annually.

Pending issuance of guidance addressing this issue, plan sponsors should be cautious in adopting interest crediting rates other than those explicitly permitted in these proposed regulations. If such a rate were adopted, and it did not satisfy the requirement not to be in excess of a market rate of return under rules provided in future guidance, the rate would have to be reduced in order to satisfy the requirement.

The proposed regulations would provide that, to the extent that interest credits (or equivalent amounts) have accrued under the terms of a statutory hybrid plan, section 411(d)(6) is violated by a plan amendment that changes the interest crediting rate if the revised rate under any circumstances could result in a lower rate of return after the applicable amendment date of the plan amendment. An exception is provided that would permit certain changes in a plan's interest crediting rate without violating section 411(d)(6). Under this exception, the proposed regulations would permit an amendment to change the plan's interest crediting rate for future periods from the safe harbor market rates of interest (for example, rates based on eligible cost-of-living indices, or rates based on Treasury bonds with the margins specified in the proposed regulations) to the rate of interest on long-term investment grade corporate bonds. Such a change would not constitute a reduction in accrued benefits in violation of section 411(d)(6) because it is expected that the change would result in a reduction only in rare and unusual circumstances, and the change would be permitted only if the amendment is effective not less than 30 days after adoption and, on the effective date of the amendment, the new interest crediting rate is not less than the interest crediting rate that would have applied in the absence of the amendment. In addition, the IRS and the Treasury Department may provide additional guidance regarding changes to the ongoing interest crediting rate under a plan that would or would not constitute a reduction of accrued benefits in violation of section 411(d)(6).

Pension Equity Plans (PEPs)

These proposed regulations do not include any rules specifically relating to plans that are often referred to as pension equity plans, or PEPs (other than defining a participant's accumulated benefit under a PEP as the accumulated percentage of final average compensation). Notice 2007–6 requested comments on the application of qualification requirements other than sections 411(b)(1)(H) and 417(e) to such plans, including the treatment of interest credited with respect to terminated vested participants. See § 601.601(d)(2)(ii)(*b*) of this chapter. The IRS and the Treasury Department have received a number of comments pursuant to this request. These comments indicate that, apart from determining the accumulated benefit as a percentage of final average compensation, this design often provides explicit or implicit interest credits by determining the normal retirement benefit to be: (1) The accumulated percentage of final average compensation divided by a deferred annuity factor (thus implicitly providing interest and mortality credits for deferred benefits); or (2) The lesser of (a) the current single sum benefit projected to normal retirement age and using an interest rate set forth in the plan or (b) the projected single sum benefit based on projected service to normal retirement age (taking into account the plan's formula for the accumulated percentage of final average compensation without salary increases), with the lesser of these two amounts converted to an annuity. The right to future interest credits under these designs is earned at the same time as the related percentage of final average compensation; however, the comments indicated that the interest typically commences only after active participation ceases.

The IRS and the Treasury Department will continue to evaluate comments received regarding PEPs and are focusing on the following questions in situations where the interest credit is credited only after active participation ceases:

- Are these designs properly treated as plans under which the accrued benefit is expressed "as an accumulated percentage of the participant's final, average compensation" within the meaning of section 411(a)(13)(A)? After the date on which interest credits commence, should these designs be treated as plans under which the accrued benefit is expressed "as the balance of a hypothetical account" within the meaning of section 411(a)(13)(A)?
- Do any of the designs in (1) or (2) of the preceding paragraph provide for a lower rate of accrual for additional years of service (because no interest is credited if service is continued)? See

section 411(b)(1)(G). Alternatively, can this issue be avoided by treating the annual rate at which the normal retirement benefit accrues as declining with each additional year of service?

• How should the backloading rules of section 411(b)(1)(A)–(C) apply to these designs and do they raise issues on which comments were requested in Notice 2007–14 (2007–7 IRB 501)? See § 601.601(d)(2)(ii)(*b*) of this chapter.

Section 1107 of PPA '06 and Code Section 411(d)(6)

Under section 1107 of PPA '06, a plan sponsor is permitted to delay adopting a plan amendment pursuant to statutory provisions under PPA '06 (or pursuant to any regulation issued under PPA '06) until the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 in the case of governmental plans). As described in Rev. Proc. 2007–44 (2007–28 IRB 54), this amendment deadline applies to both interim and discretionary amendments that are made pursuant to PPA '06 statutory provisions or any regulation issued under PPA '06. See § 601.601(d)(2)(ii)(*b*) of this chapter. If section 1107 of PPA '06 applies to an amendment of a plan, section 1107 provides that the plan does not fail to meet the requirements of section 411(d)(6) by reason of such amendment, except as provided by the Secretary of the Treasury.[7]

The IRS and the Treasury Department are considering whether relief from section 411(d)(6) should be provided for particular amendments that would be made pursuant to section 701 of PPA '06 or these proposed regulations. In the following provisions of this section of the preamble, the IRS and the Treasury Department have set forth a description of amendments that are and are not entitled to section 411(d)(6) relief. Comments are requested on whether section 411(d)(6) relief is or is not appropriate for any additional amendments related to section 701 of PPA '06 or these proposed regulations.

Until further guidance is provided by the IRS and the Treasury Department, section 411(d)(6) relief is not available for the following amendments that are described in section 1107 of PPA '06:

• A conversion amendment where the effective date of the reduction in benefits that a participant, but for the amendment, would have accrued under a benefit formula that is not a statutory hybrid benefit formula is earlier than the date of adoption of the reduction amendment.

• An amendment that reduces a participant's hypothetical account balance or accumulated percentage of final average compensation below the amount on the date the amendment is adopted.

• An amendment to change the interest crediting rate from one of the rates specified in Notice 96–8 using a margin that is less than or equal to the maximum margin for that rate to the same or another rate specified in Notice 96–8 with an associated margin where the excess (if any) of the maximum margin under the second rate over the margin used for that second rate exceeds the excess (if any) of the maximum margin under the first rate over the margin used for that first rate.

Until further guidance is provided by the IRS and the Treasury Department, section 411(d)(6) is available for the following amendments that are described in section 1107 of PPA '06:

• As provided in Notice 2007–6, in the case of a plan that provides for a single sum distribution to a participant that exceeds the participant's hypothetical account balance or accumulated percentage of final average compensation, the plan may be amended to eliminate the excess for distributions made after August 17, 2006. See § 601.601(d)(2)(ii)(*b*) of this chapter.

• An amendment to change the interest crediting rate from one of the rates specified in Notice 96–8 using a margin that is less than or equal to the maximum margin for that rate to one of the other rates specified in Notice 96–8 with an associated margin where the excess (if any) of the maximum margin under the second rate over the margin used for that second rate does not exceed the excess (if any) of the maximum margin under the first rate over the margin used for that first rate.

These rules under section 1107 of PPA '06 will be reflected in future guidance on the market rate of return rules under section 411(b)(5)(B)(i). The IRS and the Treasury Department expect that section 411(d)(6) relief under section 1107 of PPA '06 will be available in the case of an amendment pursuant to that future guidance to change a plan's interest crediting rate (including credits on pre-August 18, 2006 accruals) from an interest rate that is above a market rate of return to an interest rate that constitutes a market rate of return, provided that any retroactive change in the crediting rate does not apply for periods before the date that section 411(b)(5)(B)(i) first applies to the plan. In addition, to the extent permitted under future guidance, the IRS and the Treasury Department expect that section 411(d)(6) relief under section 1107 of PPA '06 will be available in the case of an amendment to change the plan's interest crediting rate to a rate that is expected to be higher than the plan's current rate (such as an amendment to change to an equity-based rate of return).

Effective/Applicability Dates

Pursuant to section 701(e)(1) of PPA '06, the amendments made by section 701 of PPA '06 are generally effective for periods beginning on or after June 29, 2005. However, sections 701(e)(2) through 701(e)(5) of PPA '06 set forth a number of special effective/applicability date rules that are described earlier in the Background section of the preamble of these proposed regulations.

These proposed regulations reflect the statutory effective dates set forth in section 701(e) of PPA '06. Thus, the proposed regulations would reflect that section 411(a)(13)(A) applies to distributions made after August 17, 2006. In addition, the proposed regulations would reflect that, in the case of a plan that is in existence on June 29, 2005, section 411(a)(13)(B) applies to plan years beginning on or after January 1, 2008. At the date of issuance of these proposed regulations, bills have been introduced in the House of Representatives and the Senate which provide that (1) section 411(a)(13)(B) only applies to a participant who performs at least one hour of service on or after the effective date of section 411(a)(13)(B) with respect to the plan, and (2) in the case of a plan other than a plan described in section 701(e)(3) or 701(e)(4) of PPA '06, section 411(a)(13)(B) applies to years ending on or after June 29, 2005.[8] Proposed § 1.411(a)(13)–1(e)(1)(iii)(A)(*2*) and § 1.411(a)(13)–1(e)(1)(iii)(B)(*2*) have been reserved in order to accommodate these changes.

These regulations are proposed to be effective for plan years beginning on or after January 1, 2009 (or, if later, the date that applies to certain collectively bargained plans pursuant to section 701(e)(4) of PPA '06). For periods after the statutory effective date and before

[7] Except to the extent permitted under section 411(d)(6) and §§ 1.411(d)–3 and 1.411(d)–4, or under a statutory provision such as section 1107 of PPA '06, section 411(d)(6) prohibits a plan amendment that decreases a participant's accrued benefits or that has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment. However, an amendment that eliminates or decreases benefits that have not yet accrued does not violate section 411(d)(6), provided that the amendment is adopted and effective before the benefits accrue.

[8] H.R. 3361 (Aug. 3, 2007) and S. 1974 (Aug. 2, 2007), at section 8(3)(B)(iv).

the regulatory effective date set forth in the preceding sentence, a plan must comply with sections 411(a)(13) and 411(b)(5). During these periods, a plan is permitted to rely on the provisions set forth in the proposed regulations for purposes of satisfying the requirements of sections 411(a)(13) and 411(b)(5).

These regulations should not be construed to create any inference concerning the applicable law prior to the effective dates of sections 411(a)(13) and 411(b)(5). See also section 701(d) of PPA '06.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (one signed and eight (8) copies) or electronic comments that are submitted timely to the IRS.

The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

In addition to the comments requested under the "Conversion protection" and "Market rate of return limitation" headings of this preamble (and in Part V of Notice 2007–6), comments are also requested on issues not addressed in these proposed regulations, including:

- The application of the 3-year vesting requirement in section 411(a)(13)(B) to a plan that is not a statutory hybrid plan when the plan is part of a floor-offset arrangement with a plan that includes a lump sum-based benefit formula.
- Whether guidance should be issued under section 411(b)(5) as to whether a characteristic is indirectly on account of age.
- Whether the age discrimination safe harbor in section 411(b)(5)(A) should be available in the case of any plan that does not express a participant's accumulated benefit as either an annuity payable at normal retirement age (or current age, if later), the balance of a hypothetical account, or the current value of the accumulated percentage of a participant's final average compensation.

All comments will be available for public inspection and copying. A public hearing will 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 public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Lauson C. Green and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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 is amended by adding entries as follows:

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

Section 1.411(a)(13)–1 also issued under 26 U.S.C. 411(a)(13). Section 1.411(b)(5)–1 also issued under 26 U.S.C. 411(b)(5). * * *

Par. 2. Section 1.411(a)(13)–1 is added to read as follows:

§ 1.411(a)(13)–1 Statutory hybrid plans.

(a) *In general.* This section sets forth certain rules that apply to statutory hybrid plans under section 411(a)(13). Paragraph (b) of this section describes special rules for certain statutory hybrid plans that determine benefits under a lump sum-based benefit formula. Paragraph (c) of this section describes the vesting requirement for statutory hybrid plans. Paragraphs (d) and (e) of this section contain definitions and effective/applicability dates, respectively.

(b) *Calculation of benefit by reference to hypothetical account balance or accumulated percentage.* Pursuant to section 411(a)(13)(A), a statutory hybrid plan that determines any portion of a participant's benefits under a lump sum-based benefit formula is not treated as failing to meet the requirements of section 411(a)(2), or the requirements of section 411(c) or 417(e) with respect to the participant's accrued benefit derived from employer contributions, solely because, with respect to benefits determined under that formula, the present value of those benefits is, under the terms of the plan, equal to the balance of the hypothetical account maintained for the participant or to the current value of the accumulated percentage of the participant's final average compensation under that formula.

(c) *Three-year vesting requirement*—(1) *In general.* Pursuant to section 411(a)(13)(B), if any portion of the participant's accrued benefit under a defined benefit plan is determined under a statutory hybrid benefit formula, the plan is not treated as meeting the requirements of section 411(a)(2) unless the plan provides that the participant has a nonforfeitable right to 100 percent of the participant's accrued benefit if the participant has 3 or more years of service. Thus, this 3-year vesting requirement applies with respect to the entire accrued benefit of a participant under a defined benefit plan even if only a portion of the participant's accrued benefit under the plan is determined under a statutory hybrid benefit formula. Similarly, if the participant's accrued benefit under a defined benefit plan is, under the plan's terms, the larger of two (or more) benefit amounts, where each amount is determined under a different benefit formula (including a benefit determined pursuant to an offset among formulas within the plan) and at least one of those formulas is a statutory hybrid benefit formula, the participant's entire accrued benefit under the defined benefit plan is subject to the 3-year vesting rule of section 411(a)(13)(B) and this paragraph (c). The rule described in the preceding sentence applies even if the larger benefit is ultimately the benefit determined under a formula that is not a statutory hybrid benefit formula.

(2) *Floor-offset arrangements involving a statutory hybrid plan.* [Reserved]

(3) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. Employer M sponsors Plan X, pursuant to which each participant's accrued benefit is equal to the sum of the benefit provided under two benefit formulas. The first benefit formula is a statutory hybrid benefit formula, and the second formula is not. Because a portion of each participant's

accrued benefit provided under Plan X is determined under a statutory hybrid benefit formula, the 3-year vesting requirement described in paragraph (c)(1) of this section applies to each participant's entire accrued benefit provided under Plan X.

Example 2. The facts are the same as in *Example 1*, except that the benefit formulas described in *Example 1* only apply to participants for service performed in Division A of Employer M and a different benefit formula applies to participants for service performed in Division B of Employer M. Pursuant to the terms of Plan X, the accrued benefit of a participant attributable to service performed in Division B is equal to the benefit provided by a benefit formula that is not a statutory hybrid benefit formula. Therefore, the 3-year vesting requirement described in paragraph (c)(1) of this section does not apply to a participant with an accrued benefit under Plan X if the participant's benefit is solely attributable to service performed in Division B.

(d) *Definitions*—(1) *In general.* The definitions in this paragraph (d) apply for purposes of this section.

(2) *Lump sum-based benefit formula.* The term lump sum-based benefit formula means a lump sum-based benefit formula as defined in § 1.411(b)(5)–1(e)(3).

(3) *Statutory hybrid benefit formula*—(i) *In general.* A statutory hybrid benefit formula means a benefit formula that is either a lump sum-based benefit formula or a formula that is not a lump sum-based benefit formula but that has an effect similar to a lump sum-based benefit formula.

(ii) *Effect similar to a lump sum-based benefit formula.* Except as provided in paragraph (d)(3)(iii) of this section, a benefit formula under a defined benefit plan that is not a lump sum-based benefit formula has an effect similar to a lump sum-based benefit formula if the formula provides that a participant's accumulated benefit (within the meaning of § 1.411(b)(5)–1(e)(2)) payable at normal retirement age (or benefit commencement, if later) is expressed as a benefit that includes the right to periodic adjustments (including a formula that provides for indexed benefits under § 1.411(b)(5)–1(b)(2)) that are reasonably expected to result in a larger annual benefit at normal retirement age (or benefit commencement, if later) for the participant than for a similarly situated, younger individual (within the meaning of § 1.411(b)(5)–1(b)(5)) who is or could be a participant in the plan. A benefit formula that does not include periodic adjustments is treated as a formula with an effect similar to a lump sum-based benefit formula if the formula is otherwise described in the preceding sentence and the adjustments are provided pursuant to a pattern of repeated plan amendments. See § 1.411(d)–4, A–1(c)(1).

(iii) *Exceptions*—(A) *Post-retirement benefit adjustments.* Post-annuity starting date adjustments of the amounts payable to a participant (such as cost-of-living increases) are disregarded in determining whether a benefit formula under a defined benefit plan has an effect similar to a lump sum-based benefit formula.

(B) *Certain variable annuity benefit formulas.* If the assumed interest rate used for purposes of the adjustment of amounts payable to a participant under a variable annuity benefit formula is at least 5 percent, then the adjustments under the variable annuity benefit formula are not treated as being reasonably expected to result in a larger annual benefit at normal retirement age (or benefit commencement, if later) for the participant than for a similarly situated, younger individual (within the meaning of § 1.411(b)(5)–1(b)(5)) who is or could be a participant in the plan, and thus such a variable annuity benefit formula does not have an effect similar to a lump sum-based benefit formula.

(C) *Contributory plans.* A benefit formula under a defined benefit plan that provides for a benefit equal to the benefit properly attributable to after-tax employee contributions does not have an effect similar to a lump sum-based benefit formula. See section 411(c)(2) for rules for determining benefits attributable to after-tax employee contributions.

(4) *Variable annuity benefit formula.* A variable annuity benefit formula means any benefit formula under a defined benefit plan which provides that the amount payable is periodically adjusted by reference to the difference between the rate of return of plan assets (or specified market indices) and a specified assumed interest rate.

(e) *Effective/applicability date*—(1) *Statutory effective/applicability date*—(i) *In general.* Except as provided in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section, section 411(a)(13) applies for periods beginning on or after June 29, 2005.

(ii) *Calculation of benefits.* Section 411(a)(13)(A) applies to distributions made after August 17, 2006.

(iii) *Vesting*—(A) *Plans in existence on June 29, 2005*—(*1*) *General rule.* In the case of a plan that is in existence on June 29, 2005 (regardless of whether the plan is a statutory hybrid plan on that date), section 411(a)(13)(B) applies to plan years beginning on or after January 1, 2008.

(*2*) *Hour of service required.* [Reserved]

(*3*) *Exception for plan sponsor election.* See § 1.411(b)(5)–1(f)(1)(iii)(A)(*2*) for a special election for early application of section 411(a)(13)(B).

(B) *Plans not in existence on June 29, 2005*—(*1*) *In general.* In the case of a plan not in existence on June 29, 2005, section 411(a)(13)(B) applies for periods beginning on or after June 29, 2005.

(*2*) *Hour of service required.* [Reserved]

(C) *Collectively bargained plans.* Notwithstanding paragraphs (e)(1)(iii)(A) and (B) of this section, in the case of a collectively bargained plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006, the requirements of section 411(a)(13)(B) do not apply for plan years beginning before the earlier of—

(*1*) The later of—

(*i*) The date on which the last of those collective bargaining agreements terminates (determined without regard to any extension thereof on or after August 17, 2006), or

(*ii*) January 1, 2008; or

(*2*) January 1, 2010.

(D) *Treatment of plans with both collectively bargained and non-collectively bargained employees.* In the case of a plan where a collective bargaining agreement applies to some, but not all, of the plan participants, the plan is considered a collectively bargained plan for purposes of paragraph (e)(1)(iii)(C) of this section if at least 25 percent of the participants in the plan are members of collective bargaining units for which the benefit levels under the plan are specified under a collective bargaining agreement.

(2) *Effective/applicability date of regulations.* This section applies for plan years beginning on or after January 1, 2009 (or, if later, the date applicable under paragraph (e)(1)(iii)(C) of this section). For the periods after the statutory effective date set forth in paragraph (e)(1) of this section and before the regulatory effective date set forth in the preceding sentence, a plan must comply with section 411(a)(13). During these periods, a plan is permitted to rely on the provisions of this section for purposes of satisfying the requirements of section 411(a)(13).

Par. 3. Section 1.411(b)(5)–1 is added to read as follows:

§ 1.411(b)(5)–1 Reduction in rate of benefit accrual under a defined benefit plan.

(a) *In general.* This section sets forth certain rules related to reduction in the rate of benefit accrual under a defined

benefit plan. Paragraph (b) of this section describes certain plan design-based safe harbors (including statutory hybrid plans) that are deemed to satisfy the age discrimination rules under section 411(b)(1)(H). Paragraph (c) of this section describes rules relating to statutory hybrid plan conversion amendments. Paragraph (d) of this section describes rules restricting interest credits (or equivalent amounts) under a statutory hybrid plan to a market rate of return. Paragraphs (e) and (f) of this section contain definitions and effective/applicability dates, respectively.

(b) *Safe harbors for certain plan designs*—(1) *Accumulated benefit testing*—(i) *In general.* Pursuant to section 411(b)(5)(A), and subject to paragraph (b)(1)(ii) of this section, a plan is not treated as failing to meet the requirements of section 411(b)(1)(H)(i) if, as of any date, the accumulated benefit of a participant would not be less than the accumulated benefit of any similarly situated, younger participant. This test requires a comparison of the accumulated benefit of each individual who is or could be a participant in the plan with the accumulated benefit of each other similarly situated, younger individual who is or could be a participant in the plan. See paragraph (b)(5) of this section for rules regarding whether each younger individual who is or could be a participant is similarly situated to a participant. The comparison described in this paragraph (b)(1)(i) is based on—

(A) The annuity payable at normal retirement age (or current age, if later) if the accumulated benefit of the participant under the terms of the plan is expressed as an annuity payable at normal retirement age (or current age, if later);

(B) The balance of a hypothetical account if the accumulated benefit of the participant under the terms of the plan is expressed as a hypothetical account balance; or

(C) The current value of an accumulated percentage of the participant's final average compensation if the accumulated benefit of the participant under the terms of the plan is expressed as an accumulated percentage of final average compensation.

(ii) *Benefit formulas for comparison*—(A) *In general.* The safe harbor provided by section 411(b)(5)(A) and paragraph (b)(1)(i) of this section does not apply to a plan if the accumulated benefit of a participant under the plan is not described in paragraph (b)(1)(i)(A), (B), or (C) of this section. In addition, except as provided in paragraph (b)(1)(ii)(B) of this section, that safe harbor also does not apply to a plan if the comparison required under paragraph (b)(1)(i) of this section involves comparing accumulated benefits that are described in different subparagraphs of paragraph (b)(1)(i) of this section. Thus, for example, if a plan provides an accumulated benefit that is expressed under the terms of the plan as an annuity payable at normal retirement age as described in paragraph (b)(1)(i)(A) of this section for participants who are age 55 or over, and the plan provides an accumulated benefit that is expressed as the balance of a hypothetical account as described in paragraph (b)(1)(i)(B) of this section for participants who are younger than age 55, the safe harbor described in section 411(b)(5)(A) and paragraph (b)(1)(i) of this section does not apply to the plan.

(B) *Greater-of and sum-of benefit formulas.* If a plan provides that a participant's accumulated benefit is equal to the sum of accumulated benefits that are described in different subparagraphs of paragraph (b)(1)(i) of this section, then the plan is deemed to satisfy paragraph (b)(1)(i) of this section if the plan satisfies the comparison described in paragraph (b)(1)(i) of this section separately for each of the different accumulated benefits. Similarly, if a plan provides that a participant's accumulated benefit is equal to the greater of accumulated benefits that are described in different subparagraphs of paragraph (b)(1)(i) of this section, then the plan is deemed to satisfy paragraph (b)(1)(i) of this section if the plan satisfies the comparison described in paragraph (b)(1)(i) of this section separately for each of the different accumulated benefits. For purposes of this paragraph (b)(1)(ii)(B), a similarly situated, younger participant is treated as having an accumulated benefit of zero under a benefit formula if the benefit formula does not apply to the participant.

(iii) *Disregard of certain subsidized benefits.* For purposes of paragraph (b)(1)(i) of this section, any subsidized portion of any early retirement benefit that is included in a participant's accumulated benefit is disregarded. For this purpose, the subsidized portion of an early retirement benefit is the retirement-type subsidy within the meaning of § 1.411(d)–3(g)(6) that is contingent on a participant's severance from employment and commencement of benefits before normal retirement age.

(2) *Indexed benefits*—(i) *In general.* Except as provided in paragraph (b)(2)(iv) of this section, pursuant to section 411(b)(5)(E) and this paragraph (b)(2)(i), a defined benefit plan is not treated as failing to meet the requirements of section 411(b)(1)(H) solely because a benefit formula under the plan (other than a lump sum-based benefit formula) provides for the periodic adjustment of accrued benefits under the plan, but only if the adjustment is by means of the application of a recognized investment index or methodology described in paragraph (b)(2)(ii) of this section and the plan satisfies paragraph (b)(2)(iii) of this section. A statutory hybrid plan that is not treated as failing to satisfy section 411(b)(1)(H) pursuant to the preceding sentence must nevertheless satisfy the qualification requirements otherwise applicable to statutory hybrid plans, including the requirements of § 1.411(a)(13)–1(c) (relating to minimum vesting standards), paragraph (c) of this section (relating to plan conversion amendments), and paragraph (d) of this section (relating to market rates of return).

(ii) *Recognized investment index or methodology.* An adjustment is made pursuant to a recognized investment index or methodology if it is made pursuant to—

(A) An eligible cost-of-living index as described in § 1.401(a)(9)–6, A–14(b);

(B) The rate of return on the aggregate assets of the plan; or

(C) The rate of return on the annuity contract for the employee issued by an insurance company licensed under the laws of a State.

(iii) *Similarly situated participant test.* A plan satisfies this paragraph (b)(2)(iii) if the aggregate periodic adjustments of each participant's accrued benefit under the plan (determined as a percentage of the unadjusted accrued benefit) would not be less than the aggregate periodic adjustments of any similarly situated younger participant. This test requires a comparison of the aggregate periodic adjustments of each individual who is or could be a participant in the plan for any specified period with the aggregate periodic adjustments of each other similarly situated, younger individual who is or could be a participant in the plan for the same period. See paragraph (b)(5) of this section for rules regarding whether each younger individual who is or could be a participant is similarly situated to a participant.

(iv) *Protection against loss*—(A) *In general.* Paragraph (b)(2)(i) of this section does not apply unless the plan satisfies section 411(b)(5)(E)(ii) and paragraph (d)(2)(ii) of this section (relating to preservation of capital).

(B) *Exception for variable annuity benefit formulas.* The requirement to

satisfy section 411(b)(5)(E)(ii) and paragraph (d)(2)(ii) of this section does not apply in the case of a benefit provided under a variable annuity benefit formula, but only if the adjustments under the variable annuity benefit formula are based on the rate of return on the aggregate assets of the plan or the rate of return on the annuity contract for the employee issued by an insurance company licensed under the laws of a State.

(3) *Certain offsets permitted.* A plan is not treated as failing to meet the requirements of section 411(b)(1)(H) solely because the plan provides offsets against benefits under the plan to the extent the offsets are allowable in applying the requirements of section 401(a) and the applicable requirements of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829), and the Age Discrimination in Employment Act of 1967, Public Law 90–202 (81 Stat. 602).

(4) *Permitted disparities in plan contributions or benefits.* A plan is not treated as failing to meet the requirements of section 411(b)(1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) are met.

(5) *Definition of similarly situated.* For purposes of paragraphs (b)(1) and (b)(2) of this section, an individual is similarly situated to another individual if the individual is identical to that other individual in every respect that is relevant in determining a participant's benefit under the plan (including period of service, compensation, position, date of hire, work history, and any other respect) except for age. In determining whether an individual is similarly situated to another individual, any characteristic that is relevant for determining benefits under the plan and that is based directly or indirectly on age is disregarded. For example, if a particular benefit formula applies to a participant on account of the participant's age, an individual to whom the benefit formula does not apply and who is identical to the participant in all other respects is similarly situated to the participant. By contrast, an individual is not similarly situated to a participant if a different benefit formula applies to the individual and the application of the different formula is not based directly or indirectly on age.

(c) *Special rules for plan conversion amendments*—(1) *In general.* Pursuant to section 411(b)(5)(B)(ii), (iii), and (iv), if there is a conversion amendment within the meaning of paragraph (c)(4) of this section with respect to a defined benefit plan, then the plan is treated as failing to meet the requirements of section 411(b)(1)(H) unless the plan, after the amendment, satisfies the requirements of paragraph (c)(2) of this section.

(2) *Separate calculation of post-conversion benefit*—(i) *In general.* A statutory hybrid plan satisfies the requirements of this paragraph (c)(2) if the plan provides that, in the case of an individual who was a participant in the plan immediately before the date of adoption of the conversion amendment, the participant's benefit at any subsequent annuity starting date is not less than the sum of:

(A) The participant's section 411(d)(6) protected benefit (as defined in § 1.411(d)–3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment; and

(B) The participant's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the amendment.

(ii) *Rules of application.* For purposes of this paragraph (c)(2), except as provided in paragraph (c)(3) of this section, the benefits under paragraph (c)(2)(i)(A) and (B) of this section must each be determined in the same manner as if they were provided under separate plans that are independent of each other (for example, without any benefit offsets), and, except to the extent permitted under § 1.411(d)–3 or § 1.411(d)–4 (or other applicable law), each optional form of payment provided under the terms of the plan with respect to a participant's section 411(d)(6) protected benefit as in effect before the amendment must be available thereafter to the extent of the plan's benefits for service prior to the effective date of the amendment.

(3) *Establishment of opening hypothetical account balance*—(i) *In general.* Provided that the requirements of paragraph (c)(3)(ii) of this section are satisfied, a statutory hybrid plan under which an opening hypothetical account balance or opening accumulated percentage of the participant's final average compensation is established as of the effective date of the conversion amendment does not fail to satisfy the requirements of paragraph (c)(2) of this section merely because benefits attributable to that opening hypothetical account balance or opening accumulated percentage (that is, benefits that are not described in paragraph (c)(2)(i)(B) of this section) are substituted for benefits described in paragraph (c)(2)(i)(A) of this section.

(ii) *Comparison of benefits*—(A) *Testing requirement.* For any optional form of benefit payable at an annuity starting date where there was an optional form of benefit within the same generalized optional form of benefits (within the meaning of § 1.411(d)–3(g)(8)) that would have been available to the participant at that annuity starting date under the terms of the plan as in effect immediately before the effective date of the conversion amendment, the requirements of this paragraph (c)(3)(ii) are satisfied only if the plan provides that the amount of the benefit under that optional form of benefit available to the participant under the lump sum-based formula that is attributable to the opening hypothetical account balance or opening accumulated percentage as described in paragraph (c)(3)(i) of this section, determined under the terms of the plan as of the annuity starting date (including actuarial conversion factors), is not less than the benefit under that optional form of benefit described in paragraph (c)(2)(i)(A) of this section. To satisfy this requirement, if the benefit under an optional form attributable to the opening hypothetical account balance or opening accumulated percentage is less than the benefit described in paragraph (c)(2)(i)(A) of this section, then the benefit attributable to the opening hypothetical account balance or opening accumulated percentage must be increased to the extent necessary to provide the minimum benefit described in this paragraph (c)(3)(ii)(A). Thus, if a plan is using the option under this paragraph (c)(3) to satisfy paragraph (c)(2) of this section with respect to a participant, the participant must receive a benefit equal to not less than the sum of:

(*1*) The greater of the benefit attributable to the opening hypothetical account balance as described in this paragraph (c)(3)(ii) and the benefit described in paragraph (c)(2)(i)(A) of this section, and

(*2*) The benefit described in paragraph (c)(2)(i)(B) of this section.

(B) *Special rule for post-conversion optional forms of benefit.* If an optional form of benefit is available on the annuity starting date with respect to the benefit attributable to the opening hypothetical account balance or opening accumulated percentage, but no optional form within the same generalized optional form of benefit (within the meaning of § 1.411(d)–3(g)(8)) was available at that annuity starting date under the terms of a plan as in effect immediately prior to the effective date of the conversion

amendment, then, for purposes of this paragraph (c)(3)(ii), the plan is treated as if such an optional form of benefit were available immediately prior to the effective date of the conversion amendment. In that event, paragraph (c)(3)(ii)(A) of this section must be applied by taking into account the optional form of benefit that is treated as if it were available on the annuity starting date under the terms of the plan as in effect immediately prior to the effective date of the conversion amendment. Thus, for example, if a single sum optional form of payment is not available under the plan terms applicable to the accrued benefit described in paragraph (c)(2)(i)(A) of this section, but a single sum form of payment is available with respect to the benefit attributable to the opening hypothetical account balance or opening accumulated percentage as of the annuity starting date, then, for purposes of paragraph (c)(3)(ii)(A) of this section, the plan is treated as if a single sum (to which section 417(e)(3) applies) were available under the terms of the plan as in effect immediately prior to the effective date of the conversion amendment.

(4) *Conversion amendment*—(i) *In general.* An amendment is a conversion amendment that is subject to the requirements of this paragraph (c) with respect to a participant if—

(A) The amendment reduces or eliminates the benefits that, but for the amendment, the participant would have accrued after the effective date of the amendment under a benefit formula that is not a statutory hybrid benefit formula (and under which the participant was accruing benefits prior to the amendment); and

(B) After the effective date of the amendment, all or a portion of the participant's benefit accruals under the plan are determined under a statutory hybrid benefit formula.

(ii) *Rules of application*—(A) *In general.* Paragraphs (c)(4)(iii), (iv), and (v) of this section describe special rules that treat certain arrangements as conversion amendments. The rules described in those paragraphs apply both separately and in combination. Thus, for example, in an acquisition described in § 1.410(b)–2(f), if the buyer adopts an amendment under which a participant's benefits under the seller's plan that is not a statutory hybrid plan are coordinated with a separate plan of the buyer that is a statutory hybrid plan, such as through an offset of the participant's benefit under the buyer's plan by the participant's benefit under the seller's plan, the seller and buyer are treated as a single employer under paragraph (c)(4)(iv) of this section and they are treated as having adopted a conversion amendment under paragraph (c)(4)(iii) of this section. However, pursuant to paragraph (c)(4)(iii) of this section, if there is no coordination between the two plans, there is no conversion amendment.

(B) *Covered amendments.* Only amendments that eliminate or reduce accrued benefits described in section 411(a)(7), or a retirement-type subsidy described in section 411(d)(6)(B)(i), that would otherwise accrue as a result of future service are treated as amendments described in paragraph (c)(4)(i)(A) of this section.

(C) *Operation of plan terms treated as covered amendment.* If, under the terms of a plan, a change in the conditions of a participant's employment results in a reduction of the participant's benefits that would have accrued in the future under a benefit formula that is not a statutory hybrid benefit formula, the plan is treated for purposes of this paragraph (c)(4) as if such plan terms constitute an amendment that reduces the participant's benefits that would have accrued after the effective date of the change under a benefit formula that is not a statutory hybrid benefit formula. Thus, for example, if a participant transfers from an operating division that is covered by a non-statutory hybrid benefit formula to an operating division that is covered by a statutory hybrid benefit formula, there has been a conversion amendment as of the date of the transfer.

(iii) *Multiple plans.* An employer is treated as having adopted a conversion amendment if the employer adopts an amendment under which a participant's benefits under a plan that is not a statutory hybrid plan are coordinated with a separate plan that is a statutory hybrid plan, such as through a reduction (offset) of the benefit under the plan that is not a statutory hybrid plan.

(iv) *Multiple employers.* If the employer of an employee changes as a result of a transaction described in § 1.410(b)–2(f), then the two employers are treated as a single employer for purposes of this paragraph (c)(4).

(v) *Multiple amendments*—(A) *In general*—(1) *General rule.* For purposes of this paragraph (c)(4), a conversion amendment includes multiple amendments that result in a conversion amendment even if the amendments are not conversion amendments individually. For example, an employer is treated as having adopted a conversion amendment if the employer first adopts an amendment described in paragraph (c)(4)(i)(A) of this section and, at a later date, adopts an amendment that adds a benefit under a statutory hybrid benefit formula as described in paragraph (c)(4)(i)(B) of this section, if they are consolidated under paragraph (c)(4)(v)(A)(*2*) of this section.

(*2*) *Delay between plan amendments.* In the case of an amendment to provide a benefit under a statutory hybrid benefit formula that is adopted within three years after adoption of an amendment to reduce non-statutory hybrid benefit formula benefits, those amendments are consolidated in determining whether a conversion amendment has been adopted. Thus, the later adoption of the statutory hybrid benefit formula will cause the earlier amendment to be treated as a conversion amendment. In the case of an amendment to provide a benefit under a statutory hybrid benefit formula that is adopted more than three years after adoption of an amendment to reduce benefits under a non-statutory hybrid benefit formula, there is a presumption that the amendments are not consolidated unless the facts and circumstances indicate that adoption of the amendment to provide a benefit under a statutory hybrid benefit formula was intended at the time of reduction in the non-statutory hybrid benefit formula.

(B) *Multiple conversion amendments.* If an employer adopts multiple amendments reducing benefits described in paragraph (c)(4)(i)(A) of this section, each amendment is treated as a separate conversion amendment, provided that paragraph (c)(4)(i)(B) of this section is applicable at the time of the amendment (taking into account the rules of this paragraph (c)(4)).

(vi) *Effective date of a conversion amendment.* The effective date of a conversion amendment is, with respect to a participant, the date as of which the reduction of the participant's benefits described in paragraph (c)(4)(i)(A) of this section occurs. In accordance with section 411(d)(6), the date of a reduction of those benefits cannot be earlier than the date of adoption of the conversion amendment.

(5) *Examples.* The following examples illustrate the application of paragraph (c) of this section:

Example 1. (i) *Facts where plan does not establish opening hypothetical account balance for participants and participant elects life annuity at normal retirement age.* Employer N sponsors Plan E, a defined benefit plan that provides an accumulated benefit, payable as a straight life annuity commencing at age 65 (which is Plan E's normal retirement age), based on a percentage of highest average compensation

times the participant's years of service. Plan E permits any participant who has had a severance from employment to elect payment in the following optional forms of benefit (with spousal consent if applicable), with any payment not made in a straight life annuity converted to an equivalent form based on reasonable actuarial assumptions: a straight life annuity; and a 50 percent, 75 percent, or 100 percent joint and survivor annuity. The payment of benefits may commence at any time after attainment of age 55, with an actuarial reduction if the commencement is before normal retirement age. In addition, the plan offers a single sum payment after attainment of age 55 equal to the present value of the normal retirement benefit using the applicable interest rate and mortality table under section 417(e)(3) in effect under the terms of the plan on the annuity starting date.

(ii) *Facts relating to the conversion amendment.* On January 1, 2010, Plan E is amended to eliminate future accruals under the highest average compensation benefit formula and to base future benefit accruals on a hypothetical account balance. For service on or after January 1, 2010, each participant's hypothetical account balance is credited monthly with a pay credit equal to a specified percentage of the participant's compensation during the month and also with interest based on the third segment rate described in section 430(h)(2)(C)(iii). With respect to benefits under the hypothetical account balance attributable to service on and after January 1, 2010, a participant is permitted to elect (with spousal consent) payment in the same generalized optional forms of benefit (even though different actuarial factors apply) as under the terms of the plan in effect before January 1, 2010, and also as a single sum distribution. The plan provides for the benefits attributable to service before January 1, 2010, to be determined under the terms of the plan as in effect immediately before the effective date of the amendment, and the benefits attributable to service on and after January 1, 2010 to be determined separately, under the terms of the plan as in effect after the effective date of the amendment, with neither benefit offsetting the other in any manner. Thus, each participant's benefits are equal to the sum of the benefits attributable to service before January 1, 2010 (to be determined under the terms of the plan as in effect immediately before the effective date of the amendment), plus the benefits attributable to the participant's hypothetical account balance.

(iii) *Facts relating to an affected participant.* Participant A is age 62 on January 1, 2010 and, on December 31, 2009, A's benefit for years of service before January 1, 2010, payable as a straight life annuity commencing at A's normal retirement age (age 65) which is January 1, 2013, is $1,000 per month. Participant A has a severance from employment on January 1, 2013, and, on January 1, 2013, the hypothetical account balance, with pay credits and interest from January 1, 2010, to January 1, 2013, has become $11,000. Using the conversion factors under the plan as amended on January 1, 2013, that balance is equivalent to a straight life annuity of $100 per month commencing on January 1, 2013. This benefit is in addition to the benefit attributable to service before January 1, 2010. Participant A elects (with spousal consent) a straight life annuity of $1,100 per month commencing January 1, 2013.

(iv) *Conclusion.* Participant A's benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section because Participant A's benefit is not less than the sum of Participant A's section 411(d)(6) protected benefit (as defined in § 1.411(d)–3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment, and Participant A's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the amendment.

Example 2. (i) *Facts involving plan's establishment of opening hypothetical account balance and payment of pre-conversion accumulated benefit in life annuity at normal retirement age.* The facts in this *Example 2* are the same as the facts under paragraph (i) of *Example 1.*

(ii) *Facts relating to the conversion amendment.* On January 1, 2010, Plan E is amended to eliminate future accruals under the highest average compensation benefit formula and to base future benefit accruals on a hypothetical account balance. An opening hypothetical account balance is established for each participant, and, under the plan's terms, that balance is equal to the present value of the participant's accumulated benefit on December 31, 2009 (payable as a straight life annuity at normal retirement age or immediately, if later), using the applicable interest rate and applicable mortality table under section 417(e)(3) on January 1, 2010. Under Plan E, the account based on this opening hypothetical account balance is maintained as a separate account from the account for accruals on or after January 1, 2010. The hypothetical account balance maintained for each participant for accruals on or after January 1, 2010, is credited monthly with a pay credit equal to a specified percentage of the participant's compensation during the month. A participant's hypothetical account balance (including both of the separate accounts) is credited monthly with interest based on the third segment rate described in section 430(h)(2)(C)(iii).

(iii) *Facts relating to optional forms of benefit.* Following severance from employment and attainment of age 55, a participant is permitted to elect (with spousal consent) payment in the same generalized optional forms of benefit as under the plan in effect prior to January 1, 2010, with the amount payable calculated based on the hypothetical account balance on the annuity starting date and the applicable interest rate and applicable mortality table on the annuity starting date. The single sum distribution is equal to the hypothetical account balance.

(iv) *Facts relating to conversion protection.* The plan provides that, as of a participant's annuity starting date, the plan will determine whether the benefit attributable to the opening hypothetical account payable in the particular optional form of benefit selected is greater than or equal to the benefit accrued under the plan through the date of conversion and payable in the same generalized optional form of benefit with the same annuity starting date. If the benefit attributable to the opening hypothetical account balance is greater, the plan provides that such benefit is paid in lieu of the pre-conversion benefit, together with the benefit attributable to post-conversion contribution credits. If the benefit attributable to the opening hypothetical account balance is less, the plan provides that such benefit is increased sufficiently to provide the pre-conversion benefit, together with the benefit attributable to post-conversion contribution credits.

(v) *Facts relating to an affected participant.* On January 1, 2010, the opening hypothetical account balance established for Participant A is $80,000, which is the present value of Participant A's straight life annuity of $1,000 per month commencing at January 1, 2013, using the applicable interest rate and applicable mortality table under section 417(e)(3) in effect on January 1, 2010. On January 1, 2010, the applicable interest rate for Participant A is equivalent to a level rate of 5.5 percent. Thereafter, Participant's A's hypothetical account balance for subsequent accruals is credited monthly with a pay credit equal to a specified percentage of the participant's compensation during the month. In addition, Participant A's hypothetical account balance (including both of the separate accounts) is credited monthly with interest based on the third segment rate described in section 430(h)(2)(C)(iii).

(vi) *Facts relating to calculation of the participant's benefit.* Participant A has a severance from employment on January 1, 2013 at age 65, and elects (with spousal consent) a straight life annuity commencing January 1, 2013. On January 1, 2013, the opening hypothetical account balance, with interest credits from January 1, 2010, to January 1, 2013, has become $95,000, which, using the conversion factors under the plan on January 1, 2013, is equivalent to a straight life annuity of $1,005 per month commencing on January 1, 2013 (which is greater than the $1,000 a month payable at age 65 under the terms of the plan in effect before January 1, 2010). This benefit is in addition to the benefit determined using the hypothetical account balance for service after January 1, 2010.

(vii) *Conclusion.* The benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant A because A's benefit is not less than the sum of (A) the greater of Participant A's benefits attributable to the opening hypothetical account balance and A's section 411(d)(6) protected benefit (as defined in § 1.411(d)–3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment, and (B) Participant A's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the amendment.

Example 3. (i) *Facts involving a subsequent decrease in interest rates.* The facts are the same as in *Example 2*, except that, because of a decrease in bond rates after January 1, 2010, and before January 1, 2013, the rate of interest credited in that period averages less than 5.5 percent, and, on January 1, 2013, the effective applicable interest rate under section 417(e)(3) under the plan's terms is 4.7 percent. As a result, Participant A's opening hypothetical account balance plus attributable interest credits has increased to only $87,000 on January 1, 2013, and, using the conversion factors under the plan on January 1, 2013, is equivalent to a straight life annuity commencing on January 1, 2013, of $775 per month. Under the terms of Plan E, the benefit attributable to A's opening account balance is increased so that A's straight life annuity commencing on January 1, 2013, is $1,000 per month. This benefit is in addition to the benefit attributable to the hypothetical account balance for service after January 1, 2010.

(ii) *Conclusion.* The benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant A because A's benefit is not less than the sum of (A) the greater of A's benefits attributable to the opening hypothetical account balance and A's section 411(d)(6) protected benefit (as defined in § 1.411(d)–3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment, and (B) A's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the amendment.

Example 4. (i) *Facts involving payment of a subsidized early retirement benefit.* The facts are the same as in *Example 2*, except that under the terms of Plan E on December 31, 2009, a participant who retires before age 65 and after age 55 with 30 years of service has only a 3 percent per year actuarial reduction. Participant A has a severance from employment on January 1, 2011, when A is age 63 and has 30 years of service. On January 1, 2011, A's opening hypothetical account balance, with interest from January 1, 2010, to January 1, 2011, has become $86,000, which, using the conversion factors under the plan (as amended) on January 1, 2011, is equivalent to a straight life annuity commencing on January 1, 2011, of $850 per month.

(ii) *Facts relating to calculation of the participant's benefit.* Under the terms of Plan E on December 31, 2009, Participant A is entitled to a straight life annuity commencing on January 1, 2011, equal to at least $940 per month ($1,000 reduced by 3 percent for each of the 2 years that A's benefits commence before normal retirement age). Under the terms of Plan E, the benefit attributable to A's opening account balance is increased so that A is entitled to a straight life annuity of $940 per month commencing on January 1, 2013. This benefit is in addition to the benefit determined using the hypothetical account balance for service after January 1, 2010.

(iii) *Conclusion.* The benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant A because A's benefit is not less than the sum of (A) the greater of Participant A's benefits attributable to the opening hypothetical account balance (increased by attributable interest credits) and A's section 411(d)(6) protected benefit (as defined in § 1.411(d)–3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment, and (B) Participant A's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the amendment.

Example 5. (i) *Facts involving addition of a single sum payment option.* The facts are the same as in *Example 2*, except that, before January 1, 2010, Plan E did not offer payment in a single sum distribution for amounts in excess of $5,000. Plan E, as amended on January 1, 2010, offers payment in any of the available annuity distribution forms commencing at any time following severance from employment as were provided under Plan E before January 1, 2010. In addition, Plan E, as amended on January 1, 2010, offers payment in the form of a single sum attributable to service before January 1, 2010, which is the greater of the opening hypothetical account balance (increased by attributable interest credits) or a single sum distribution of the straight life annuity payable at age 65 using the same actuarial factors as are used for mandatory cashouts for amounts equal to $5,000 or less under the terms of the plan on December 31, 2009. Participant B is age 40 on January 1, 2010, and B's opening hypothetical account balance (increased by attributable interest credits) is $33,000 (which is the present value, using the conversion factors under the plan (as amended) on January 1, 2010, of Participant B's straight life annuity of $1,000 per month commencing at January 1, 2035, which is when B will be age 65). Participant B has a severance from employment on January 1, 2013, and elects (with spousal consent) an immediate single sum distribution. Participant B's opening hypothetical account balance (increased by attributable interest) on January 1, 2013, is $45,000. The present value, on January 1, 2013, of Participant B's benefit of $1,000 per month, commencing immediately using the actuarial factors for mandatory cashouts under the terms of the plan on December 31, 2009, would result in a single sum payment of $44,750. Participant B is paid a single sum distribution equal to the sum of $45,000 plus an amount equal to B's January 1, 2013, hypothetical account balance for benefit accruals for service after January 1, 2010.

(ii) *Conclusion.* Because, under Plan E, Participant B is entitled to the sum of (A) The greater of the $45,000 opening hypothetical account balance (increased by attributable interest credits) and $44,750 (present value of the benefit with respect to service prior to January 1, 2010, using the actuarial factors for mandatory cashout distributions under the terms of the plan on December 31, 2009), plus (B) An amount equal to B's hypothetical account balance for benefit accruals for service after January 1, 2010, the benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant B. If Participant B's hypothetical account balance under Plan E was instead less than $44,750 on January 1, 2013, Participant B would be entitled to a single sum payment equal to the sum of $44,750 and an amount equal to B's hypothetical account balance for benefit accruals for service after January 1, 2010.

Example 6. (i) *Facts involving addition of new annuity optional form of benefit.* The facts are the same as in *Example 2*, except that, after December 31, 2009, and before January 1, 2013, Plan E is amended to offer payment in a 5-, 10-, or 15-year term certain and life annuity, using the same actuarial assumptions that apply for other optional forms of distribution. When Participant A has a severance from employment on January 1, 2013, A elects (with spousal consent) a 5-year term certain and life annuity commencing immediately equal to $935 per month. Application of the same actuarial assumptions to Participant A's benefit of $1,000 per month (under Plan E as in effect on December 31, 2009), commencing immediately on January 1, 2013, would result in a 5-year term certain and life annuity commencing immediately equal to $955 per month. Under the terms of Plan E, the benefit attributable to A's opening account balance is increased so that, using the conversion factors under the plan (as amended) on January 1, 2013, A's opening hypothetical account balance (increased by attributable interest credits) produces a 5-year term certain and life annuity commencing immediately equal to $955 per month commencing on January 1, 2013. This benefit is in addition to the benefit determined using the January 1, 2013, hypothetical account balance for service after January 1, 2010.

(ii) *Conclusion.* This benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant A.

Example 7. (i) *Facts involving addition of distribution option before age 55.* The facts are the same as in *Example 5*, except that Participant B (age 43) elects (with spousal consent) a straight life annuity. Under Plan E, the straight life annuity attributable to Participant B's opening hypothetical account balance at age 43 is $221 per month. Application of the same actuarial assumptions to Participant B's benefit of $1,000 per month (under Plan E as in effect on December 31, 2009), commencing immediately on January 1, 2013, would result in a straight life annuity at age 43 equal to $219 per month.

(ii) *Conclusion.* Because, under its terms, Plan E provides that Participant B is entitled to an amount not less than the present value (using the same actuarial assumptions as apply on January 1, 2013, in converting the $45,000 hypothetical account balance attributable to the opening hypothetical account balance to the $221 straight life annuity) of Participant B's straight life annuity of $1,000 per month commencing at January 1, 2035, and the $221 straight life annuity is in addition to the benefit accruals for service after January 1, 2010, payment of

the $221 monthly annuity would satisfy the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant B.

(d) *Market rate of return*—(1) *In general*—(i) *Basic test.* Subject to paragraph (d)(3) of this section, a statutory hybrid plan satisfies the requirements of section 411(b)(1)(H) and this paragraph (d) only if, for any plan year, the interest crediting rate under the terms of the plan is no greater than a market rate of return.

(ii) *Definition of interest crediting rate and interest credit.* For purposes of this paragraph (d), a plan's interest crediting rate means the rate by which a participant's benefit is increased under the ongoing terms of the plan to the extent the amount of the increase is not conditioned on current service, regardless of how the amount of that increase is calculated. The amount of such an increase is an interest credit. Thus, whether the amount is an interest credit for this purpose is determined without regard to whether the amount is calculated by reference to a rate of interest, a rate of return, an index, or otherwise.

(iii) *Single rates.* Except as is otherwise provided in this paragraph (d)(1), an interest crediting rate is not in excess of a market rate of return only if the plan provides an interest credit for the year at a rate that is equal to one of the following rates that is specified in the terms of the plan:

(A) The interest rate on long-term investment grade corporate bonds (as described in paragraph (d)(4) of this section);

(B) An interest rate that is deemed to be not in excess of a market rate of return under paragraph (d)(5) of this section; or

(C) An interest rate that is described in paragraph (d)(6) of this section.

(iv) *Timing rules*—(A) *In general.* A plan must specify the timing for determining the plan's interest crediting rate that will apply for each plan year (or portion of a plan year) using either of the methods described in paragraph (d)(1)(iv)(B) of this section and must specify the frequency of interest crediting under the plan pursuant to paragraph (d)(1)(iv)(C) of this section.

(B) *Methods to determine interest crediting rate.* A plan is permitted to provide daily interest credits using a daily interest crediting rate based on the permitted rates specified in paragraph (d)(1)(iii) of this section. Alternatively, a plan is permitted to provide an interest credit for a stability period that is based on the interest crediting rate for a specified lookback month with respect to that stability period. The stability period and lookback month must satisfy the rules for selecting the stability period and lookback month under § 1.417(e)–1(d)(4). (However, the interest rates can be any of the rates in paragraph (d)(1)(iii) of this section and the stability period and lookback month need not be the same as those used under the plan for purposes of section 417(e)(3).)

(C) *Frequency of interest crediting.* Interest credits under a plan must be made on an annual or more frequent periodic basis. If a plan provides for the crediting of interest more frequently than annually (for example, monthly or quarterly), then the interest credit for that period must be a pro rata portion of the annual interest credit. Thus, for example, if a plan's terms provide for interest to be credited monthly and for the interest crediting rate to be equal to the interest rate on long-term investment grade corporate bonds (as described in paragraph (d)(4) of this section), and that interest rate for a plan year is 6 percent, the accumulated benefits at the beginning of each month would be increased by 0.5 percent per month during the plan year. Interest credits under the terms of a plan are not treated as creating an effective rate of return that is in excess of a market rate of return merely because an otherwise permissible interest crediting rate is compounded more frequently than annually.

(v) *Lesser rates.* An interest crediting rate is not in excess of a market rate of return if the plan provides an interest crediting rate that, under all circumstances, is always less than one of the rates described in paragraph (d)(1)(iii) of this section.

(vi) *Greater-of rates.* If a statutory hybrid plan provides for an interest credit that is equal to the interest credits determined under the greater of 2 or more different interest crediting rates, the effective interest crediting rate is not in excess of a market rate of return only if each of the different rates satisfies the requirements of paragraph (d)(1)(ii) of this section and the additional requirements of paragraph (d)(7) of this section are satisfied.

(2) *Preservation of capital requirement*—(i) *In general.* A statutory hybrid plan is treated as failing to meet the requirements of section 411(b)(1)(H) if the requirements of paragraph (d)(2)(ii) of this section are not satisfied.

(ii) *Preservation of capital defined*—(A) *In general.* The requirements of this paragraph (d)(2)(ii) are satisfied if the plan provides that, as of the participant's annuity starting date, the participant's benefit under the plan is no less than the benefit determined as of that date based on the sum of the hypothetical contributions credited under the plan (or the accumulated percentage of the participant's final average compensation, or the participant's accrued benefits determined without regard to any indexing under section 411(b)(5)(E), as applicable).

(B) *Hypothetical contributions defined.* For purposes of this paragraph (d)(2)(ii), a hypothetical contribution is any amount credited under a statutory hybrid plan other than an interest credit (as defined in paragraph (d)(1)(ii) of this section). Thus, if an opening hypothetical account balance or opening accumulated percentage of the participant's final average compensation is established pursuant to paragraph (c)(3) of this section, that opening hypothetical account balance or opening accumulated percentage as of the date established is treated as a hypothetical contribution and, thus, is taken into account for purposes of the preservation of capital requirement of this paragraph (d)(2)(ii).

(3) *Plan termination*—(i) *In general.* Except as provided in paragraph (d)(3)(ii) of this section, a statutory hybrid plan is treated as meeting the requirements of paragraph (d)(1) of this section only if the terms of the plan provide that, upon termination of the plan, a participant's benefit as of the termination is determined using the interest rate and mortality table otherwise applicable for determining that benefit under the plan (without regard to termination of the plan).

(ii) *Variable interest rates.* A statutory hybrid plan is treated as meeting the requirements of paragraph (d)(1) of this section only if the terms of the plan provide that, upon termination of the plan, any interest rate used to determine a participant's benefits under the plan (including any interest crediting rate and any interest rate used to determine annuity benefits) that is a variable rate is determined as the average of the rates of interest used under the plan for that purpose during the 5-year period ending on the termination date.

(4) *Long-term investment grade corporate bonds.* For purposes of this paragraph (d), the rate of interest on long-term investment grade corporate bonds means the third segment rate described in section 430(h)(2)(C)(iii) (determined with or without regard to the transition rules of section 430(h)(2)(G)), provided that such rate floats on a periodic basis not less frequently than annually. However, for plan years beginning prior to January 1, 2008, the rate of interest on long-term investment grade corporate bonds means the rate described in section

412(b)(5)(B)(ii)(II) prior to amendment by the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (PPA '06).

(5) *Safe harbor rates of interest*—(i) *Rates based on Treasury bonds with margins.* An interest crediting rate is deemed to be not in excess of a market rate of return if the rate is adjusted at least annually and is equal to the sum of any of the following rates of interest for Treasury bonds and the associated margin for that interest rate:

Treasury bond interest rates	Associated margin
The discount rate on 3-month Treasury Bills.	175 basis points.
The discount rate on 12-month or shorter Treasury Bills.	150 basis points.
The yield on 1-year Treasury Constant Maturities.	100 basis points.
The yield on 3-year or shorter Treasury bonds.	50 basis points.
The yield on 7-year or shorter Treasury bonds.	25 basis points.
The yield on 30-year or shorter Treasury bonds.	0 basis points.

(ii) *Eligible cost-of-living indices.* An interest crediting rate is deemed to be not in excess of a market rate of return if the rate is adjusted no less frequently than annually and is equal to the rate of increase with respect to an eligible cost-of-living index described in § 1.401(a)(9)–6, A–14(b), except that for purposes of this paragraph (d)(5)(ii), the eligible cost-of-living index described in § 1.401(a)(9)–6, A–14(b)(2), is increased by 300 basis points.

(iii) *Additional safe harbors.* The Commissioner may, in guidance of general applicability, specify additional interest crediting rates that are deemed to be not in excess of a market rate of return. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(6) *Other interest rates*—(i) *Reasonable minimum guaranteed rate of return.* [Reserved]

(ii) *Equity-based rates.* [Reserved]

(7) *Combinations of rates of return*—(i) *In general.* If a plan provides an interest crediting rate that is equal to the interest credits determined under the greater of 2 or more different interest crediting rates where each of the different rates satisfies the requirements of paragraph (d)(1)(iii) of this section, then the interest credits provided by the plan satisfy this paragraph (d)(7) only if one or more of the different interest crediting rates under the plan are adjusted as provided in paragraphs (d)(7)(iii) or (d)(7)(iv) of this section in order to provide that the effective interest crediting rate resulting from the use of the greater of 2 or more rates does not exceed a market rate of return. This paragraph (d)(7) provides the exclusive rules that may be used for this purpose and, therefore, a plan does not satisfy the requirements of this paragraph (d) if the plan provides for interest credits determined using the greater of 2 or more interest crediting rates and that combination of interest crediting rates is not specifically permitted by this paragraph (d)(7).

(ii) *Coordination with preservation of capital rule.* No adjustment under this paragraph (d)(7) is required merely because the plan satisfies the requirements of paragraph (d)(2) of this section.

(iii) *Combination of fixed and variable interest rates.* [Reserved]

(iv) *Other combinations.* [Reserved]

(8) *Section 411(d)(6)*—(i) *General rule.* Except as provided in this paragraph (d)(8), to the extent that benefits have accrued under the terms of a statutory hybrid plan that entitle the participant to future interest credits, an amendment to the plan to change the interest crediting rate for such interest credits violates section 411(d)(6) if the revised rate under any circumstances could result in a lower interest crediting rate as of any date after the applicable amendment date of the amendment (within the meaning of § 1.411(d)–3(g)(4)) changing the interest crediting rate. For additional rules, see § 1.411(d)–3(a)(1).

(ii) *Adoption of long-term investment grade corporate bond rate or safe harbor rate.* An amendment to a statutory hybrid plan to change the interest crediting rate for future periods from an interest crediting rate described in paragraph (d)(5) of this section to the interest crediting rate described in paragraph (d)(4) of this section does not constitute a decrease of an accrued benefit and, therefore, does not violate section 411(d)(6). However, an amendment described in this paragraph (d)(8)(ii) cannot be effective less than 30 days after adoption and, on the effective date of the amendment, the new interest crediting rate cannot be less than the interest crediting rate that would have applied in the absence of the amendment.

(iii) *Other changes not treated as prohibited reduction of accrued benefit.* [Reserved].

(e) *Definitions*—(1) *In general.* The definitions in this paragraph (e) apply for purposes of this section.

(2) *Accumulated benefit.* A participant's accumulated benefit at any date means the participant's benefit, as expressed under the terms of the plan, accrued to that date. For this purpose, the accumulated benefit of a participant may be expressed under the terms of the plan as either the balance of a hypothetical account or the current value of an accumulated percentage of the participant's final average compensation, even if the plan defines the participant's accrued benefit as an annuity beginning at normal retirement age that is actuarially equivalent to that balance or value.

(3) *Lump sum-based benefit formula*—(i) *In general.* A lump sum-based benefit formula means a benefit formula used to determine all or any part of a participant's accumulated benefit under a defined benefit plan under which the benefit provided under the formula is expressed as the balance of a hypothetical account maintained for the participant or as the current value of the accumulated percentage of the participant's final average compensation. Whether a benefit formula is a lump sum-based benefit formula is determined based on how the accumulated benefit of a participant is expressed under the terms of the plan, and does not depend on whether the plan provides an optional form of benefit in the form of a single sum payment.

(ii) *Exception for contributory plans.* A participant is not treated as having a lump sum-based benefit formula merely because the participant is entitled to a benefit under a defined benefit plan that is equal to the greater of the otherwise applicable benefit formula and the benefit properly attributable to after-tax employee contributions.

(4) *Statutory hybrid benefit formula.* A statutory hybrid benefit formula means a statutory hybrid benefit formula as defined in § 1.411(a)(13)–1(d)(3).

(5) *Statutory hybrid plan.* A statutory hybrid plan means a defined benefit plan that contains a statutory hybrid benefit formula.

(6) *Variable annuity benefit formula.* A variable annuity benefit formula means a variable annuity benefit formula as defined in § 1.411(a)(13)–1(d)(4).

(f) *Effective/applicability date*—(1) *Statutory effective/applicability dates*—(i) *In general.* Except as provided in paragraph (f)(1)(iii) of this section, section 411(b)(5) applies for periods beginning on or after June 29, 2005.

(ii) *Conversion amendments.* The requirements of section 411(b)(5)(B)(ii), (iii), and (iv) apply to a conversion amendment (as defined in paragraph (c)(4) of this section) that is adopted after, and takes effect after, June 29, 2005.

(iii) *Market rate of return*—(A) *Plans in existence on June 29, 2005*—(1) *In general.* In the case of a plan that is in existence on June 29, 2005 (regardless of whether the plan is a statutory hybrid plan on that date), section 411(b)(5)(B)(i) only applies to plan years beginning on or after January 1, 2008.

(*2*) *Exception for plan sponsor election.* Notwithstanding paragraph (f)(1)(iii)(A)(*1*) of this section, a plan sponsor of a plan that is in existence on June 29, 2005 (regardless of whether the plan is a statutory hybrid plan on that date) may elect to have the requirements of section 411(a)(13)(B) and section 411(b)(5)(B)(i) apply for any period after June 29, 2005, and before the first plan year beginning after December 31, 2007. In accordance with section 1107 of the PPA '06, an employer is permitted to adopt an amendment to make this election as late as the last day of the first plan year that begins on or after January 1, 2009 (January 1, 2011, in the case of a governmental plan as defined in section 414(d)) if the plan operates in accordance with the election.

(B) *Plans not in existence on June 29, 2005.* In the case of a plan not in existence on June 29, 2005, section 411(b)(5)(B)(i) applies to the plan on and after the later of June 29, 2005, and the date the plan becomes a statutory hybrid plan.

(2) *Effective/applicability date of regulations.* This section applies for plan years beginning on or after January 1, 2009 (or, if later, the date applicable under paragraph (f)(3) of this section). For the periods after the statutory effective date set forth in paragraph (f)(1) or (f)(3) of this section and before the regulatory effective date set forth in the preceding sentence, a plan must comply with section 411(b)(5). During these periods, a plan is permitted to rely on the provisions of this section for purposes of satisfying the requirements of section 411(b)(5).

(3) *Collectively bargained plans*—(i) *In general.* Notwithstanding paragraph (f)(1)(iii) of this section, in the case of a collectively bargained plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006, the requirements of section 411(b)(5)(B)(i) do not apply to plan years beginning before the earlier of—

(A) The later of—

(*1*) The date on which the last of those collective bargaining agreements terminates (determined without regard to any extension thereof on or after August 17, 2006), or

(*2*) January 1, 2008; or

(B) January 1, 2010.

(ii) *Treatment of plans with both collectively bargained and non-collectively bargained employees.* In the case of a plan where a collective bargaining agreement applies to some, but not all, of the plan participants, the plan is considered a collectively bargained plan for purposes of paragraph (f)(3)(i) of this section if at least 25 percent of the participants in the plan are members of collective bargaining units for which the benefit levels under the plan are specified under the collective bargaining agreement.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–25025 Filed 12–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

Public Meeting to Receive Comments on the Proposed Rule for the Management of Roadless Areas in the State of Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: There will be a public meeting in Washington, DC to discuss the proposed rule for the management of roadless areas on National Forest System lands in the State of Idaho.

DATES: The meeting will be held January 14, 2008, from 5 p.m. to 10 p.m.

ADDRESSES: The meeting will be held at the United States Department of Agriculture, South Building, Jefferson Auditorium, 1400 Independence Avenue, SW., Washington, DC. Comments on the proposed rule may be sent via e-mail to *IDcomments@fsroadless.org.* Comments also may be submitted via the world wide web/Internet at *http://www.regulations.gov.* Written comments concerning this notice should be addressed to Roadless Area Conservation-Idaho, P.O. Box 162909, Sacramento, CA 95816–2909, or via facsimile to 916–456–6724. All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at *http://roadless.fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Brad Gilbert, Idaho Roadless Rule Team Leader, at (208) 765–7438.

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

SUPPLEMENTARY INFORMATION: Attendees wishing to comment orally will be allotted three minutes to speak on a first come, first served basis. Meeting attendees will need to pass through USDA security in order to enter the building. To ensure arriving to the meeting on time, attendees are encouraged to arrive at the USDA South Building before 5 p.m. You will need photo identification to enter the building.

Attendees are encouraged to provide their names to security prior to the meeting in order to gain quicker access to the building. Attendees can submit their names to a comment line by calling 202–205–1776. In the message you should identify yourself as wanting to attend the public meeting on the Idaho rule, and then both say and spell your name. Names should be submitted by close of business on January 10, 2008. Any bags that attendees bring will have to go through screening; you are therefore encouraged not to bring bags in order to speed up the screening process.

A copy of the proposed rule, draft environmental impact statement (DEIS), the DEIS summary, dates for public meetings in Idaho, and other information related to this rulemaking will be available at the national roadless Web site *http://www.roadless.fs.fed.us* as well as by calling Brad Gilbert, Idaho Roadless Rule Team Leader, at (208) 765–7438. Reviewers may request printed copies or compact disks of the DEIS and the summary by writing to the Rocky Mountain Research Station, Publication and Distribution, 240 West Prospect Road, Fort Collins, CO 80526–2098. Fax orders will be accepted at 970–498–1122. Order by e-mail from *rschneider@fs.fed.us.* When ordering, requesters must specify if they wish to receive the summary or full set of documents and if the material should be provided in print or on disk.

Dated: December 20, 2007.

Anne J. Zimmerman,

Acting Associate Deputy Chief, NFS.

[FR Doc. E7–25135 Filed 12–27–07; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[EPA–HQ–SFUND–2007–0469; FRL–8511–4]

RIN 2050–AG37

CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking provides notice of, and requests comments, including any relevant data, on a proposed administrative reporting exemption from particular notification requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Emergency Planning and Community Right-to-Know Act, also known as Title III of the Superfund Amendments and Reauthorization Act. Specifically, the proposed administrative reporting exemption applies to releases of hazardous substances to the air where the source of those hazardous substances is animal waste at farms. Nothing in this proposed rule, however, would change the notification requirements if hazardous substances are released to the air from any other source other than animal waste at farms (*i.e.*, ammonia tanks), as well as releases of any hazardous substances from animal waste to any other environmental media, (*i.e.*, soil, ground water, surface water) when the release of those hazardous substances is at or above its reportable quantity per 24 hours. This administrative reporting exemption is protective of human health and the environment and consistent with the Agency's goal to reduce reporting burden where there would likely be no Federal, state or local emergency response to such release reports. Eliminating such reporting will allow emergency response officials to better focus on releases where the Agency is more likely to take a response action. Finally, in proposing this administrative reporting exemption from the notification requirements under the Comprehensive Environmental Response, Compensation, and Liability Act, section 103(a) and the Emergency Planning and Community Right to Know Act, section 304, EPA is not proposing to limit any of its authorities under CERCLA sections 104 (response authorities), 106 (abatement actions), 107 (liability), or any other provisions of the Comprehensive Emergency Response, Compensation, and Liability Act or the Emergency Planning and Community Right to Know Act in this rulemaking.

DATES: Comments must be received on or before March 27, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2007–0469, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov.*
- *Fax*: (202) 566–9744.
- *Mail*: Superfund Docket, Environmental Protection Agency, Mail code: [2822T], 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery*: EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2007–0469. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Unit I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Lynn M. Beasley, Regulation and Policy Development Division, Office of Emergency Management (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1965; fax number: (202) 564–2625; e-mail address: *Beasley.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211 (Energy Effects)
I. National Technology Transfer and Advancement Act of 1995 ("NTTAA")
J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

I. General Information

A. Does This Action Apply to Me?

Type of entity	Examples of affected entities
Industry	NAICS Code 111—Crop Production. NAICS Code 112—Animal Production.
State and/or Local Governments.	State Emergency Response Commissions, and Local Emergency Planning Committees.
Federal Government.	National Response Center.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the criteria in section III.A of this proposed rule and the applicability criteria in §§ 302.6 and 355.40 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

In an effort to implement the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA) more efficiently, EPA is proposing to establish an administrative reporting exemption from the notification requirements of CERCLA and EPCRA for releases of hazardous substances, such as ammonia and hydrogen sulfide, to the air where the source of the release is animal waste at farms. The Agency believes that a federal response to such notifications is impractical and unlikely. In addition, nothing in this proposal would limit EPA's authority to take action under its various authorities under CERCLA sections 104 (response authorities), 106 (abatement actions), 107 (liability), or any of provisions of CERCLA or EPCRA (other than ECPCRA section 304) through this rulemaking.

Therefore, when submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

C. What Is the Statutory Authority for This Rulemaking?

Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, gives the Federal government broad authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA primarily by reference to other Federal environmental statutes. Section 102 of CERCLA gives the Environmental Protection Agency (EPA) authority to designate additional hazardous substances. Currently there are approximately 760 CERCLA hazardous substances, exclusive of Radionuclides, F-, K-, and Unlisted Characteristic Hazardous Wastes.

CERCLA Section 103(a) calls for immediate notification to the National Response Center (NRC) when the person in charge of a facility has knowledge of a release of a hazardous substance equal to or greater than the reportable quantity (RQ) established by EPA for that substance. In addition to the notification requirements established pursuant to CERCLA section 103, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*, requires the owner or operator of certain facilities to immediately report to State and local authorities releases of CERCLA hazardous substances or any extremely hazardous substances (EHSs) if they exceed their RQ (see 40 CFR 355.40). This proposed rule only applies to CERCLA section 103 notification requirements, including the provisions that allow for continuous release reporting found in paragraph (f)(2) of CERCLA section 103, and EPCRA section 304 notification requirements.

The Agency has previously granted such administrative reporting exemptions (AREs) where the Agency has determined that a federal response to such a release is impracticable or unlikely. For example, on March 19, 1998, the Agency issued a final rule (see 63 FR 13459) that granted exemptions for releases of naturally occurring radionuclides. The rule entitled, Administrative Reporting Exemptions for Certain Radionuclide Releases ("Radionuclide ARE"), granted exemptions for releases of hazardous substances that pose little or no risk or to which a Federal response is infeasible or inappropriate (see 63 FR 13461).

The Agency relies on CERCLA sections 102(a), 103, and 115 (the general rulemaking authority under CERCLA) as authority to issue regulations governing section 103 notification requirements. The Agency relies on EPCRA section 304 as authority to issue regulations governing EPCRA section 304 notification requirements, and EPCRA section 328 for general rulemaking authority.

D. Which Hazardous Substances Are We Proposing to Exempt From the Notification Requirements of CERCLA and EPCRA?

EPA proposes to exempt certain releases of hazardous substances to the air from the notification requirements of CERCLA and EPCRA, as implemented in 40 CFR 302.6 and 40 CFR 355.40, respectively. Specifically, we are proposing to exempt those hazardous substance releases which are emitted to the air (typically during digestion, break-down or decomposition) from animal waste at farms. Although ammonia and hydrogen sulfide are the most recognized hazardous substances that are emitted from animal waste, there may also be some amounts of additional hazardous substances released.

Ammonia is a by-product of the break-down of urea and proteins that are

contained in animal waste. Hydrogen sulfide is another by-product of the break-down of animal waste. These hazardous substances can be emitted when animal waste is contained in a lagoon or stored in under-floor manure pits in some animal housing, manure stockpiles, or in the open where animals congregate. Open air or dry manure stockpiles are not generally associated with significant hydrogen sulfide emissions.

Additional hazardous substances may be emitted to the air from animal waste.[1] These hazardous substances would typically be subject to the notification requirements of CERCLA section 103 and EPCRA section 304 once their RQ is met or exceeded. However, this proposed rule will extend the administrative reporting exemption to all hazardous substances emitted to the air from animal waste at farms.

II. Background

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released into the environment in a quantity that equals or exceeds its RQ must immediately notify the NRC of the release. A release is reportable if an RQ or more is released into the environment within a 24-hour period (see 40 CFR 302.6). This reporting requirement serves as a trigger for informing the Federal government of a release so that Federal personnel can evaluate the need for a response in accordance with the National Contingency Plan (NCP) and undertake any necessary response action in a timely fashion.

The NRC is located at the United States Coast Guard (USCG) headquarters and is the national communications center for the receipt of all pollution incidents reporting. The NRC is continuously manned for processing activities related to receipt of the notifications. NCP regulations, 40 CFR 300.125, require that notifications of discharges and releases be made telephonically and state that the NRC will immediately relay telephone notices of discharges (*i.e.*, oil) or releases (*i.e.*, hazardous substances) to the appropriate predesignated federal on-scene coordinator (OSC). The NRC receives an average of approximately 34,000[2] notifications per year. Of those notifications, averages of approximately 33,700[3] discharge or release notifications are relayed to EPA.

Under EPCRA section 304(a), three release scenarios require notification.

- First, if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of CERCLA, the owner or operator of a facility shall immediately provide notice to the community emergency coordinator for the local emergency planning committees (LEPC) for any area likely to be affected by the release and to the State emergency planning commission (SERC) of any State likely to be affected by the release. (*EPCRA section 304(a)(1)*)
- EPCRA section 304(a) also requires the owner or operator of the facility to immediately provide notice under EPCRA section 304(b) for either of the following two scenarios:
  - If the release is an extremely hazardous substance, but not subject to the notifications under section 103(a) of CERCLA. (*EPCRA section 304(a)(2)*)
  - If the release is not an extremely hazardous substance and only subject to the notifications under section 103(a) of CERCLA. (*EPCRA section 304(a)(3)*)

EPCRA notification is to be given to the community emergency coordinator for each LEPC for any area likely to be affected by the release, and the SERC of any state likely to be affected by the release. Through this notification, state and local officials can assess whether a response action to the release is appropriate. EPCRA section 304 notification requirements apply only to releases that have the potential for off-site exposure and that are from facilities that produce, use, or store a "hazardous chemical," as defined by regulations promulgated under the Occupational Safety and Health Act of 1970 (OSHA) (29 CFR 1910.1200(c)) and by section 311 of EPCRA.

In establishing the RQs for the various hazardous substances, EPA adjusted the statutory RQs of CERCLA hazardous substances based on specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance in a reportable quantity. (See 50 FR 13456, April 4, 1985.) The adjusted RQs did not reflect the determination that a release of a substance will be hazardous at the RQ level and not hazardous below that level. EPA did not, at the time, make such a determination because the actual hazard will vary with the unique circumstances of the release. Instead, the RQs reflect the Agency's judgment of which releases should trigger notification to the federal government so that the government may assess to what extent, if any, a federal removal or remedial action may be necessary. (*See* 50 FR 13465.)

For the purposes of making RQ adjustments under CERCLA, EPA adopted the five RQ levels of 1, 10, 100, 1000, and 5000 pounds originally established pursuant to CWA section 311 (see 40 CFR part 117). The Agency adopted the five-level system primarily because: (1) It has been successfully used pursuant to the CWA, (2) the regulated community was familiar with these five levels, and (3) it provided a relatively high degree of discrimination among the potential hazards posed by different CERCLA hazardous substances.

The methodology used for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, and chronic toxicity.[4] In addition, substances that were identified as potential carcinogens were evaluated for their relative activity as potential carcinogens.

The Agency ranks each intrinsic physical, chemical, and toxicological property on a five-tier scale, associating a specific range of values on each scale with a particular RQ value. Thus, each substance receives several tentative RQ values based on its particular properties. For example, ammonia received a tentative RQ of 100 pounds based on its aquatic toxicity levels; however, for the intrinsic property, mammalian toxicity (inhalation), ammonia received a tentative RQ value of 1000 pounds. The lowest of all of the tentative RQs for

[1] *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*. National Research Council of the National Academies, The National Academies Press, Washington, DC (2003), p. 54. Additional hazardous substances may include nitrous oxide (NO) and volatile organic compounds (VOCs). The major constituents of VOC emissions could include organic sulfides, disulfides, C_4 to C_7 aldehydes, trimethylamines, C_4 amines, quinoline (RQ = 5000 pounds), dimethylpyrazine, and C_3 to C_6 organic acids, along with lesser amounts of aromatic compounds and C_4 to C_7 alcohols, ketones, and aliphatic hydrocarbons.

[2] Average number of notifications from years 2000–2006, National Response Center statistics available at, *http://www.nrc.uscg.mil/incident97-02.html*. See Superfund Docket EPA–HQ–SFUND–2007–0469 for a summary table.

[3] Average number of notifications made to EPA from years 2000–2006, National Response Center statistics available at, *http://www.nrc.uscg.mil/epa97-02.html*. The average was calculated from those notifications that went to the EPA Regions 1 through 10, including notifications to the EPA Regions for Continuous Releases. See Superfund Docket EPA–HQ–SFUND–2007–0469 for a summary table.

[4] Chronic toxicity was defined as toxicity resulting from repeated or continuous exposure to either a single release or multiple releases of a hazardous substance.

each hazardous substance becomes the "primary criteria RQ" for that substance. After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain extrinsic degradation processes. These "secondary criteria" are biodegradation, hydrolysis, and photolysis, or "BHP." If the hazardous substance degrades relatively rapidly to a less harmful compound through one or more of these processes when it is released into the environment, the primary criteria RQ is raised one level. The single RQ assigned to each hazardous substance on the basis of the primary criteria and BHP becomes the adjusted RQ for that substance.

The single RQ approach was adopted to provide a relatively simple reporting system that does not unduly burden either EPA or the regulated community. Since releases into more than one medium often occur, the single RQ approach prevents confusion. Section 102(a) of CERCLA expressly authorizes the Administrator to set a single quantity for each hazardous substance, and the legislative history emphasizes the virtues of simplicity and administrative convenience. (For a more detailed discussion of the methodology that was used to establish the RQs for hazardous substances, *see* 50 FR 13465, Apr. 4, 1985.)

Owners and operators of farms, like all other facilities, are required to report the release of hazardous substances into the environment [5] in accordance with CERCLA section 103 and EPCRA section 304 when it meets or exceeds the RQ of the hazardous substance. For example, releases into the environment of ammonia or any other hazardous substance, from tanks located on a farm, at or above an RQ are reportable under CERCLA section 103 and EPCRA section 304.

In 2005, EPA received a petition from the National Chicken Council, National Turkey Federation, and U.S. Poultry & Egg Association, seeking an exemption from CERCLA and EPCRA reporting requirements for ammonia emissions from poultry operations. The Agency published a notice in the **Federal Register** on December 27, 2005 (70 FR 76452) that acknowledged receipt of the petition and requested public comment. The comment period closed on March 27, 2006.

Also, in 2005, EPA offered the owners and operators of animal agricultural operations an opportunity to sign up for an air monitoring study. The purpose of the air monitoring study is to develop emissions estimating methodologies for all animal agricultural operations.[6] Over 2600 animal feeding operations, representing over 14,000 farms, signed up for the study. The monitoring study which began in the spring of 2007 includes 25 representative sites (lagoons or barns) on 21 different farms in 10 states (NC, NY, IA, WI, CA, KY, TX, WA, IN, and OK). The sites will be monitored for two years, allowing the Agency to account for emissions variability by season, and for the effect of any seasonal operational changes (such as pumping out lagoons), that could have an effect on emission levels. At the end of the monitoring study, EPA will use the data along with any other relevant, available data to develop emissions estimating methodologies. The monitoring study results will be publicly available upon completion of the study. In addition, EPA will publish the emissions estimating methodologies based on these results, within 18 months of the study's conclusion. Thus, such information will be widely available to the public.

III. Summary of This Action

A. What Is the Scope of This Proposed Rule?

The scope of this proposed rule is limited to releases of hazardous substances to the air from animal waste at farms. Specifically, the Agency is proposing an administrative reporting exemption from the CERCLA section 103 and EPCRA section 304 notification requirements as implemented in 40 CFR 302.6 and 302.8 and 40 CFR 355.40, respectively. The scope of this proposed rule is intended to include all hazardous substances that may be emitted to the air from animal waste at farms. (See Section I.D. for further discussion of which hazardous substances we are proposing to include within the administrative reporting exemption.)

B. Proposed Definitions

In proposing this rule, the Agency believes it is important to provide clarity with respect to the scope of the proposed reporting exemption. Therefore, the Agency is proposing definitions for *animal waste* and *farm* (to be added to the Code of Federal Regulations) that only pertains to regulations promulgated pursuant to CERCLA section 103 and EPCRA section 304, specifically 40 CFR 302.3 (definitions) and 40 CFR 355.20 (definitions).

Animal Waste—means manure (feces, urine, other excrement, and bedding, produced by livestock that has not been composted), digestive emissions, and urea. The definition includes animal waste when mixed or commingled with bedding, compost, feed, soil and other materials typically found with animal waste.

The Agency is not aware of any existing definition for animal waste and thus, seeks comment from the public on the appropriateness, clarity and completeness of this definition.

The Agency also is limiting the proposed reporting exemption to animal waste that is generated on farms, and is proposing a specific definition for *farm* under this proposal. For this proposed exemption only, EPA defines *farm*, by using the definition found in the National Agricultural Statistics Service (NASS) Census of Agriculture, and adopting it. Also, the Agency recognizes that Federal and state research farms utilizing farm animals are subject to the conditions experienced on other farms; therefore, EPA proposes to include Federal and state poultry, swine, dairy and livestock research farms.

Farm—means (a.) any place whose operation is agricultural and from which $1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year. Operations receiving $1,000 or more in Federal government payments are counted as farms, even if they have no sales and otherwise lack the potential to have $1,000 or more in sales; or, (b.) a Federal or state poultry, swine, dairy or livestock research farm.

EPA seeks comment on the proposed definition for a *farm*, and whether an alternative definition may be more appropriate. In addition, the Agency is aware that animal waste also is generated at other facilities, such as zoos and circuses. Because the focus of this proposal is on animal waste generated or found at farms, we are not proposing to expand the reporting

[5] Environment means, "(A) the navigable waters, the waters of the contiguous zone, and the ocean waters for which the natural resources are under the exclusive management authority of the United States * * *, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States." *See* CERCLA section 101(8).

[6] The National Academy of Sciences, Board on Agriculture and Natural Resources appointed a 16-person ad hoc committee, the Committee on Air Emissions from Animal Feeding Operations, to evaluate the scientific information needed to address issues raised by EPA regarding CAA regulation of air emissions from animal feeding operations (AFOs) and the U.S. Department of Agriculture aid to farmers in mitigating the effects of air emissions with modified agricultural practices. One of the findings of that Committee was, in part, direct measurements of air emissions at all AFOs are not feasible. Nevertheless, measurements on a statistically representative subset of AFOs are needed.

exemption beyond such facilities. However, the Agency requests comment on whether the reporting exemption should be expanded to other types of facilities that also generate animal waste, and if so, what other types of facilities should be included in the reporting exemption. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

C. What Is Not Included Within the Scope of This Proposed Rule?

As noted previously, this administrative reporting exemption is limited in scope to those releases of hazardous substances to the air from animal waste at farms. EPA is not proposing to exempt from CERCLA section 103 or EPCRA section 304 notification requirements for releases of hazardous substances from animal waste to any other environmental media or at any other facilities other than farms (i.e., meat processing plants, slaughter houses, tanneries). In addition, EPA is not proposing to exempt from CERCLA section 103 or EPCRA section 304 notification requirements of any release of hazardous substances to the air from any source other than animal waste at farms.

The Agency believes that there could be releases to the air from other sources of hazardous substances at farms where an emergency response to that release may be possible. For example, EPA is not proposing to exempt ammonia releases from ammonia storage tanks at farms. In addition, notification of a release of a hazardous substance, which meets or exceeds its RQ, from animal waste to any environmental media (other than air) is still required under this proposal. Thus, notification that there was a release of a hazardous substance that meets or exceeds the RQ where stored animal waste is released into water (i.e., a lagoon burst) would still be required under this proposal. Such notifications would alert the government to an emergency situation that could pose serious environmental consequences if not immediately addressed. Hence, those releases to the environment would still be reportable at or above their RQ as they are more likely to result in a response action from Federal, state or local governments.

No EPCRA statutory requirements, other than the emergency hazardous substance notification requirements under EPCRA section 304, are included within this proposal. The proposal does not limit the Agency's authority under CERCLA sections 104 (response authorities), 106 (abatement actions), 107 (liability), or any other provisions of CERCLA and EPCRA to address releases of hazardous substances from animal waste at farms.

D. What Is EPA's Rationale for This Administrative Reporting Exemption?

EPA's rationale for this administrative reporting exemption is based on the purpose of notifying the NRC, and SERCs and LEPCs when a hazardous substance is released, and then the likelihood that a response to that release would be taken by any government agency.

Upon receipt of a notification from the NRC, EPA determines whether a response is appropriate. *See* 40 CFR 300.130(c). If it is determined that a response is appropriate, the NCP regulations describe the roles and responsibilities for responding to the release. Thus, the question that EPA considered is whether the Agency would ever take a response action, as a result of such notification, for releases of hazardous substances to the air from animal waste at farms. We believe not and, thus, are proposing to no longer require such reporting. This conclusion is based in part on EPA's experience.[7] Specifically, to date, EPA has not initiated a response to any NRC notifications of ammonia, hydrogen sulfide, or any other hazardous substances released to the air where animal waste at farms is the source of that release. Moreover, we cannot foresee a situation where the Agency would take any future response action as a result of such notification of releases of hazardous substances from animal waste at farms because in all instances the source (animal waste) and nature (to the air over a broad area) are such that on-going releases makes an emergency response unnecessary, impractical and unlikely. Typically, if a response is taken as a result of a release notification, the government may require monitoring or make recommendations to local officials regarding evacuations and shelter-in-place. While this may be an appropriate response to hazardous substances releases from tanks, pipes, vents or in train derailment situations where the emergency may result in acute exposures, the Agency does not believe that this is a necessary or appropriate response to the release of hazardous substances to the air from animal waste at farms.

Several states have indicated that such response actions are unlikely to be taken as a result of a notification of releases of hazardous substances from animal waste at farms. EPA received 26 comment letters from state and/or local emergency response agencies in its request for public comment on the 2005 petition from the National Chicken Council, National Turkey Federation, and U.S. Poultry & Egg Association ("poultry petition"). All of those commenters supported granting the poultry petition—that is, exempting from CERCLA and EPCRA reporting requirements for ammonia emissions from poultry operations. Generally, those agencies supported the petition because they are aware of the operations in their jurisdictions, were concerned about the resource implications of receiving the notifications (i.e., having to process the notifications), and would not conduct an emergency response as a result of the notifications. Thus, the comments received from state and/or local emergency response agencies is consistent with EPA's view.

Furthermore, the Agency does not need to receive such notifications in order to enforce applicable CWA, CAA, RCRA, and/or other applicable CERCLA and EPCRA regulations at farms. EPA still retains those enforcement authorities to address threats to human health and the environment.

We estimate that the private sector, state and local, and the Federal governments spend approximately three hours per release to prepare and process episodic notifications and 24.5 hours to process continuous release notifications.[8]

Based on these reasons, the Agency believes it is appropriate to propose to eliminate the reporting requirement under CERCLA section 103 and EPCRA section 304 for hazardous substances released to the air at farms where the source of those hazardous substances is animal waste. Nevertheless, the Agency solicits comments on whether there might be a situation where a response would be triggered by such a notification of the release of hazardous substances to the air from animal waste

[7] Notifications must still be made when and if hazardous substances are released to the air at farms from any other source (other than animal waste), as well as releases of any hazardous substances from animal waste to any other environmental media (i.e., soil, groundwater and surface water).

[8] For episodic releases, this estimate was calculated using the burden hours described in the Information Collection Requests 1049.10 and 1395.06 for episodic releases of hazardous substances to the NRC and emergency notifications to SERCs and LEPCs. For continuous releases, this estimate was calculated using the burden hours described in the Information Collection Request 1445.06 for continuous release reporting requirements. Supporting statements for both information collection requests are available in the Superfund Docket, EPA–HQ–SFUND–2007–0469.

at farms, and if so, what an appropriate response would be. Any comments that would support such an action should include an appropriate rationale in order for the Agency to be able to consider it for final action.

E. What Are the Economic Impacts of This Administrative Reporting Exemption?

This proposed administrative reporting exemption will reduce the costs of complying with CERCLA section 103 and EPCRA section 304 for those farms that release hazardous substances to air from animal waste. Entities that are expected to experience a reduction in burden and cost include both the farms that are no longer required to report those releases, as well as the Federal, state and local governments responsible for receiving the reports. The economic analysis completed for this proposed rule is available in the docket for this rulemaking and is based on the underlying economic analyses that were completed for the regulations that established the notification requirements.[9] We estimate that this proposed rule will reduce burden on farms associated with making notifications under CERCLA section 103 and EPCRA section 304 by approximately 3,432,000 hours over the ten year period beginning in 2009 and associated costs by approximately $160,173,000 over the same period. We estimate that this proposed rule will also reduce burden on Federal, State and local governments responsible for receiving and processing the notifications under CERCLA section 103 and EPCRA section 304 by approximately 161,000 hours over the ten year period beginning in 2009 and associated costs by approximately $8,109,000 over the same period. In evaluating the potential burden and cost savings to those farms that would no longer be required to make notifications under CERCLA section 103 and EPCRA section 304 and the government entities that are no longer required to receive and process such notifications, we used the same universe as used in the 2003 CAFO Rule (see 68 FR 7176, Feb 12, 2003). We also assumed that over the ten year period (2009–2018) that there would be a declining number of CAFOs; however, some of those operations would increase in size.

[9] The following documents are available in the Superfund Docket, EPA–HQ–SFUND–2007–00469: *Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act*, Volume 1 (March 1985); *Regulatory Impact Analysis in Support of Rulemaking Under Sections 302, 303, and 304 of Title III of the Superfund Amendments and Reauthorization Act of 1986* (April 1987); and *Economic Analysis in Support of the Continuous Release Reporting Regulation Under Section 103(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act* (April 1990).

IV. Statutory and Regulatory Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this proposed rule to the Office of Management and Budget (OMB) for review and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Rather, this proposed rule represents a reduction in burden for both industry and the government by administratively exempting the reporting requirement for releases of hazardous substances to the air from animal waste at farms. OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 302 and 40 CFR part 355 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2050–0046, EPA ICR number 1049.10 for 40 CFR 302.6 (Episodic releases of oil and hazardous substances), OMB control number 2050–0086, EPA ICR number 1445.06 for 40 CFR 302.8 (Continuous release reporting requirements) and OMB control number 2050–0092, EPA ICR number 1395.06 for 40 CFR 355 (Emergency planning and notification). A copy of the OMB approved Information Collection Request (ICR) may be obtained by writing to: Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1700.

EPA ICR number 1049.10 covers collection requirements for notification of episodic releases of oil and hazardous substances; EPA ICR number 1445.06 covers collection requirements for the continuous release reporting requirements; and EPA ICR number 1395.06 covers collection requirements for the notification requirements for releases of hazardous substances and extremely hazardous substances to both SERCs and LEPCs. Each of these information collections are affected by this proposed rule. However, this proposed rule represents a reduction in the burden for both industry and the government through an administrative reporting exemption from those reporting requirements.

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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rulemaking will relieve regulatory burden because we propose to eliminate the reporting requirement for releases of hazardous substances to the air from animal waste at farms. We expect the net reporting and recordkeeping burden associated with reporting air releases of hazardous substances from animal waste at farms under CERCLA section 103 and EPCRA section 304 to decrease. This reduction in burden will be realized by small and large businesses. We have therefore concluded that this proposed rule will relieve regulatory burden for all affected small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. That is, the proposal imposes no enforceable duty on any state, local or tribal governments or the private sector; rather, this proposed rule will result in burden reduction in the receipt of notifications of the release to the air of hazardous substances, primarily ammonia and hydrogen sulfide, from animal waste at farms.

Additionally, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule reduces regulatory burden and the private sector is not expected to incur costs exceeding $100 million. Thus, the proposal is not subject to the requirements of Sections 202 and 205 of UMRA.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. There are no state and local government bodies that incur direct compliance costs by this proposed rulemaking. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

The Executive Order 13045, entitled "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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

H. Executive Order 13211 (Energy Effects)

This 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. This proposed rule will reduce the burden associated with the notification of releases to air of hazardous substances from animal waste at farms.

I. National Technology Transfer and Advancement Act of 1995 ("NTTAA")

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As discussed in the Background section of the preamble for this proposed rule, the adjusted RQs do not reflect the determination that a release of a substance will be hazardous at the RQ level and not hazardous below that level. Instead, the RQs reflect the Agency's judgment of which releases should trigger notification to the federal government so that the government may assess to what extent, if any, a federal removal or remedial action may be necessary. In addition, the requirement to notify the government under CERCLA section 103 and EPCRA section 304 does not require the notifying entity to take any specific action to address the release. Therefore because the notification is not specifically designed to protect human health or the environment and EPA has determined that a response action would be unlikely, EPA does not believe that exempting these releases from CERCLA section 103 and EPCRA section 304 notification requirements will have a disproportionately high and adverse human health or environmental effect on minority or low-income populations.

This proposed rule addresses information collection requirements for CERCLA section 103 and EPCRA section 304. No EPCRA programs, other than the emergency notification program under EPCRA section 304, are included in this proposal and the Agency is not proposing to limit CERCLA sections 104 (response authorities), 106 (abatement actions), 107 (liability), or any other provisions of CERCLA through this proposed rulemaking. The Agency also retains its authority to apply existing statutory provisions in its efforts to prevent minority and or low-income communities from being subject to disproportionately high and adverse impacts and environmental effects. We therefore have determined that this proposal does not have a disproportionately high and adverse human health or environmental effects on minority or low-income populations.

List of Subjects

40 CFR Part 302

Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemicals, Disaster assistance, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 20, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

2. Section 302.3 is amended by adding in alphabetical order the definitions of "Animal waste" and "Farm" to read as follows:

§ 302.3 Definitions.

* * * * *

Animal Waste means manure (feces, urine, other excrement, and bedding, produced by livestock that has not been composted), digestive emissions, and urea. The definition includes animal waste when mixed or commingled with bedding, compost, feed, soil and other typical materials found with animal waste.

* * * * *

Farm means:

(1) Any place whose operation is agricultural and from which $1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year. Operations receiving $1,000 or more in Federal government payments are counted as farms, even if they have no sales and otherwise lack the potential to have $1,000 or more in sales; or

(2) A Federal or state poultry, swine, dairy or livestock research farm.

* * * * *

3. Section 302.6 is amended by adding paragraph (e)(3) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(e) * * *

(3) Releases to the air of any hazardous substance from animal waste at farms.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

4. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

5. Section 355.20 is amended by adding in alphabetical order the definitions of "Animal waste" and "Farm" to read as follows:

§ 355.20 Definitions.

* * * * *

Animal Waste as used in § 355.40 only, animal waste means manure (feces, urine, other excrement, and bedding, produced by livestock that has not been composted), digestive emissions, and urea. The definition includes animal waste when mixed or commingled with bedding, compost, feed, soil and other typical materials found with animal waste.

* * * * *

Farm as used in § 355.40 only, farm means:

(1) Any place whose operation is agricultural and from which $1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year. Operations receiving $1,000 or more in Federal government payments are counted as farms, even if they have no sales and otherwise lack the potential to have $1,000 or more in sales; or

(2) A Federal or state poultry, swine, dairy or livestock research farm.

* * * * *

6. Section 355.40 is amended by adding paragraph (a)(2)(viii) to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(2) * * *

(viii) Any release to the air of a hazardous substance from animal waste at farms.

* * * * *

[FR Doc. E7–25231 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Parts 422, 423, and 498

Office of the Inspector General

42 CFR Part 1005

Office of the Secretary

45 CFR Parts 16, 81, 160 and 1303

RIN 0991–AB42

Revisions to Procedures for the Departmental Appeals Board and Other Departmental Hearings

AGENCY: Office of the Secretary, Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Health and Human Services (Department) proposes to amend Departmental regulations governing administrative review by the Departmental Appeals Board (DAB) and certain other administrative review regulations to ensure that the final administrative decision of the Department reflects the considered opinion of the Secretary of Health and Human Services (Secretary). Current regulations at 45 CFR Part 16 governing the review of grant disputes do not specifically require the DAB to follow published guidance issued by the Secretary or a Departmental component. The DAB decision is currently the final administrative decision of the Department on such disputes and currently there is no Secretarial review of this final decision. Similarly, the DAB currently provides the final agency review of the imposition of civil monetary penalties (CMPs) for which administrative appeal is available under 45 CFR Part 160, Subpart E, enforcement sanctions under 42 CFR Part 422 and 423, determinations subject to reconsideration and appeal under 42 CFR Part 498 and the imposition by the Inspector General of the Department (I.G.) or the Centers for Medicare and Medicaid Services (CMS) of exclusions, CMPs and assessments subject to appeal under 42 CFR Part 1005. As in 45 CFR Part 16, the decisions of the DAB under these processes are considered the final agency action on matters, though they are not subject to Secretarial review.

This proposed rule would amend DAB regulations to require that the DAB follow published guidance that is not inconsistent with applicable statutes and regulations and would permit the Secretary an opportunity to review DAB decisions to correct errors in the application of law, or deviations from published guidance, in such disputes. This proposed rule would make technical changes to the regulations at 45 CFR Part 16. This proposed rule would also amend hearing and appeal procedures at 45 CFR Part 160, Subpart E and at 42 CFR Parts 422, 423 and 498 to include a parallel statement regarding the treatment of published guidance. Similarly, this proposed rule would amend the procedures at 45 CFR Part 81 to provide a similar statement regarding the treatment of published guidance by hearing examiners and reviewing authorities. In addition, this proposed rule would amend the hearing and appeal procedures at 45 CFR Part 160, Subpart E and 42 CFR Parts 422, 423, 498 and 1005 to provide a parallel opportunity for Secretarial review of DAB decisions. Finally, this proposed rule would revise the procedures for Head Start grantee appeals by applying the current 60-day time limit for "final decisions" to the Board's decision.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 28, 2008.

ADDRESSES: You may submit comments either by E-mail to *randolph.pate@hhs.gov* or by mail to: Randy Pate, 200 Independence Ave., SW., Room 415F, Washington, DC 20201.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Randy Pate, 202–690–7858.

SUPPLEMENTARY INFORMATION:

I. Background

HHS was the first federal grantor agency to offer a structured process of administrative dispute resolution for its grantees on a large scale, when, in 1973, it established what was then called the Departmental Grant Appeals Board. The name was changed to the Departmental Appeals Board (DAB) when, as noted below, the jurisdiction was significantly expanded. The name "Departmental Appeals Board" is now used to refer to two entities: (1) the decision-making body consisting of Board Members, appointed by the Secretary, who issue decisions made by panels of three Board Members; and (2) in general, the larger organization, which is located in the Office of the Secretary and which includes not only the Board, but also

Administrative Law Judges (ALJs), Administrative Appeals Judges who serve on the Medicare Appeals Council, and organizational divisions that support the Board Members and Judges, and perform other organizational functions. Below, we use the term "Board" to refer to the decision-making body and the acronym "DAB" to refer to the larger organization.

The current rules for the Board, at 45 CFR Part 16, were issued on August 31, 1981, at 46 FR 43818. Those rules set out a fair, quick and flexible process for appeal from final written decisions. The rules provide a framework which has been used by the Department for resolution of an increasing range of disputes.

The basic jurisdiction of the Board over grant disputes is described in Appendix A to the current regulations at 45 CFR Part 16. This jurisdiction is exercised by the Board Members, with support from the Appellate Division of the DAB. The Board also has appellate jurisdiction over disputes that are heard by Administrative Law Judges (ALJs) who, in most cases, are assigned to the DAB and supported by the Civil Remedies Division of the DAB. These ALJ hearings are conducted pursuant to separate regulatory provisions, but ALJ decisions are subject to review by the Board. In 1988, the Secretary delegated to the DAB responsibility for adjudicating civil money penalties and exclusions imposed under a wide range of fraud and abuse authorities. In 1993, the Secretary delegated to the DAB responsibility for hearing appeals in provider and supplier participation, enrollment and enforcement cases brought by CMS. Also, when the Social Security Administration (SSA) became an independent agency in 1995, the Secretary delegated to the Board Chair the Medicare Appeals Council function of hearing appeals in Medicare coverage, payment and entitlement cases.

The DAB has final review authority over the reconsideration and appeal process for determinations under 42 CFR Part 498. These are procedures for reviewing certain specified initial determinations, which include those that affect participation in the Medicare and Medicaid programs, impose sanctions on certain providers, and impose enforcement remedies on laboratories under both Medicare and the Clinical Laboratories Improvement Amendments of 1988. Under these procedures, providers or suppliers generally have a right to a hearing before an ALJ, and a review of the ALJ decision by the Board. When this process was first established, by final rule published at 33 FR 7317 (May 17, 1968), the final review was vested in the Appeals Council of the Social Security Administration, which was then a component agency of this Department. Final review authority was transferred to the DAB after the SSA became an independent agency. 61 FR 32347 (June 24, 1996).

The DAB has final review authority under 42 CFR Part 1005 over disputes concerning the imposition of exclusions, CMPs, and assessments relating to health care fraud and abuse under sections 1128 and 1128A of the Social Security Act as well as other disputes. CMS and the I.G. have been delegated the authority by the Secretary to administer these health care fraud and abuse authorities, as described in 42 CFR Parts 402, 1001, 1003, and 1005. As provided in 42 CFR Part 1005, disputes concerning the exercise of these authorities are heard by an ALJ, and the decision of the ALJ may be appealed to the DAB. Under these regulations, the scope of ALJ and DAB review is limited.

The DAB has review authority concerning Medicare Local Coverage Determinations (LCDs) and National Coverage Determinations (NCDs) pursuant to section 1869(f)(1) of the Social Security Act and to regulations at 42 CFR Part 426. Challenges to LCDs are heard initially by ALJs, with a statutory right of appeal to the Board, and challenges to NCDs are heard by the DAB directly. This proposed rule would not affect the LCD or NCD review authority.

Under 45 CFR Part 150, ALJs of the DAB provide hearings concerning the imposition of civil money penalties by CMS against health insurance issuers and non-federal governmental plans for failure to comply with requirements of title XXVII of the Public Health Service Act and with regulations at 45 CFR Parts 146 and 148 ("HIPAA portability requirements"). This proposed rule would not affect these hearings, which are subject to review by the CMS Administrator.

On February 16, 2006, at 71 FR 8389, the Department issued final rules located in 45 CFR Part 160, Subpart E, providing for Board final review authority over disputes involving the imposition of civil money penalties for violation of the Administrative Simplification provisions of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations. These provisions contain standards for certain financial and administrative transactions, code sets, unique health identifiers and the security and privacy of certain health information. The authority for civil money penalties is contained in section 1176 of the Social Security Act, 42 U.S.C. 1320d–5, which at subparagraph (a)(2) provides an opportunity for administrative appeals, by incorporating by reference section 1128A of the Social Security Act, which includes the administrative hearing and appeals requirements set forth in section 1128A(c), 42 U.S.C. 1320a–7a.

On December 5, 2007, at 72 FR 68700, CMS issued final regulations at 42 CFR Parts 422 and 423 providing for appeals of civil money penalties imposed on Medicare Advantage organizations and Medicare prescription drug sponsors (based on a proposed rule issued May 25, 2007 at 72 FR 29368). These regulations provided for an opportunity for a hearing before an ALJ and review of the ALJ determination by the Board.

The DAB also exercises additional hearing and appeal responsibilities based on procedural delegations of authority. Such delegations can be made on a case-by-case basis, through a general delegation of authority over a class of disputes, or through other arrangements between the DAB and the Secretary or the head of the appropriate HHS operating division or other agency responsible for administering the program.

As the DAB's jurisdiction has increased, the issues for DAB review have grown in complexity and significance. In addition, the volume of cases has grown considerably. The DAB has responded to the challenges posed with considerable diligence and sophistication. In particular, Board members have developed great expertise in dispute resolution, hearing procedures, and many aspects of the subject Departmental programs.

The procedures used by the Board for grant disputes are broadly modeled after adversary judicial proceedings and have been successful in resolving factual disputes based on a record. Current rules, however, lack sufficient safeguards to avoid putting the DAB in a situation where it is prompted to substitute its judgment on interpretive issues for that of the Secretary or the delegated component with interpretive authority. While the Board has considerable expertise in Departmental programs, however, under the current rules, the Board does not have access to the full range of policy considerations that the Secretary and the relevant component may have in interpreting applicable statutes and regulations.

Similar considerations apply in the Board's appellate review of ALJ decisions concerning civil money penalties under 45 CFR Part 160, Subpart E, enforcement sanctions under

42 CFR Parts 422 and 423, review of initial determinations under 42 CFR Part 498, or review of ALJ decisions concerning civil remedies.

Current regulations at 42 CFR Parts 422, 423, and 498 do not specifically articulate the applicability of statutes, regulations, or published guidance. And the current procedures at 45 CFR Part 160, Subpart E, 42 CFR Part 498 and 42 CFR Part 1005 contain no provision for Secretarial review.

As a result, these hearing procedures do not provide sufficient safeguards to ensure that the decisions accurately reflect the considered views of the Secretary.

In addition to the Departmental hearing procedures discussed above, under 45 CFR Part 81, there are procedures governing administrative hearings pursuant to Title VI of the Civil Rights Act of 1964 and 45 CFR Part 80. These hearings are conducted by hearing examiners who are authorized, under § 81.62, either to make initial decisions or to recommend findings and propose decisions. These decisions are reviewable by a reviewing authority, under § 81.104, and by the Secretary, under § 81.106.

The hearing regulations in 45 CFR Part 81 do not clearly articulate the applicability of statutes, regulations or published guidance. Although the regulations can be read to imply that presiding officers and reviewing authorities will be bound by applicable statutes, regulations and guidance, there is no clear articulation of this standard. As a result, there is a possibility that decisions of presiding officers and reviewing authorities will not accurately reflect applicable law or policy.

II. Provisions of This Proposed Rule

This rule proposes substantive changes in the general DAB procedures at 45 CFR Part 16, and in the hearing and appeal procedures at 45 CFR Parts 81 and 160, Subpart E, 42 CFR Part 1005 and 42 CFR Part 498. The rule proposes to clarify that, in cases heard by the Board under the authority of 45 CFR Part 16, the Board must follow published guidance issued by the Secretary or relevant component to the extent the guidance is not inconsistent with applicable statutes and regulations. The rule proposes to provide an opportunity for Secretarial review (including, where the Secretary deems appropriate, remand) of Board decisions under 45 CFR Part 16. The rule would also amend 45 CFR Part 16 in several places to update the DAB's title, update the current mailing address, and remove certain outdated regulatory references. And the rule would amend Appendix A to 45 CFR Part 16 to clarify that the Board's authority to hear disputes may arise from a procedural delegation of authority directly from the Secretary or other responsible official. The rule additionally proposes to make conforming amendments to articulate the applicability of statutes, regulations and published guidance in hearing and appeals procedures under 45 CFR Part 81 and Part 160, Subpart E, and under 42 CFR Part 498. We would also provide an opportunity for Secretarial review of decisions under 45 CFR Part 160, Subpart E, and 42 CFR Parts 498 and 1005.

We anticipate that, unless there are statutory reasons to the contrary, future areas of DAB jurisdiction will incorporate similar review procedures. We also intend that each of the provisions of this DAB proposed rule will remain in force if any of the provisions are invalidated for any reason.

Any final rule based on this proposed rule would be effective prospectively only, and would not affect final decisions that have been issued by the Board prior to the effective date. The final rule would affect cases that are still under Board review as of the effective date of the final rule.

We address each of the modifications in this proposed rule individually below:

A. Applicability of statutes, regulations and published guidance (45 CFR § 16.14)

Current regulations at 45 CFR § 16.14 provide that the Board "shall be bound by all applicable laws and regulations." This provision, however, does not address the weight to be afforded interpretations of statutes and regulations that have been adopted by the Secretary either directly or through the Departmental component with delegated authority to administer the program whose decision is the subject of Board review.

In this proposed rule, we clarify that the Board should follow published guidance of the Secretary or relevant component, to the extent not inconsistent with applicable statutes and regulations. This requirement would parallel the standard included at 45 CFR § 160.508(c)(1) of the final regulations recently issued governing appeals involving the imposition of civil money penalties for violations of the Administrative Simplification provisions under HIPAA and its implementing regulations. As we indicated in that rulemaking, by "published guidance" we mean to include guidance that has been publicly disseminated. 71 FR 8416. In this case, this includes, for example, guidance issued through manual provisions, State Medicaid Directors letters, or posting on the CMS Web site. While this would not include written statements that are issued to particular grantees, or in briefs filed by the respondent agency in litigation, we expect that the Board would give weight to such statements in the absence of contrary published guidance or conflicts with other agency statements, as an initial exercise of the interpretative authority delegated to the agency and an expression of the agency's policy expertise. This is particularly true with respect to issues of first impression. When there is no published guidance on an issue, or when there is ambiguity in the published guidance, we would expect the Board to review relevant unpublished issuances for direction in interpreting such an issue.

By "relevant component" we mean the Departmental component delegated responsibility for interpreting and administering the provision at issue. This would not necessarily be the component that is a party in the proceeding before the Board. For example, the issuances of a component operating a grant program would not be controlling with respect to interpretations of cost allocation requirements, since responsibility for interpreting such requirements is delegated to the Departmental Division of Cost Allocation. To make this clear, we are also providing that the Board will be bound by Secretarial delegations of authority.

This clarification would help to ensure that the decisions of the Board reflect the considered judgment of the Department on such issues. The proposed provision would explain that it is not the role of the Board to weigh the relative strengths of an interpretation adopted after due consideration of relevant factors by the Department or its components. The strength of regulatory and policy interpretations are necessarily considered in their adoption. It is the role of the Department and its components to craft regulations and adopt policy interpretations. In that process, the Department necessarily contemplates various policy alternatives and litigation risks. Those considerations are legitimately left to the discretion of the Department and its components rather than an adjudicative body like the Board. Because the Board was created as an adjudicator, separate and apart from the policy-making components of the Department, its role is important but limited. As the

Supreme Court has recognized, where a separate administrative adjudicatory body is created, its role is limited to finding facts and resolving individual disputes, but it is not authorized to develop new interpretive policies. Having the DAB substitute its policy views would limit the ability of the Department to determine the level of acceptable risk in light of program priorities and goals, and ultimately would limit Departmental flexibility in performing its functions.

We anticipate that this change would have greater effect in statutory entitlement programs than it would in discretionary grant programs. In certain discretionary grant programs, the requirements are neither statutory nor regulatory but are largely set by the grant award terms and conditions. These requirements are akin to contractual obligations. In these discretionary grant programs, the issue of notice to the grantee of a purported requirement may be the key issue in resolving disputes. The adequacy of the notice may depend on the specific grant documents applicable to the grant award. By contrast, in statutory entitlement programs, requirements are set in statute and regulation, and disputes focus on statutory and regulatory interpretation. In those instances, the DAB would be required to follow published guidance of the Secretary or the relevant component on the interpretive issue. Notice to the grantee generally would not be determinative in a statutory program since the applicable statute or regulation gives grantees notice of the scope of interpretive flexibility.

B. Secretarial Review of DAB Decisions Concerning Disputes (45 CFR 16.21)

The original rules of the Board provided for the relevant constituent component of the Department to review, modify, or reverse Board decisions before they became final decisions of the Secretary. 45 CFR 16.10 (1973); 38 FR 9907 (Apr. 20, 1973). In 1978, HHS's rules were modified so that the Board decisions would be "final administrative decisions with respect to reconsideration of disallowances arising under various Federal-State public assistance programs." 43 FR 9264, 9264 (March 6, 1978). When the current Board grant review regulations were originally proposed on January 6, 1981, 46 FR 1644, there was a provision for Secretarial review of Board decisions. In the final rules, adopted on August 31, 1981, 46 FR 43816, that provision was omitted. The preamble to the final rule stated that numerous comments had been submitted on this issue, and that "[t]he Department continues to study whether Board decisions should be 'final' or should be subject to Secretarial review." The preamble indicated that the omission of the provision for Secretarial review did not reflect a final decision on this issue, but was an interim measure "to avoid further delay in implementing these procedures."

Now, with over 20 years of experience, we are again proposing to authorize Secretarial review of Board decisions. This change is intended to ensure consistency in decision making and to ensure that the Secretary's policies are correctly implemented. Further, this proposed change is consistent with the rules originally establishing the Board for adjudication of grant disputes. While we intend that the instances of Secretarial review will be limited, the availability of such review is essential to ensure the accuracy of DAB decisions in reflecting the proper application of relevant statutes, regulations and interpretive policy. Such accuracy is important because Board decisions are binding on the Department in the case at hand, are considered final federal agency action for purposes of judicial review, and may have some precedential value for future adjudications. In cases of first impression, these decisions may be the first articulation of Departmental interpretation and implementation of policies with respect to applicable statutes and regulations. Only through review of DAB decisions can the Department exercise its full authority to interpret and implement statutory and regulatory provisions and ensure that the Secretary's policies are appropriately implemented. The Secretary's views will continue to be ultimately subject to federal court review.

We are proposing a clear time frame for the Secretary to determine whether to undertake review, so as not to unduly delay the administrative review process and the availability of judicial review. We believe 30 days should be sufficient time for the Secretary to determine whether review is warranted. We have not proposed any process for either party to request Secretarial review, and we do not anticipate that the Secretary or the delegated official performing the review would consider external requests for review.

We anticipate that Secretarial review will ordinarily be completed within a 45-day time frame after acceptance of review. In light of the varying complexity and significance of Board cases, however, we are not proposing to limit the time for Secretarial consideration. For example, additional time may be required in cases involving a voluminous record, or when additional development of the record is necessary.

After undertaking review, the Secretary would be authorized to affirm or reverse a Board decision, or to remand a case back to the Board for further consideration of identified errors in the application of statutes, regulations or interpretive policy. In cases where Secretarial review is undertaken, the original DAB decision would be regarded as a proposed decision, and would be set aside to the extent inconsistent with the Secretary's review decision.

In cases involving certain parts of title IV of the Social Security Act, the Secretary would only be authorized to affirm the Board or remand the case back to the Board with instructions for further consideration. This is because sections 410(c) and 1123A(c) of the Social Security Act, pertaining to the program for Temporary Assistance for Needy Families, provide that the final decision of the Board is appealable to federal court. In these cases, while we would provide for Secretarial review, the Board would issue the final agency decision.

We have not proposed in the regulatory text any briefing or other procedures for Secretarial review in order to maintain flexibility to tailor the process to the needs of the particular case. We anticipate that the Secretary would notify the parties as to the procedures to be followed. But we invite comments on whether the regulations should specify procedures for Secretarial review.

We propose to require that the Secretary would issue a written decision upon review. In the case of affirmance or reversal of the Board decision, this would be the final decision of the Secretary on the matter. The written decision would contain the basis for the Secretary's conclusions. In the case of a summary affirmance, or a partial affirmance, the written decision could incorporate by reference some or all of the Board decision. In the case of a remand of the case to the Board for further proceedings, the written remand order would include the basis for remand and would instruct the DAB in the proper application of statutes, regulations or interpretive policy. Upon remand, the Board would be bound by the Secretary's remand instructions. The Board would be responsible, however, to apply the law to the facts of the particular case. The Board would thus issue a new decision in accordance with the Secretary's instructions.

While we anticipate that Secretarial review will be a review of the record created before the Board, the Secretary may identify specific issues for which additional briefing by the parties is necessary. This additional briefing would ensure that the record fully reflects the factual, legal and policy issues that the Secretary considers in reviewing the case. Such additional briefing would ensure that both sides have a full and fair opportunity to respond to issues that the Secretary determines are relevant to the outcome. We do not presently contemplate providing the parties a right to request an additional briefing opportunity, but we solicit comments on whether there are circumstances in which such a right would be appropriate.

C. Technical Changes (45 CFR Part 16)

1. Title of 45 CFR Part 16, 45 CFR §§ 16.2 and 16.20(a)—Updating DAB Name and Address

We propose to delete the word "Grant" from the title of 45 CFR Part 16 and the definition of the "Board" in § 16.2, and to update the name and address of the DAB in § 16.20(a). In § 16.20(a), we would reference filing instructions set forth in the final written decision being appealed and the Appellate Division Practice Manual found on DAB's Web site. We indicate that the DAB's mailing address can be found on that Web site because the Web site can reflect updated addresses. We also list the 2007 address. In light of these references, we would delete § 16.20(d) and (e), since these provisions refer to issues addressed in the filing instructions noted in revised § 16.20(a) and, furthermore, do not reflect current Board procedures relating to electronic submissions.

2. 45 CFR §§ 16.3(b), 16.7(a), 16.12 and 16.22(b)(1)–Deleting Outdated References

45 CFR §§ 16.3(b), 16.7(a) and 16.22(b)(1) contain outdated references to sections of 45 CFR Part 74, which has since been revised so that the cited sections no longer correspond to the referenced substance. For example, the references to 45 CFR-74.304 in § 16.3(b) and 16.7(a) would more properly be to 45 CFR 74.90. We propose to delete these references both because they are outdated and because the regulations at 45 CFR Part 74 are general cross-cutting Departmental rules and many of the programs subject to review now have individualized regulatory provisions that address the same subjects, in some cases in more detail. 45 CFR 16.12(d) contains an outdated reference to the Public Health Service, which we would delete. Instead, we would insert a parenthetical reference to the process set forth at 42 CFR Part 50 as an example of a formal preliminary review process.

3. 45 CFR Part 16, Appendix A—Updating References and Reflecting Board Authority to Hear Disputes Based on Procedural Delegations of Authority

In Appendix A, we propose to update or delete outdated statutory and regulatory references. In addition, as noted above, the Board exercises hearing and appeal responsibilities based on procedural delegations of authority to the Board from the Secretary, the head of the appropriate HHS component responsible for administering the program. Such a delegation may be made on a case-by-case basis, through general delegations of authority over a class of disputes, or through other arrangements between the DAB and the Secretary or the head of the appropriate HHS component responsible for administering the program. The proposed rule would clarify Appendix A to make clear that the Board may hear cases based on such a delegation.

D. Addition of 45 CFR § 81.64—Conforming Changes in Standard of Review

Regulations in 45 CFR Part 81 set forth procedures for administrative hearings pursuant to Title VI of the Civil Rights Act of 1964 and 45 CFR Part 80. These hearings are conducted by hearing examiners who are authorized, under § 81.62, to either make initial decisions or recommended findings and proposed decisions. These decisions are reviewable by a reviewing authority, under § 81.104, and by the Secretary, under § 81.106.

The regulations governing these hearings and reviews, however, do not clearly articulate the standard of review to be applied by hearing examiners and reviewing authorities in reviewing issues of law, regulation or policy interpretation.

We are thus proposing to add a new section, § 81.64, to explain that hearing examiners and reviewing authorities are bound by all applicable statutes, regulations, Secretarial delegations of authority and published guidance and interpretations of the Secretary or relevant component to the extent not inconsistent with applicable statutes and regulations. This is the same standard, discussed above, that would be applied in DAB review under 45 CFR Part 16. This change would thus conform the standard of review in these hearings with the standard of review in other Departmental hearing procedures.

E. 45 CFR §§ 160.508(c), 160.548, and 160.554—Conforming Changes in Standard of Review, Removal of Board Decision Reconsideration Process and Provision for Secretarial Review Authority

Regulations at 45 CFR Part 160, Subpart E, set out procedures for administrative hearings for disputes involving the imposition of civil money penalties for violation of the Administrative Simplification provisions of HIPAA and its implementing regulations. Current regulations in 45 CFR § 160.508(c)(1) articulate limitations on ALJ review with respect to finding invalid or refusing to follow Federal statutes, regulations, or Secretarial delegations of authority, or refusing to defer to published Departmental guidance. While we believe these limitations embody the same principles as the limitations that we are proposing elsewhere in this rulemaking, we are proposing to revise slightly 45 CFR § 160.508(c)(1) to conform the description of these limitations to the other proposed regulatory provisions discussed in this rulemaking.

These limitations are also intended to apply to Board appellate review of the ALJ decisions. Accordingly, to make clear that these same limitations also apply to Board appellate review of ALJ decisions, we propose to add a provision to that effect at § 160.548(h)(2).

We also propose to provide for Secretarial review authority for Board and certain ALJ decisions by inserting a new proposed § 160.554 and making conforming changes to 45 CFR 160.548(j) and (k)(1). The same considerations discussed above with respect to DAB review under 45 CFR Part 16 apply to decisions concerning civil money penalties for violations of Administrative Simplification requirements that are subject to the appeal processes set forth under 45 CFR Part 160. Thus, we believe that Secretarial review authority is appropriate under these provisions. Because Board review is not a mandatory part of the appeals process under Part 160 (the Board can decline review of an ALJ decision), we are proposing Secretarial review of both ALJ decisions that the Board has declined to review and Board decisions. To ensure that the Board has the primary review authority, however, we propose that the Secretary will only be able to review an ALJ decision after the Board denies a request for review of the case.

In addition, because of the proposed addition of Secretarial review to the HIPAA Administrative Simplification hearing appeals process, we are proposing to remove the level of review that currently exists at § 160.548(j) for reconsideration by the Board, on request of either party, of its own decisions.

The proposed removal of the reconsideration process would ensure the appeals process remains efficient and is not unduly prolonged. Also, the removal of the reconsideration process would better align the appeals process at Part 160 with the appeals process provided in the regulations at 42 CFR Part 1005, upon which the hearing appeals provisions at 45 CFR Part 160 were originally based.

F. Revision of 45 CFR 1303.17(a) To Conform Timing for Head Start Appeals To Provide for Opportunity for Secretarial Review

The current provisions at 45 CFR 1303.17(a) require that the "final" decision be rendered not later than 60 days after the closing of the record before the Board. We propose to revise this regulation by providing that this time limit is applicable only to the timing of the Board's decision, by replacing the phrase "final decision" with "Board's decision."

G. Revision of 42 CFR Parts 422 and 423 By the addition of 42 CFR §§ 422.1007, 422.1085, 423.1007 and 423.1085 and Revisions to 42 CFR §§ 422.1068, 422.1078(c), 422.1086, 422.1088, 423.1068, 423.1078(c), 423.1086, and 423.1088—Conforming Articulation of Limitations on Review and Provision for Secretarial Review Authority

Recently issued regulations in 42 CFR Parts 422 and 423 do not articulate the principle that administrative law judges and the Board are bound by all applicable statutes and regulations. Articulation of this principle may prevent inappropriate arguments or requests for equitable relief unfounded in law or practice. The articulation of this principle will also make the appeals process more transparent. In addition, we propose to include in the new regulatory provision language parallel to the language proposed for 45 CFR § 16.14 regarding the treatment of published guidance by the Secretary or relevant component. We see no basis to distinguish the scope of review in appeals under 42 CFR Parts 422 and 423 from that proposed in appeals under 45 CFR Part 16. In all cases, the fundamental interpretive authority rests in the Secretary or the component delegated the authority by the Secretary to administer the provisions at issue.

We also propose to provide authority for Secretarial review of Board and ALJ decisions by adding 42 CFR §§ 422.1085 and 423.1085. The same considerations discussed above with respect to Board review under 45 CFR Part 16 apply to decisions concerning initial determinations under Medicare and Medicaid that are subject to the appeal processes set forth under 42 CFR Parts 422 and 423. Thus, we believe that Secretarial review authority is appropriate under these appeal provisions.

Secretarial review ensures that the Department exercises its full authority to interpret and implement statutory and regulatory provisions and ensures that the Secretary's policies are appropriately implemented. The Secretary's views will continue to be ultimately subject to federal court review.

Because DAB review is not a mandatory part of the appeals process under Parts 422 and 423 (the Board can deny review of an ALJ decision), we are proposing Secretarial review of both ALJ decisions and Board decisions. By this, we intend that where the Board denies or dismisses review of an ALJ decision (42 CFR §§ 422.1078 and 423.1078), the Secretary may review the ALJ decision and affirm, reverse or remand, parallel to the authority in the proposed 45 CFR § 16.21. To ensure that the Board has the primary review authority, however, we propose that the time frame for determination of whether the Secretary will review an ALJ decision will run only from the time that the Board denies a request for review of the case.

In sum, we are proposing a similar opportunity for Secretarial review under this provision as we propose under 45 CFR Part 16.

H. Addition of 42 CFR § 498.8 and Revisions to 42 CFR §§ 498.74, 498.89 and 498.90—Conforming Articulation of Limitations on Review and Provision for Secretarial Review Authority

Current regulations in 42 CFR Part 498 do not articulate the principle that administrative law judges and the Board are bound by all applicable statutes and regulations. While in practice, this principle has generally been applied in decisions, and thus articulation of this principle will not result in any change in practice, its articulation may prevent inappropriate arguments or requests for equitable relief unfounded in law or practice. The articulation of this principle will also make the appeals process more transparent. In addition, we propose to include in the new regulatory provision language parallel to the language proposed for 45 CFR § 16.14 regarding the treatment of published guidance by the Secretary or relevant component. We see no basis to distinguish the scope of review in appeals under 42 CFR Part 498 from that proposed in appeals under 45 CFR Part 16. In both cases, the fundamental interpretive authority rests in the Secretary or the component delegated the authority by the Secretary to administer the provisions at issue.

We also propose to provide authority for Secretarial review of Board and ALJ decisions. The same considerations discussed above with respect to Board review under 45 CFR Part 16 apply to decisions concerning initial determinations under Medicare and Medicaid that are subject to the appeal processes set forth under 42 CFR Part 498. Thus, we believe that Secretarial review authority is appropriate under this provision.

In particular, there are a significant number of decisions under Part 498 that may be the first articulation of Departmental interpretation and implementation of policies with respect to applicable statutes and regulations. Only through review of these decisions can the Department exercise its full authority to interpret and implement statutory and regulatory provisions and ensure that the Secretary's policies are appropriately implemented. The Secretary's views will continue to be ultimately subject to federal court review.

Because DAB review is not a mandatory part of the appeals process under Part 498 (the Board can deny review of an ALJ decision), we are proposing Secretarial review of both ALJ decisions and Board decisions. By this, we intend that where the Board denies review of an ALJ decision (42 CFR §§ 498.74(b)(2), 498.83(a)), the Secretary may review the ALJ decision and affirm, reverse or remand, parallel to the authority in the proposed 45 CFR § 16.21. To ensure that the Board has the primary review authority, however, we propose that the time frame for determination of whether the Secretary will review an ALJ decision will run only from the time that the Board denies a request for review of the case.

In sum, we are proposing a similar opportunity for Secretarial review under this provision as we propose under 45 CFR Part 16.

I. Revisions to 42 CFR Part 1005—Conforming Provision for Secretarial Review Authority

We propose to provide regulatory authority for Secretarial review of Board decisions concerning the exclusion, CMP, and assessment authorities

delegated to the I.G. by the Secretary. The same considerations discussed above with respect to Board review under 45 CFR Part 16 and 42 CFR Part 498 apply to such decisions. Thus, we believe that Secretarial review authority is appropriate under this provision.

As with 45 CFR Part 16 and 42 CFR Part 498, there are a significant number of decisions under 42 CFR Part 1005 that may be the first articulation of Departmental interpretation and implementation of policies with respect to applicable statutes and regulations. Only through review of these decisions can the Department exercise its full authority to interpret and implement statutory and regulatory provisions and ensure that the Secretary's policies are appropriately implemented. The Secretary's views will continue to be ultimately subject to federal court review.

The proposed revisions would provide that, when the Board declines review of an ALJ decision under § 1005.21(g), the Secretary may review the ALJ decision, as contemplated in proposed 42 CFR § 1005.24. To ensure that the Board continues to have the primary review authority, we are proposing that the time frame for determination of whether the Secretary will review an ALJ decision will run only from the time that the Board denies a request for review of the case. In addition, the procedure for Secretarial review has been tailored in proposed § 1005.24 to conform to the administrative appeals process in Part 1005.

Because of the limitations on Board review that currently exist in the regulations relating to the exclusion, CMP, and assessment authorities, we do not believe additional clarification is needed with respect to the Board's treatment of published guidance. The regulations limit an ALJ's ability to find invalid or refuse to follow a federal statute or regulation. 42 CFR § 1005.4(c)(1). Also, an ALJ is unable to review the exercise of discretion in imposing a permissive exclusion, CMP, or assessment, or to reduce a period of exclusion to zero. 42 CFR §§ 1005.4(c)(5)–(7). The only issues that may be appealed in an exclusion action are whether the petitioner received proper notice of the exclusion, whether a basis for exclusion exists, and whether the length of the exclusion is unreasonable. 42 CFR § 1001.2007(a). Further, an ALJ is required to follow the determination of the scope and effect of an exclusion. 42 CFR § 1005.4(c)(5). Finally, the Board's standard of review of factual disputes is whether the ALJ's decision is supported by substantial evidence on the whole record. 42 CFR § 1005.21(h). The Board's standard of review of legal disputes is whether the ALJ's decision is erroneous. Id. Because these regulations limit the issues that are appealable, they safeguard the discretion to pursue exclusions, CMPs, or assessments in appropriate cases. The proposed ability of the Secretary to review Board decisions will help preserve the Secretary's authority to interpret the exclusion, CMP, and assessment statutes and regulations.

Therefore, we are not amending the DAB standard of review for matters that fall within 42 CFR Part 1005. We are, however, proposing a Secretarial review process under 42 CFR Part 1005 as is similarly proposed under 45 CFR Part 16.

III. 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.

IV. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13422 (January 2007), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866, as amended, 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). This rule concerns agency administrative appeal procedures, and any direct burden that is imposed on appellants (such as the cost of additional briefing or the cost of delays in the final agency decision) does not reach the economic threshold and, thus, is not considered a major rule. These changes in agency procedures may impact the handling of administrative appeals that involve more than $100 million in a year. But any impact would result from improved application of existing statutes, regulations and Departmental interpretations and must be attributed to those underlying legal requirements. While we conclude that this proposed rule is not economically significant, we nevertheless are characterizing this proposed rule as significant under E.O. 12866 because it will materially affect the procedural rights of grant recipients with respect to appeals. As noted above, the proposed rule would not affect substantive rights to administrative determinations consistent with existing statutes, regulations and Departmental interpretations.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, by virtue of either nonprofit status or having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. While there are a number of small entities that receive Departmental grants and have access to the DAB for appeal of disallowances, we have determined that the direct effects of the proposed changes in administrative appeal procedures, such as the cost of additional briefing or the cost of delays in the final agency decision, are not economically significant. Thus, we are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Social Security Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending

in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. The direct burden of these changes in administrative appeal procedures, such as the cost of additional briefing or the cost of delays in the final agency decision, does not reach the economic threshold. An indirect impact may result from improved application of existing statutes, regulations and Departmental interpretations, but must be attributed to those underlying legal requirements. As a result, we conclude that this rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any significant direct costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, and Reporting and recordkeeping requirements.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Health professionals, Medicare, Penalties, Privacy, and Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Grant programs-health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties, and Social security.

45 CFR Part 16

Administrative practice and procedure, Grant programs health, and Grant programs-social programs.

45 CFR Part 81

Administrative practice and procedure, and Civil rights.

45 CFR Part 160

Administrative practice and procedure, Computer technology, Health care, Health facilities, Health insurance, Health records, Hospitals, Medicaid, Medicare, Penalties, and Reporting and recordkeeping requirements.

45 CFR Part 1303

Administrative practice and procedure, Education of disadvantaged, Grant programs-social programs, and Reporting and recordkeeping requirements.

For the reasons set forth in this preamble, the Department of Health and Human Services proposes to amend 42 CFR chapters IV (parts 422 and 423 as published on December 5, 2007 (72 FR 68700)) and V and 45 CFR chapters I and XIII as follows:

Title 42—Public Health

PART 422—MEDICARE ADVANTAGE PROGRAM

1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart T—Appeal procedures for Civil Money Penalties

2. Section 422.1007 is added to read as follows:

§ 422.1007 Limitations of review.

The ALJ and the Departmental Appeals Board may not find invalid or refuse to follow Federal statutes, regulations, or Secretarial delegations of authority and must follow published guidance to the extent not inconsistent with statute or regulation.

3. Section 422.1068 is amended by—

A. Removing the word "or" at the end of paragraph (b)(3).

B. Redesignating paragraph (b)(4) as paragraph (b)(5).

C. Adding new paragraph (b)(4).

The addition reads as follows:

§ 422.1068 Administrative Law Judge's decision.

* * * * *

(b) * * *

(4) The Secretary undertakes review of the case pursuant to § 422.1085 of this chapter.

* * * * *

4. Section 422.1078 is amended by revising paragraph (c) to read as follows:

§ 422.1078 Departmental Appeals Board action on request for review.

* * * * *

(c) *Effect of dismissal.* The dismissal of a request for Board review shall be the final agency decision unless the Secretary elects review under § 422.1085.

* * * * *

5. Section 422.1085 is added to read as follows:

§ 422.1085 Secretarial Review of ALJ or Departmental Appeals Board decisions.

The Secretary may review a decision of an ALJ or the Board for error in applying statutes, regulations or interpretive policy.

(a) A copy of each preliminary Board decision will be delivered to the Secretary and the parties within 5 working days from the date the Board issues it. When the Board denies a request for review of an ALJ decision, a copy of the ALJ decision will be delivered to the Secretary and the parties within 5 working days from the date the Board declines to review it.

(b) After delivery of the Board or ALJ decision, the Secretary may, within 30 days of receipt of the decision, undertake review of the case by mailing (or otherwise communicating) to the Board, or the ALJ, and the parties notice of a pending Secretarial review. The underlying decision will be a preliminary decision during the 60-day period after issuance, or a longer period while Secretarial review is pending. If the Secretary decides not to review the case within 30 days, or if the Secretary affirms the decision, summarily, the Board or ALJ decision becomes the final decision of the Secretary on the matter.

(c) After undertaking review of a case, the Secretary may affirm or reverse the underlying decision, or remand the case with instructions for further proceedings. If the Secretary affirms with modifications or reverses the underlying decision, a written decision that sets forth the basis for the action will be the final decision of the Secretary on the matter. If the Secretary remands the case for further proceedings, the original Board or ALJ decision shall be set aside and a written remand order will issue from the Secretary which shall include the reasons for remand and instructions on the proper application of statutes, regulations or interpretive policy. Such

an order will be binding on the Board or ALJ which shall issue a new decision consistent with the Secretary's remand order.

(d) If the Secretary declines review, or disposes of the case by final decision affirming or reversing the Board, the Board shall promptly issue a notice of case closure to the parties.

6. Section 422.1086 is amended by revising the section heading, the introductory text of paragraph (a), and paragraph (c) to read as follows:

§ 422.1086 Effect of the Departmental Appeals Board or Secretarial decision.

(a) *General rule.* A decision of the Board is the final agency decision, unless: the time period permitted for Secretarial review has not elapsed; it is the subject of a Secretarial remand; or it is set aside by a decision by the Secretary to affirm or reverse. If a decision of the Board is set aside by the Secretary, the Secretary shall issue the final agency decision. The final agency decision shall be indicated in the notice of case closure issued by the Board pursuant to 422.1085(d), and shall be binding unless —

* * * * *

(c) *Special rules. Civil money penalty—*

Finality of decision. When CMS imposes a civil money penalty, the final administrative action that initiates the 60-day period for seeking judicial review will be receipt of the notice of case closure issued by the Board pursuant to § 422.1085(d).

7. Section 422.1088 is amended by revising paragraph (a) to read as follows:

§ 422.1088 Extension of time for seeking judicial review.

(a) Any affected party that is dissatisfied with a final administrative decision that imposes a CMP, either a binding decision of the Departmental Appeals Board under 422.1086 or a decision by the Secretary under 422.1085, and is entitled to judicial review must commence a civil action within 60 calendar days from receipt of the notice of case closure issued pursuant to 422.1085(d), unless the Board extends the time in accordance with paragraph (c) of this section.

* * * * *

PART 423—VOLUNTEER MEDICAL PRESCRIPTION DRUG BENEFIT

8. The authority for part 423 continues to read as follows:

Authority: Secs 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart T—Appeal Procedures for Civil Money Penalties

9. Section 423.1007 is added to read as follows:

§ 423.1007 Limitations of review.

The ALJ and the Departmental Appeals Board may not find invalid or refuse to follow Federal statutes, regulations, or Secretarial delegations of authority and must follow published guidance to the extent not inconsistent with statute or regulation.

10. Section 423.1068 is amended by—

A. Removing the word "or" at the end of paragraph (b)(3).

B. Redesignating paragraph (b)(4) as paragraph (b)(5).

C. Adding new paragraph (b)(4).

The addition reads as follows:

§ 423.1068 Administrative Law Judge's decision.

* * * * *

(b) * * *

(4) The Secretary undertakes review of the case pursuant to § 423.1085.

* * * * *

11. Section 423.1078 is amended by revising paragraph (c) to read as follows:

§ 423.1078 Departmental Appeals Board action on request for review.

* * * * *

(c) *Effect of dismissal.* The dismissal of a request for Board review shall be the final agency decision unless the Secretary elects review under § 423.1085.

* * * * *

12. Section 423.1085 is added to read as follows:

§ 423.1085 Secretarial Review of ALJ or Departmental Appeals Board decisions.

The Secretary may review a decision of an ALJ or the Board for error in applying statutes, regulations or interpretive policy.

(a) A copy of each preliminary Board decision will be delivered to the Secretary and the parties within 5 working days from the date the Board issues it. When the Board denies a request for review of an ALJ decision, a copy of the ALJ decision will be delivered to the Secretary and the parties within 5 working days from the date the Board declines to review it.

(b) After delivery of the Board or ALJ decision, the Secretary may, within 30 days of receipt of the decision, undertake review of the case by mailing (or otherwise communicating) to the Board, or the ALJ, and the parties notice of a pending Secretarial review. The underlying decision will be a preliminary decision during the 60-day period after issuance or a longer period while Secretarial review is pending. If the Secretary decides not to review the case within 30 days, or if the Secretary affirms the decision, summarily, the Board or ALJ decision becomes the final decision of the Secretary on the matter.

(c) After undertaking review of a case, the Secretary may affirm or reverse the underlying decision, or remand the case with instructions for further proceedings. If the Secretary affirms with modifications or reverses the underlying decision, a written decision that sets forth the basis for the action will be the final decision of the Secretary on the matter. If the Secretary remands the case for further proceedings, the original Board or ALJ decision shall be set aside and a written remand order will issue from the Secretary which shall include the reasons for remand and instructions on the proper application of statutes, regulations or interpretive policy. Such an order will be binding on the Board or ALJ which shall issue a new decision consistent with the Secretary's remand order.

(d) If the Secretary declines review, or disposes of the case by final decision affirming or reversing the Board, the Board shall promptly issue a notice of case closure to the parties.

13. Section 423.1086 is amended by revising the section heading, the introductory text of paragraph (a), and paragraph (c) to read as follows:

§ 423.1086 Effect of the Departmental Appeals Board or Secretarial decision.

(a) *General rule.* A decision of the Board is the final agency decision, unless: the time period permitted for Secretarial review has not elapsed; it is the subject of a Secretarial remand; or it is set aside by a decision by the Secretary to affirm or reverse. If a decision of the Board is set aside by the Secretary, the Secretary shall issue the final agency decision. The final agency decision shall be indicated in the notice of case closure issued by the Board pursuant to 423.1085(d), and shall be binding unless—

* * * * *

(c) *Special rules. Civil money penalty—*

Finality of decision. When CMS imposes a civil money penalty, the final administrative action that initiates the 60-day period for seeking judicial review will be receipt of the notice of case closure issued by the Board pursuant to 423.1085(d).

14. Section 423.1088 is amended by revising paragraph (a) to read as follows:

§ 423.1088 Extension of time for seeking judicial review.

(a) Any affected party that is dissatisfied with a final administrative decision that imposes a CMP, either a binding decision of the Departmental Appeals Board under § 423.1086 or a decision by the Secretary under § 423.1085, and is entitled to judicial review must commence a civil action within 60 calendar days from receipt of the notice of case closure issued pursuant to § 423.1085(d), unless the Board extends the time in accordance with paragraph (c) of this section.

* * * * *

PART 498— APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFS/MR AND CERTAIN NFS IN THE MEDICAID PROGRAM

15. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

16. Section 498.8 is added to read as follows:

§ 498.8 Limitations of review.

The ALJ and the Departmental Appeals Board may not find invalid or refuse to follow Federal statutes, regulations, or Secretarial delegations of authority and must follow published guidance to the extent not inconsistent with statute or regulation.

Subpart D—Hearings

17. Section 498.74 is amended by—

A. Redesignating paragraphs (b)(2), (b)(3) and (b)(4) as (b)(3), (b)(4) and (b)(5), respectively.

B. Adding new paragraph (b)(2).

The addition reads as follows:

§ 498.74 Administrative Law Judge's decision.

* * * * *

(b) * * *

(2) The Secretary undertakes review of the case pursuant to § 498.89.

* * * * *

Subpart E—Departmental Appeals Board Review

18. Section 498.83 is amended by revising paragraph (c) to read as follows:

§ 498.83 Departmental Appeals Board action on request for review.

* * * * *

(c) *Effect of dismissal.* The dismissal of a request for Board review shall be the final agency decision unless the Secretary elects review under § 498.89.

* * * * *

19. Section 498.89 is added to read as follows:

§ 498.89 Secretarial Review of ALJ or Departmental Appeals Board decisions.

The Secretary may review a decision of an ALJ or the Board for error in applying statutes, regulations or interpretive policy.

(a) A copy of each preliminary Board decision will be delivered to the Secretary and the parties within 5 working days from the date the Board issues it. When the Board denies or dismisses a request for review of an ALJ decision, a copy of the ALJ decision will be delivered to the Secretary and the parties within 5 working days from the date the Board declines to review it.

(b) After delivery of the Board or ALJ decision, the Secretary may, within 30 days of receipt of the decision, undertake review of the case by mailing (or otherwise communicate) to the Board, or the ALJ, and the parties notice of a pending Secretarial review. The underlying decision will be a preliminary decision during the 60-day period after issuance or a longer period while Secretarial review is pending. If the Secretary decides not to review the case within 30 days, or if the Secretary affirms the decision, summarily, the Board or ALJ decision becomes the final decision of the Secretary on the matter.

(c) After undertaking review of a case, the Secretary may affirm or reverse the underlying decision, or remand the case with instructions for further proceedings. If the Secretary affirms with modifications or reverses the underlying decision, a written decision that sets forth the basis for the action will be the final decision of the Secretary on the matter. If the Secretary remands the case for further proceedings, the original Board or ALJ decision shall be set aside and a written remand order will issue from the Secretary which shall include the reasons for remand and instructions on the proper application of statutes, regulations or interpretive policy. Such an order will be binding on the Board or ALJ which shall issue a new decision consistent with the Secretary's remand order.

(d) If the Secretary declines review, or disposes of the case by final decision affirming or reversing the Board, the Board shall promptly issue a notice of case closure to the parties.

20. Section 498.90 is amended by revising the section heading, the introductory text of paragraph (a), and paragraph (c)(1) to read as follows:

§ 498.90 Effect of the Departmental Appeals Board or Secretarial decision.

(a) *General rule.* A decision of the Board is the final agency decision, unless: The time period permitted for Secretarial review has not elapsed; it is the subject of a Secretarial remand; or it is set aside by a decision by the Secretary to affirm or reverse. If a decision of the Board is set aside by the Secretary, the Secretary shall issue the final agency decision. The final agency decision shall be indicated in the notice of case closure issued by the Board pursuant to § 498.89(d), and shall be binding unless—

* * * * *

(c) *Special rules. Civil money penalty—*

(1) *Finality of decision.* When CMS imposes a civil money penalty, the final administrative action that initiates the 60-day period for seeking judicial review will be receipt of the notice of case closure issued by the Board pursuant to § 498.89(d).

* * * * *

21. Section 498.95 is amended by revising paragraph (a) to read as follows:

§ 498.95 Extension of time for seeking judicial review.

(a) Any affected party that is dissatisfied with a final agency decision and is entitled to judicial review must commence a civil action within 60 days from receipt of the notice of case closure issued by the Board pursuant to § 498.89(d), unless the Board extends the time in accordance with paragraph (c) of this section. The date of receipt is deemed to be 5 days after the date on the notice, unless there is a showing that it was, in fact, received earlier or later.

* * * * *

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

22. The authority citation for part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

23. Section 1005.20 is amended by revising paragraph (d) to read as follows:

§ 1005.20 Initial decision.

* * * * *

(d) Except for exclusion actions taken in accordance with § 1001.2003 of this chapter and paragraph (e) of this section, unless the initial decision is appealed to the DAB, it will be final and

binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

* * * * *

24. Section 1005.21 is amended by revising paragraphs (j) and (k) to read as follows:

§ 1005.21 Appeal to DAB.

* * * * *

(j) Except with respect to any penalty, assessment or exclusion remanded to the ALJ or to be reviewed by the Secretary pursuant to § 1005.24 of this chapter, the DAB's decision, including a decision to decline review of the initial decision, becomes final and binding 60 days after the date on which the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(k)(1) Any petition for judicial review must be filed within 60 days after the decision becomes final and binding as provided in paragraph (j) of this section or § 1005.24(c)(1).

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final decision will be sent by certified mail, return receipt requested, to the Chief Counsel to the IG. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the Chief Counsel to the IG receives two or more petitions within 10 days after the decision becomes final and binding, the Chief Counsel to the IG will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

25. Section 1005.24 is added to read as follows:

§ 1005.24 Secretarial Review of ALJ or DAB decisions.

The Secretary may review all ALJ decisions that the DAB has declined to review and all DAB decisions for error in applying statutes, regulations or interpretive policy.

(a) A copy of each DAB decision will be delivered to the Secretary within 5 working days from the date the DAB issues it. When the DAB denies a request for review of an ALJ decision, a copy of the ALJ decision will be delivered to the Secretary by the DAB within 5 working days from the date the DAB declines review.

(b) After delivery of a DAB or ALJ decision, the Secretary may undertake a review of the decision.

(1) The Secretary may, within 30 days of receipt of the Board or ALJ decision, undertake review of the decision by mailing (or otherwise transmitting) to the Board, or the ALJ, and the parties notice of a pending Secretarial review. The Secretary's undertaking review of the decision automatically stays the effective date of the decision.

(2) If the Secretary does not undertake a review within 30 days of receipt of the decision, the decision shall be final and binding 60 days after the date the DAB served the parties with the decision, as provided in § 1005.21(j).

(c) Upon review of the decision, the Secretary may affirm or reverse the decision, or remand the matter to the DAB or ALJ for further proceedings.

(1) The Secretary's affirmance or reversal of the decision shall be final and binding on the date the Secretary serves the parties with a written decision setting forth the basis for the decision. Such a decision may incorporate by reference some or all of the reasoning of the reviewed decision, and shall be the final agency action. If service is by mail, the date of service shall be deemed to be 5 days from the date of mailing. Any petition for judicial review must be filed within 60 days after the Secretary serves the parties with the decision.

(2) If the Secretary remands the decision to the DAB or ALJ, the Secretary shall issue a written remand order including the reasons for remand and instructions on the proper application of statutes, regulations or interpretive policy. The Secretary's remand order will be binding on the DAB or ALJ. Upon issuance of the Secretary's remand order, the original DAB or ALJ decision shall be set aside.

(3) Within 60 days of receipt of the Secretary's remand order by the DAB or ALJ, the DAB or ALJ shall serve the parties and the Secretary with a copy of the new decision consistent with the Secretary's remand order. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

Title 45—Public Welfare

PART 16—PROCEDURES OF THE DEPARTMENTAL APPEALS BOARD

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301 and secs. 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

2. The heading of part 16 is revised to read as forth above.

§ 16.2 [Amended]

3. Section 16.2 is amended in paragraph (a) by removing the word "Grant" from the phrase "Departmental Grant Appeals Board."

4. Section 16.3 is amended by revising paragraph (b) to read as follows:

§ 16.3 When these procedures become available.

* * * * *

(b) The appellant must have received a final written decision, and must appeal that decision within 30 days after receiving it.

* * * * *

5. Section 16.7 is amended by revising paragraph (a) to read as follows:

§ 16.7 The first steps in the appeal process: The notice of appeal and the Board's response.

(a) A prospective appellant must submit a notice of appeal to the Board within 30 days after receiving the final decision. The notice of appeal must include a copy of the final decision, a statement of the amount in dispute in the appeal, and a brief statement of why the decision is wrong.

* * * * *

6. Section 16.12 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 16.12 The expedited process.

* * * * *

(d) *Special expedited procedures where there has already been review.* Some HHS components use a board or other relatively independent reviewing authority to conduct a formal preliminary review process (such as the process described at 42 CFR Part 50, Subpart D) which results in a written decision based on a record including documents or statements presented after reasonable notice and opportunity to present such material. In such cases, the following rules apply to appeals of $25,000 or less instead of those under paragraph (c) of this section.

* * * * *

7. Section 16.14 is revised to read as follows:

§ 16.14 How Board review is limited.

The Departmental Appeals Board may not find invalid or refuse to follow Federal statutes, regulations, or Secretarial delegations of authority and must follow published guidance to the extent not inconsistent with statute or regulation.

8. Section 16.20 is amended by—

A. Revising paragraph (a).

B. Removing paragraphs (d) and (e).

The revision reads as follows:

§ 16.20 How to submit material to the Board.

(a) All submissions should be filed in the manner indicated in the final written decision being appealed or the filing instructions contained in the Appellate Division Practice Manual available on the Board's website at *www.hhs.gov/dab.* The Board's mailing address is set forth on that Web site, and, as of October 1, 2007, is: Department of Health and Human Services, Departmental Appeals Board, Appellate Division, Cohen Building, Rm. G–644, MS 6127, 330 Independence Ave., SW., Washington, DC 20201.

* * * * *

9. Section 16.21 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 16.21 Record and decisions.

* * * * *

(c) The Board will promptly notify the Secretary of any disposition of a case on the merits by delivering a copy of each Board decision to the Secretary within 5 working days after the Board issues it.

(d) After delivery of the Board decision, the Secretary may, within 30 days of receipt of the Board decision, undertake review of the case by mailing (or otherwise transmitting) to the Board and the parties notice of a pending Secretarial review. The Board's decision will be a proposed decision during the 30 day period after issuance and while Secretarial review is pending. If the Secretary does not within 30 days determine to review the case, or if the Secretary affirms the Board decision summarily, the Board decision becomes the final decision of the Secretary on the matter, and the Board will promptly so notify the parties.

(e) After undertaking review of a case, the Secretary may affirm or reverse the Board's decision, or remand the case with instructions for further proceedings. In cases involving title IV of the Social Security Act, the Secretary may only affirm or remand the case with instructions for further proceedings. If the Secretary affirms with modifications or reverses the Board's decision, a written decision that sets forth the basis for the action will be the final decision of the Secretary on the matter. If the Secretary remands the case to the Board for further proceedings, the Board's original decision shall be set aside and a written remand order will issue from the Secretary which shall include the reasons for remand and instructions on the proper application of statutes, regulations or interpretive policy. Such an order will be binding on the Board which shall issue a new decision consistent with the Secretary's remand order.

10. Section 16.22 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 16.22 The effect of an appeal.

(a) *General.* Until the Board disposes of an appeal and the opportunity for Secretarial review has lapsed, the respondent shall take no action to implement the final decision appealed.

(b) * * *

(1) Suspend funding;

* * * * *

11. Appendix A to Part 16 is amended by—

A. Revising paragraph A.

B. Amending paragraph B by—

i. In paragraph (a)(1), removing the phrase "Titles I, IV, VI X, XVI(AABD) XIX and XX" and adding in its place the phrase "Titles IV, X, XIV, XVI (AABD), XIX, XX and XXI."

ii. In paragraph (a)(1), removing the phrase "such as those under sections 403(g) and 1903(g)".

iii. In paragraph (a)(2), inserting the word "former" before the phrase "Public Health Service."

iv. In paragraph (a)(3) removing the phrase "sections 113 and 132" and adding in its place the phrase "sections 124 and 143";

v. Adding paragraph (a)(7).

C. Revising subparagraph (b) of paragraph C.

D. Revosomg paragraph E.

The revisions and addition read as follows:

Appendix A to Part 16—What Disputes the Board Reviews.

A. What this Appendix covers.

This Appendix describes some of the programs which use the procedures in 45 CFR Part 16 for dispute resolution, the types of disputes covered, and any conditions for Board review of final written decisions resulting from those disputes. Disputes under programs not specified in this Appendix may be covered in a program regulation, delegation, memorandum of understanding, or other arrangement between the Board and the head of the appropriate HHS operating component or other agency responsible for administering the program. If in doubt, call the Board. Even though a dispute may be covered here, the Board may still not be able to review it if the limits in paragraph F apply.

B. Mandatory grant programs.

(a) * * *

(7) Disallowance determinations under the Child Care and Development Fund Program as provided in 45 CFR 98.66.

* * * * *

C. Direct, discretionary project programs.

* * * * *

(b) Where an HHS component uses a preliminary appeal process (such as the one described at 42 CFR Part 50, Subpart D), the "final written decision" for purposes of Board review is the decision issued as a result of that process.

* * * * *

PART 81—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 80 OF THIS TITLE

12. The authority citation for part 81 continues to read as follows:

Authority: 5 U.S.C. 301 and 45 CFR 80.9(d).

Subpart G—Responsibilities and Duties of Presiding Officer

13. Section 81.64 is added to read as follows:

§ 81.64 Scope of review of the presiding officer and the reviewing authority.

The hearing examiner and the reviewing authority may not find invalid or refuse to follow Federal statutes, regulations, or Secretarial delegations of authority and must follow published guidance to the extent not inconsistent with statute or regulation.

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

14. The authority citation for part 160 continues to read as follows:

Authority: 42 U.S.C. 1302(a), 42 U.S.C. 1320d–1320d8, sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)), and 5 U.S.C. 552.

Subpart E—Procedures for Hearings

15. Section 160.508 is amended by revising paragraph (c)(1) to read as follows:

§ 160.508 Authority of the ALJ.

* * * * *

(c) * * *

(1) May not find invalid or refuse to follow Federal statutes, regulations, or Secretarial delegations of authority and must follow published guidance to the extent not inconsistent with statute or regulation;

* * * * *

16. Section 160.548 is amended by—

A. Redesignating paragraph (h) as paragraph (h)(1).

B. Adding paragraph (h)(2).

C. Revising paragraph (j).

D. Revising paragraph (k)(1).

The revisions and addition read as follows:

§ 160.548 Appeal of the ALJ's decision.

* * * * *

(h) * * *

(2) The Board may not find invalid or refuse to follow Federal statutes, regulations, or Secretarial delegations of

authority and must follow published guidance to the extent not inconsistent with statute or regulation.

* * * * *

(j) Except with respect to a decision remanded to the ALJ, or a decision the Secretary has undertaken to review pursuant to § 160.554 of this part, the Board's decision, including a decision to decline review of the initial decision, becomes final and binding as the decision of the Secretary 60 days after the date on which the Board serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(k)(1) A respondent's petition for judicial review must be filed within 60 days of when the decision of the Secretary becomes final and binding as provided in paragraph (j) of this section or § 160.554(c)(1).

* * * * *

17. Section 160.554 is added to read as follows:

§ 160.554 Secretarial Review of ALJ or Board Decisions.

The Secretary may review all ALJ decisions that the Board has declined to review and all Board decisions for error in applying statutes, regulations or interpretative policy.

(a) A copy of each Board decision will be delivered to the Secretary within 5 working days after the Board issues it. When the Board denies a request for review of an ALJ decision, a copy of the ALJ decision will be delivered to the Secretary by the Board within 5 working days after the Board declines review.

(b) After delivery of a Board or ALJ decision, the Secretary may undertake a review of the decision.

(1) The Secretary may, within 30 days of receipt of the Board or ALJ decision, undertake review of the decision by mailing (or otherwise transmitting) to the Board, or the ALJ, and the parties notice of a pending Secretarial review. The Secretary's undertaking review of the decision automatically stays the effective date of the decision.

(2) If the Secretary does not undertake review within 30 days of receipt of the decision, the decision shall be final and binding as the decision of the Secretary 60 days after the date the Board served the parties with the decision, as provided in § 160.548(j).

(c) Upon review of the decision, the Secretary may affirm or reverse the decision, or remand the matter to the Board or ALJ for further proceedings.

(1) The Secretary's affirmance or reversal of the decision shall be final and binding on the date the Secretary serves the parties with a written decision setting forth the basis for the decision. Such a decision may incorporate by reference some or all of the reasoning of the reviewed decision, and shall be the final agency action. Any petition for judicial review must be filed within 60 days of when the respondent receives notice of the Secretary's decision.

(2) If the Secretary remands the decision to the Board or ALJ, the Secretary shall issue a written remand order including the reasons for remand and instructions on the proper application of statutes, regulations or interpretative policy. The Secretary's remand order will be binding on the Board or ALJ. Upon issuance of the Secretary's remand order, the original Board or ALJ decision shall be set aside.

(3) If service of a ruling or decision issued under this section is by mail, the date of service shall be deemed to be 5 days from the date of the mailing.

PART 1303— APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

18. The authority citation for part 1303 continues to read as follows:

Authority: 42 U.S.C. 9801, *et seq.*

Subpart B—Appeals by Grantees

§ 1303.17 [Amended]

19. Section 1303.17 is amended by removing the phrase "final decision" in paragraph (a), in the second sentence, and adding in its place the phrase "Board's decision".

Dated: September 17, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–6221 Filed 12–21–07; 1:00 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7753]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 27, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B–7753, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151 or.(e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to

meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground	
				Existing	Modified
City of Sacramento, California					
California	City of Sacramento	Natomas Basin	Area West of Natomas East Main Drainage Canal.	None	*33
			Area North of American River	None	*33
			Area East of Sacramento River	None	*33

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Sacramento

Maps are available for inspection at Stormwater Management Program, 1395 35th Avenue, Sacramento, CA 95822.

Unincorporated Areas of Sacramento County, California					
California	Unincorporated Areas of Sacramento County.	Natomas Basin	Area West of Natomas East Main Drainage Canal.	None	*33
			Area North of American River	None	*33
			Area East of Sacramento River	None	*33

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Sacramento County

Maps are available for inspection at Municipal Services Agency, Department of Water Resources, 827 7th Street, Room 301, Sacramento, CA 95814.

State	City/town/county	Source of flooding	Location**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground	
				Existing	Modified
Unincorporated Areas of Sutter County, California					
California	Unincorporated Areas of Sutter County.	Natomas Basin	Area West of Natomas East Main Drainage Canal.	None	*33
			Area South of Cross Canal	None	*33
			Area East of Sacramento River	None	*33

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Sutter County

Maps are available for inspection at Sutter County Administrators Office, 1160 Civic Center Boulevard, Yuba City, CA 95993.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Cobb County, Georgia and Incorporated Areas				
Allatoona Branch	Approximately 700 feet upstream of confluence of Allatoona Creek.	+983	+985	Unincorporated Areas of Cobb County.
	Approximately 75 feet upstream of Holland Rd	+1017	+1019	
Allatoona Creek	Approximately 625 feet upstream of County Line Rd	+861	+862	Unincorporated Areas of Cobb County.
	Approximately 1625 feet upstream of Holland Rd	+1078	+1070	
Bishop Creek	Just upstream of confluence with Sope Creek	+907	+911	Unincorporated Areas of Cobb County.
	Just upstream of Seven Springs Circle	+973	+979	
Blackjack Creek	Just upstream of confluence with Sope Creek	+993	+999	Unincorporated Areas of Cobb County, City of Marietta.
	Just upstream of Lightfoot Circle	None	+1065	
Butler Creek	Approximately 1375 feet upstream of Nance Rd	+861	+862	Unincorporated Areas of Cobb County, City of Acworth, City of Kennesaw.
	Approximately 600 feet downstream of Sumit Wood Drive.	+1027	+1024	
Campground Creek	Just upstream of confluence with Sope Creek	+928	+931	Unincorporated Areas of Cobb County.
	Approximately 800 feet upstream of Roswell Road	None	+1057	
Concord Creek	Approximately 50 feet upstream of Covered Bridge Road.	+898	+897	Unincorporated Areas of Cobb County.
	Approximately 650 feet downstream of Durrell Street	None	+1014	
Cooper Lake Creek	Approximately 550 feet downstream of East West Connector.	+829	+825	Unincorporated Areas of Cobb County, City of Smyrna.
	Approximately 100 feet upstream of Gann Road	None	+892	
Due West Creek	Approximately 300 feet downstream of Hadaway Road.	+895	+896	Unincorporated Areas of Cobb County.
	Approximately 1100 feet downstream of Butterfield Road.	None	+988	
Eastside Creek	Just upstream of confluence with Sope Creek	+915	+920	Unincorporated Areas of Cobb County.
	Just downstream of Greenview Drive	None	+965	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Elizabeth Branch	Just upstream of the confluence with Sope Creek	+999	+1000	Unincorporated Areas of Cobb County, City of Marietta.
	Approximately 1750 feet upstream of interstate 75	None	+1082	
Favor Creek	Approximately 1025 feet upstream of confluence of Nickajack Creek.	+914	+917	Unincorporated Areas of Cobb County.
	Approximately 1225 feet downstream of Favor Road	+988	+987	
Hope Creek	Just upstream of confluence with Rottenwood Creek	+945	+940	Unincorporated Areas of Cobb County, City of Marietta.
	Approximately 1100 upstream of Interstate 75	None	+1004	
Laurel Creek	Approximately 375 feet upstream of Norfolk Southern Corporation Railroad.	+801	+807	Unincorporated Areas of Cobb County, City of Smyrna.
	Approximately 150 feet downstream of Dunn Street	None	+986	
Liberty Hill Branch	Approximately 400 feet upstream of Monarch Valley Walk.	+767	+770	Unincorporated Areas of Cobb County.
	Approximately 950 feet upstream of Blackhawk Trail	+884	+914	
Little Allatoona Creek	Approximately 1875 feet upstream of Old Stilesboro Road.	+895	+896	Unincorporated Areas of Cobb County.
	Approximately 925 feet upstream of Femstone Road	+926	+932	
Little Noonday Creek	Approximately 1925 feet upstream confluence of Noonday Creek.	+908	+906	Unincorporated Areas of Cobb County.
	Approximately 1325 feet upstream of Almon Drive	+1008	+1007	
Lost Mountain Creek	At Confluence with Wildhorse Creek	+902	+907	City of Powder Springs.
	Approximately 1850 feet upstream of the confluence with Wildhorse Creek.	+906	+907	
Luther Ward Creek	Approximately 1525 feet upstream of confluence of Mud Creek.	+917	+920	Unincorporated Areas of Cobb County.
	Approximately 1700 feet upstream of Luther Ward Road.	+967	+963	
Milam Branch	Approximately 700 feet upstream of confluence of Queen Creek.	+929	+914	Unincorporated Areas of Cobb County.
	Approximately 50 feet downstream of Lone Oak Drive	+1007	+1010	
Mill Creek No. 1	Approximately 250 feet upstream of the confluence of Powder Springs Creek.	+941	+942	Unincorporated Areas of Cobb County.
	Just downstream of Poplar Springs Road	+1002	+1001	
Mill Creek No. 2	Approximately 2000 feet upstream of confluence of Nickajack Creek.	+909	+908	Unincorporated Areas of Cobb County.
	Approximately 100 feet upstream of Hicks Road	None	+965	
Morgan Lake Tributary	Just upstream of Rio Montana Drive	+950	+947	Unincorporated Areas of Cobb County.
	Approximately 300 feet downstream of Morgan Lake Dam.	+988	+986	
Mud Creek	Approximately 1600 feet upstream of confluence of Nose Creek.	+909	+912	Unincorporated Areas of Cobb County.
	Approximately 250 feet downstream of Gordon Combs Road.	+1023	+1024	
Nickajack Creek	Approximately 2550 feet downstream of Veterans Memorial Highway.	+766	+767	Unincorporated Areas of Cobb County, City of Smyrna.
	Approximately 200 feet upstream of Cobb Drive	None	+1047	
Noonday Creek	Approximately 175 feet upstream of Shallowford Road	+907	+904	Unincorporated Areas of Cobb County, City of Kennesaw, City of Marietta.
	Approximately 325 feet upstream of New Salem Road	None	+1025	
Noonday Tributary No. 3	Approximately 1125 feet upstream of confluence of Noonday Creek.	+926	+928	Unincorporated Areas of Cobb County, City of Marietta.
	Approximately 350 feet downstream Dickson Road	+1056	+1051	
Noonday Tributary No. 7	Approximately 425 feet upstream of confluence of Noonday Creek.	+955	+953	Unincorporated Areas of Cobb County.
	Approximately 1500 feet downstream of Club Drive	+997	+995	
Noses Creek	Approximately 300 feet upstream of Clay Road	+891	+892	Unincorporated Areas of Cobb County, City of Austell, City of Marietta, City of Powder Springs.

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	Approximately 225 feet downstream of Tower Road ...	+1081	+1082	
Olley Creek	Approximately 2525 feet upstream of confluence of Sweetwater Creek.	+891	+892	Unincorporated Areas of Cobb County, City of Austell, City of Marietta.
	Approximately 50 feet downstream of Hill Street	+1072	+1069	
Olley Creek Tributary	Approximately 350 feet downstream of Booth Road ...	+1004	+1001	Unincorporated Areas of Cobb County, City of Marietta.
	Approximately 600 feet upstream of Brownstone Road.	None	+1026	
Piney Grove Creek	Just upstream of the Confluence with Sewell Mill Creek.	+942	+951	Unincorporated Areas of Cobb County.
	Just downsteam of Davis Road	+1070	+1067	
Pitner Creek	Approximately 800 feet upstream of confluence of Little Allatoona Creek.	+892	+890	Unincorporated Areas of Cobb County.
	Approximately 425 feet upstream of Fords Road	+994	+997	
Poorhouse Creek	Just upstream of the confluence with Rottenwood Creek.	+926	+928	Unincorporated Areas of Cobb County, City of Marietta.
	Approximately 4,800 feet upstream of Cobb Parkway	None	+954	
Poplar Creek	Just upstream of confluence with Rottenwood Creek	+877	+880	Unincorporated Areas of Cobb County, City of Smyrna.
	Just upstream of PineCrest Circle	None	+1011	
Powder Springs Creek	Approximately 2100 feet upstream of C H James Parkway.	+913	+914	Unincorporated Areas of Cobb County.
	Approximately 800 feet upstream of Macland Road	+940	+941	
Powers Creek	Just upstream of confluence with Rottenwood Creek	+931	+933	Unincorporated Areas of Cobb County
	Approximately 200 feet upstream of Powers Ferry Road.	None	+951	
Proctor Creek	Approximately 1950 feet upstream of Old Highway 41	+864	+865	Unincorporated Areas of Cobb County, City of Acworth, City of Kennesaw.
	Just upstream of Jiles Road	None	+948	
Queen Creek	Approximately 175 feet downstream of Queens River Drive.	+766	+767	Unincorporated Areas of Cobb County.
	Approximately 225 feet upstream of Mableton Drive ...	None	+997	
Robertson Creek	Just upstream of the Confluence with Sewell Mill Creek.	+922	+923	Unincorporated Areas of Gobb County.
	Approxiamtely 600 feet upstream of Benson Drive	None	+1019	
Rottenwood Creek	Approxiamtely 500 feet upstream of the confluence with the Chattahoochee River.	+788	+789	Unincorporated Areas of Cobb County, City of Marietta.
	Just upstream of Fairground Street	+1051	+1052	
Rubes Creek	Approximately 2800 feet upstream of confluence of Trickum Creek.	+898	+896	Unincorporated Areas of Cobb County.
	Approximately 130 feet upstream of Saxony Glen	None	+1075	
Rubes Creek Tributary	Just upstream of Confluence with Rubes Creek	+921	+918	Unincorporated Areas of Cobb County.
	Approximately 750 feet upstream of Keheley Road	+990	+986	
Sewell Mill Creek	Just Upsteam of Greenfield Drive	+919	+921	Unincorporated Areas of Cobb County.
	Just upstream of Karen Lane	+1086	+1084	
Smyrna Branch	Approximately 450 feet downstream of Cobb Drive	+936	+933	City of Smyrna.
	Approximately 175 feet upstream of Powder Springs Street.	None	+997	
Sope Branch	Just upstream of Confluence with Sope Creek	+1022	+1023	City of Marietta.
	Approxiamtely 300 feet upstream of Sequoia Road	None	+1088	
Sope Creek	Just upstream of confluence with the Chattahoochee River.	+807	+808	Unincorporated Areas of Cobb County, City of Marietta.
	Approxiamtely 1025 feet upstream of Fairground Street.	None	+1042	
Tanyard Creek	Approximately 1275 feet upstream of Lake Acworth Drive.	+867	+864	Unincorporated Areas of Cobb County, City of Acworth.

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	Approximately 300 feet downstream of Baker Plantation Drive.	+918	+919	
Theater Branch	Approximately 125 feet upstream of Old Concord Road.	+928	+929	Unincorporated Areas of Cobb County, City of Smyrna.
	Just downstream of Parkway Drive	+970	+973	
Thompson Creek	Just upstream of the Confluence with Sewell Mill Creek.	+933	+934	Unincorporated Areas of Cobb County.
	Just upstream of Pine Road	+964	+965	
Trickum Creek	Just upstream of Confluence with Rubes Creek	+910	+911	Unincorporated Areas of Cobb County.
	Approximately 400 feet upstream of Pete Shaw Road	None	+1054	
Trickum Creek Tributary	Just upstream of confluence with Trickum Creek	+934	+935	Unincorporated Areas of Cobb County.
	Just downstream of Jims Road	+1104	+1108	
Ward Creek	Approximately 600 feet upstream of Ernest Barrett Parkway.	+923	+926	Unincorporated Areas of Cobb County, City of Marietta.
	Approximately 50 feet downstream of Northcutt Street	+1054	+1050	
Westside Branch	At confluence with Ward Creek	+1017	+1016	City of Marietta.
	Approximately 500 feet upstream of the confluence with Ward Creek.	+1017	+1016	
Wildhorse Creek	At Confluence with Noses Creek	+902	+907	Unincorporated Areas of Cobb County, City of Powder Springs.
	Just Downstream of Macedonia Road	+906	+907	
Wildwood Branch	Just upstream of the confluence with Sope Creek	+976	+985	Unincorporated Areas of Cobb County, City of Marietta.
	Approximately 300 feet downstream of Varner Road	None	+1027	

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Acworth

Maps are available for inspection at City Hall, 4415 Senator Russell Avenue, Acworth, GA 30101.

City of Austell

Maps are available for inspection at 2716 Broad Street, SW, Austell, GA 30106.

City of Kennesaw

Maps are available for inspection at 2529 J.O. Stephenson Avenue, Kennesaw, GA 30144.

City of Marietta

Maps are available for inspection at Development and Inspection Department, 205 Lawrence Street, Marietta, GA 30060.

City of Powder Springs

Maps are available for inspection at City Hall, 4484 Marietta Street, Powder Springs, GA 30127.

City of Smyrna

Maps are available for inspection at City Hall, 2800 King Street, Smyrna, GA 30080.

Unincorporated Areas of Cobb County

Maps are available for inspection at 100 Cherokee Street, Marietta, GA 30090.

Douglas County, Georgia, and Incorporated Areas

Alexander Branch	At confluence with Bear Creek	None	+957	Unincorporated Areas of Douglas County.
	Approximately 3,630 feet upstream of the confluence of Alexander Branch Tributary B.	None	+1094	
Tributary A	At confluence with Alexander Branch	None	+1000	Unincorporated Areas of Douglas County.
	Approximately 1,080 feet upstream of Cougar Trail	None	+1040	

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Tributary B	At confluence with Alexander Branch	None	+1026	Unincorporated Areas of Douglas County.
	Approximately 1,030 feet upstream of confluence with Alexander Branch.	None	+1060	
Amber Creek	At confluence with Anneewakee Creek	None	+789	Unincorporated Areas of Douglas County.
	Approximately 4,610 feet upstream of Jan Drive	None	+934	
Tributary A	At confluence with Amber Creek	None	+823	Unincorporated Areas of Douglas County.
	Approximately 2,540 feet upstream of Jan Drive	None	+902	
Anneewakee Creek	Approximately 670 feet upstream of State Highway 166.	None	+747	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 2,480 feet upstream of the confluence of Anneewakee Creek Tributary L.	None	+1147	
Tributary A	At confluence with Anneewakee Creek	None	+747	Unincorporated Areas of Douglas County.
	Approximately 2,880 feet upstream of confluence with Anneewakee Creek.	None	+799	
Tributary B	At confluence with Anneewakee Creek	None	+747	Unincorporated Areas of Douglas County.
	Approximately 2,320 feet upstream of confluence with Anneewakee Creek.	None	+811	
Tributary C	At confluence with Anneewakee Creek	None	+776	Unincorporated Areas of Douglas County.
	Approximately 1,400 feet upstream of confluence with Anneewakee Creek.	None	+866	
Tributary D	At confluence with Anneewakee Creek	None	+844	Unincorporated Areas of Douglas County.
	Approximately 2,150 feet upstream of confluence with Anneewakee Creek.	None	+906	
Tributary E	At confluence with Anneewakee Creek	+864	+873	Unincorporated Areas of Douglas County.
	Approximately 2,910 feet upstream of confluence with Anneewakee Creek.	None	+894	
Tributary F	At confluence with Anneewakee Creek	+878	+879	Unincorporated Areas of Douglas County.
	Approximately 4,000 feet upstream of confluence with Anneewakee Creek.	None	+913	
Tributary G	At confluence with Anneewakee Creek	+884	+892	Unincorporated Areas of Douglas County.
	Approximately 4,270 feet upstream of confluence with Anneewakee Creek.	None	+980	
Tributary H	At confluence with Anneewakee Creek	+887	+894	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 2,450 feet upstream of confluence with Anneewakee Creek.	None	+915	
Tributary I	At confluence with Anneewakee Creek	+891	+895	Unincorporated Areas of Douglas County.
	Approximately 840 feet upstream of Warren Road	None	+948	
Tributary J	At confluence with Anneewakee Creek	None	+945	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 2,690 feet upstream of confluence with Anneewakee Creek.	None	+1010	
Tributary K	At confluence with Anneewakee Creek	None	+1063	City of Douglasville.
	Approximately 1,560 feet upstream of Rose Lake Circle.	None	+1128	
Tributary L	At confluence with Anneewakee Creek	None	+1108	City of Douglasville.
	Approximately 300 feet upstream of Gurley Road	None	+1131	
Arbor Branch	At confluence with Anneewakee Creek	None	+995	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 160 feet upstream of Pine Lane	None	+1125	
Tributary A	At confluence with Arbor Branch	None	+1084	City of Douglasville.
	Approximately 1,310 feet upstream of Interstate Highway 20/Tom Murphy Freeway.	None	+1127	

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Austin Creek	At confluence with Anneewakee Creek	None	+935	Unincorporated Areas of Douglas County.
	Approximately 210 feet upstream of Mill Glen Drive	None	+1083	
Baldwin Creek	At confluence with Little Bear Creek	None	+763	Unincorporated Areas of Douglas County.
	Approximately 820 feet upstream of North Bear Drive	None	+1049	
Tributary A	At confluence with Baldwin Creek	None	+941	Unincorporated Areas of Douglas County.
	Approximately 2,450 feet upstream of Dorsett Shoals Road.	None	+1084	
Bear Creek	Approximately 300 feet upstream of confluence with Chattahoochee River.	None	+741	Unincorporated Areas of Douglas County.
	Approximately 630 feet upstream of Ridge Way	None	+1128	
Tributary A	At confluence with Bear Creek	None	+741	Unincorporated Areas of Douglas County.
	Approximately 1,190 feet upstream of confluence with Bear Creek.	None	+752	
Tributary B	At confluence with Bear Creek	None	+741	Unincorporated Areas of Douglas County
	Approximately 530 feet upstream of State Highway 166.	None	+780	
Tributary C	At confluence with Bear Creek	None	+756	Unincorporated Areas of Douglas County.
	Approximately 390 feet upstream of Fouts Mill Road	None	+782	
Tributary D	At confluence with Bear Creek	None	+761	Unincorporated Areas of Douglas County.
	Approximately 420 feet upstream of Fox Glove Court	None	+820	
Tributary E	At confluence with Bear Creek	None	+774	Unincorporated Areas of Douglas County.
	Approximately 2,140 feet upstream of confluence with Bear Creek.	None	+827	
Tributary F	At confluence with Bear Creek	None	+818	Unincorporated Areas of Douglas CountyD.
	Approximately 400 feet upstream of Yorktown Road	None	+901	
Tributary G	At confluence with Bear Creek	None	+822	Unincorporated Areas of Douglas County.
	Approximately 330 feet upstream of Kings Highway	None	+967	
Bomar Branch	Approximately 50 feet upstream of confluence with Anneewakee Creek.	+880	+881	Unincorporated Areas of Douglas County.
	Approximately 230 feet upstream of Appaloosa Trail	None	+939	
Chapel Farms Creek	At confluence with Anneewakee Creek	None	+769	Unincorporated Areas of Douglas County.
	Approximately 760 feet upstream of confluence of Chapel Farms Creek Tributary A.	None	+917	
Tributary A	At confluence with Chapel Farms Creek	None	+908	Unincorporated Areas of Douglas County.
	Approximately 1,020 feet upstream of confluence with Chapel Farms Creek.	None	+920	
Coursey Creek	At confluence with Little Bear Creek	None	+813	Unincorporated Areas of Douglas County.
	Approximately 4,510 feet upstream of Dorsett Shoals Road.	None	+944	
Crooked Creek	At confluence with Anneewakee Creek	+874	+875	Unincorporated Areas of Douglas County.
	Approximately 4,070 feet upstream of Bomar Road	None	+1021	
Tributary A	At confluence with Crooked Creek	None	+897	Unincorporated Areas of Douglas County.
	Approximately 4,270 feet upstream of confluence with Crooked Creek.	None	+943	
Tributary B	At confluence with Crooked Creek	None	+909	Unincorporated Areas of Douglas County.
	Approximately 290 feet upstream of Pilgrim Drive	None	+938	
Tributary C	At confluence with Crooked Creek	None	+914	Unincorporated Areas of Douglas County.
	Approximately 430 feet upstream of Tara Woods Drive.	None	+934	
Tributary D	At confluence with Crooked Creek	None	+930	Unincorporated Areas of Douglas County.

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	Approximately 2,880 feet upstream of confluence with Crooked Creek.	None	+969	
Crossing Branch	At confluence with Anneewakee Creek	+898	+905	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 6,340 feet upstream of confluence with Anneewakee Creek.	None	+984	
Dorsett Creek	At confluence with Bear Creek	None	+936	Unincorporated Areas of Douglas County.
	Approximately 440 feet upstream of Dorsett Shoals Road.	None	+1059	
Douglas County Water Reservoir.	Entire shoreline	+738	+760	Unincorporated Areas of Douglas County.
Farm Branch	At confluence with Anneewakee Creek	+881	+885	Unincorporated Areas of Douglas County.
	Approximately 290 feet upstream of Camel Drive	None	+927	
Tributary A	At confluence with Farm Branch	+882	+888	Unincorporated Areas of Douglas County.
	Approximately 2,350 feet upstream of Bomar Road	None	+942	
Gothards Creek	Approximately 12,900 feet downstream of confluence of Gothards Creek Tributary 3.	None	+923	Unincorporated Areas of Douglas County.
	Approximately 10,000 feet downstream of confluence of Gothards Creek Tributary 3.	None	+926	
Knollwood Branch	At confluence with Anneewakee Creek	None	+972	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 310 feet upstream of State Highway 5	None	+1143	
Tributary A	At confluence with Knollwood Branch	None	+1105	Unincorporated Areas of Douglas County.
	Approximately 200 feet upstream of Pinehurst Way	None	+1137	
Little Anneewakee Creek	At confluence with Anneewakee Creek	+895	+897	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 450 feet upstream of East Big B Road	None	+1058	
Tributary A	At confluence with Little Anneewakee Creek	+901	+905	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 1,610 feet upstream of Bedford Place	None	+1043	
Tributary B	At confluence with Little Anneewakee Creek	+909	+910	City of Douglasville.
	Approximately 940 feet upstream of Logan Lane	None	+967	
Tributary C	At confluence with Little Anneewakee Creek	+922	+925	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 1,910 feet upstream of confluence with Little Anneewakee Creek.	None	+955	
Tributary D	At confluence with Little Anneewakee Creek	+946	+948	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 300 feet upstream of Cindy Drive (2nd crossing).	None	+1003	
Tributary E	At confluence with Little Anneewakee Creek	+956	+958	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 2,020 feet upstream of Little Anneewakee Creek.	None	+1040	
Little Bear Creek	At confluence with Bear Creek	None	+756	Unincorporated Areas of Douglas County.
	Approximately 7,350 feet upstream of Smokestone Drive.	None	+1019	
Tributary A	At confluence with Little Bear Creek	None	+776	Unincorporated Areas of Douglas County.
	Approximately 3,520 feet upstream of confluence of Little Bear Creek Tributary B.	None	+880	
Tributary B	At confluence with Little Bear Creek Tributary A	None	+806	Unincorporated Areas of Douglas County.
	Approximately 1,340 feet upstream of confluence with Little Bear Creek Tributary A.	None	+841	

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Tributary C	At confluence with Little Bear Creek	None	+791	Unincorporated Areas of Douglas County.
	Approximately 4,760 feet upstream of confluence with Little Bear Creek.	None	+882	
Tributary D	At confluence with Little Bear Creek	None	+817	Unincorporated Areas of Douglas County.
	Approximately 3,160 feet upstream of confluence with Little Bear Creek.	None	+923	
Tributary E	At confluence with Little Bear Creek	None	+827	Unincorporated Areas of Douglas County.
	Approximately 7,500 feet upstream of confluence with Little Bear Creek.	None	+917	
Tributary F	At confluence with Little Bear Creek	None	+920	Unincorporated Areas of Douglas County.
	Approximately 2,080 feet upstream of confluence with Little Bear Creek.	None	+941	
Mobley Creek Tributary 6	Approximately 20 feet upstream of confluence with Mobley Creek.	+933	+934	Unincorporated Areas of Douglas County.
	Approximately 450 feet upstream of confluence with Mobley Creek.	+934	+935	
Panther Creek	At confluence with Chapel Farms Creek	None	+773	Unincorporated Areas of Douglas County.
	Approximately 1,230 feet upstream of Chapel Hill Farms Drive.	None	+933	
Tributary A	At confluence with Panther Creek	None	+826	Unincorporated Areas of Douglas County.
	Approximately 1,320 feet upstream of confluence with Panther Creek.	None	+851	
Simon Creek	At confluence with Anneewakee Creek	+877	+878	Unincorporated Areas of Douglas County.
	Approximately 1,660 feet upstream of Harvest Ridge Drive.	None	+934	
Slater Mill Creek	At confluence with Little Anneewakee Creek	+939	+942	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 400 feet upstream of Village Court	None	+1059	
Tributary A	At confluence with Slater Mill Creek	None	+1031	City of Douglasville.
	Approximately 360 feet upstream of East Spring Street.	None	+1171	
Tributary B	At confluence with Slater Mill Creek	None	+1032	Unincorporated Areas of Douglas County, City of Douglasville.
	Approximately 1,360 feet upstream of Fairburn Road/ State Highway 92.	None	+1069	
Sweetwater Creek	Approximately 5,900 feet downstream of State Highway 61/Dallas Highway.	None	+972	Unincorporated Areas of Douglas County.
	Approximately 2,450 feet upstream of State Highway 61/Dallas Highway.	None	+979	
Tanyard Branch	At confluence with Little Bear Creek	None	+805	Unincorporated Areas of Douglas County.
	Approximately 210 feet upstream of Canterbury Walk Way.	None	+1132	
Tributary A	At confluence with Tanyard Branch	None	+1003	Unincorporated Areas of Douglas County.
	Approximately 380 feet upstream of Twin Oak Drive	None	+1081	
Tiger Creek	At confluence with Anneewakee Creek	None	+1045	City of Douglasville.
	Approximately 650 feet upstream of Rose Avenue	None	+1152	
Tributary A	At confluence with Tiger Creek	None	+1086	City of Douglasville.
	Approximately 880 feet upstream of confluence with Tiger Creek.	None	+1097	

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Douglasville

Maps are available for inspection at 6695 Church Street, Douglasville, GA 30134.

Unincorporated Areas of Douglas County

Maps are available for inspection at 8700 Hospital Drive, Douglasville, GA 30134.

Warrick County, Indiana, and Incorporated Areas

Kelly Ditch	Approximately 900 feet upstream of the confluence with Cypress Creek.	None	+388	Unincorporated Areas of Warrick County, City of Boonville.
	Approximately 1,650 feet upstream of Baker Road	None	+398	
Summer Pecka Ditch	Approximately 2,500 feet downstream of Anderson Road.	None	+383	Unincorporated Areas of Warrick County.
	Approximately 3,900 feet upstream of Martin Drive	None	+395	

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ADDRESSES

City of Boonville

Maps are available for inspection at 135 South Second Street, Boonville, IN 47601.

Unincorporated Areas of Warrick County

Maps are available for inspection at 107 West Locust Street, Historic Courthouse, Room 201, Boonville, IN 47601.

Comanche County, Oklahoma, and Incorporated Areas

East Branch Wolf Creek	Approximately 3435 feet downstream from intersection with Cache Road.	+1120	+1121	Unincorporated Areas of Comanche County, City of Lawton.
	Approximately 145 feet downstream from intersection with Interstate 62.	+1138	+1142	
East Cache Creek	Approximately 1390 feet downstream from intersection with SE Coombs Rd..	+1061	+1060	Unincorporated Areas of Comanche County, City of Lawton.
	Approximately 2930 feet downstream from confluence with Wratton Creek.	+1092	+1090	
East Cache Creek Tributary A.	At confluence with East Cache Tributary A–1	+1080	+1076	City of Lawton.
	Approximately 2190 feet upstream from intersection with Flower Mound Rd..	+1132	+1133	
East Cache Creek Tributary B.	Approximately 5275 feet upstream from confluence with East Cache Creek.	+1074	+1077	City of Lawton.
	Approximately 4090 feet upstream from intersection with Flower Mound Rd..	+1113	+1112	
Meadowbrook Creek	Approximately 137 feet downstream from intersection Meadow Brook Dr..	+1122	+1124	City of Lawton.
	Approximately 2230 feet upstream from intersection with Northwest Creek Hollar Dr..	+1171	+1170	
Mission Creek	Approximately 6088 feet downstream from intersection with Lawrie Tatum Rd..	+1088	+1090	City of Lawton.
	Approximately 110 feet upstream from intersection with Interstate 62.	+1137	+1134	
Nine Mile Creek Tributary	Approximately 170 feet upstream from intersection with Highway 7.	+1132	+1131	Unincorporated Areas of Comanche County, City of Lawton.
	Approximately 2665 feet downstream from intersection with NE Cache Rd..	+1172	+1171	

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Squaw Creek	Approximately 127 feet upstream from intersection with Highway 44.	+1079	+1072	Unincorporated Areas of Comanche County, City of Lawton.
	Approximately 1015 feet downstream from intersection with NW Denver Avenue.	+1159	+1161	
Squaw Creek East Tributary B.	Approximately at the intersection of Avenue I and 11 Street.	+1100	+1099	City of Lawton.
	Approximately 220 feet downstream from intersection with Dearborn Avenue.	+1135	+1134	
West Branch Squaw Creek	Approximately 245 feet downstream from intersection with Arbuckle Avenue.	+1082	+1078	Unincorporated Areas of Comanche County, City of Lawton.
	Approximately 1743 upstream from confluence with West Branch Squaw Creek Tributary 4.	+1104	+1107	
West Branch Wolf Creek	Approximately 710 feet downstream from intersection with 53rd Street.	+1120	+1119	Unincorporated Areas of Comanche County, City of Lawton.
	Approximately 255 feet downstream from intersection with NW Roger Lane.	+1223	+1226	
West Branch Wolf Creek Tributary A.	Approximately 1092 feet upstream from confluence with West Branch Wolf Creek.	+1129	+1128	City of Lawton.
	At the intersection with Cache Rd.	+1179	+1178	
West Branch Wolf Creek Tributary B.	Approximately 5750 feet upstream from confluence with West Branch Wolf Creek.	+1179	+1180	City of Lawton.
	Approximately 144 feet downstream from intersection with NW Rogers Lane.	+1264	+1265	
Wolf Creek	Approximately 887 feet downstream from intersection with Highway 44.	+1059	+1058	Unincorporated Areas of Comanche County, City of Lawton.
	Approximately 1050 feet downstream from intersection with Lee Boulevard.	+1095	+1094	
Wratton Creek.	Approximately 411 feet downstream from intersection with Wratton Creek Tributary.	+1099	+1102	Unincorporated Areas of Comanche County, City of Lawton.
	Approximately 5447 feet upstream from intersection with Flower Mound Rd.	+1120	+1122	
Wratton Creek Tributary	At the intersection with Flower Mound Rd.	+1112	+1111	City of Lawton.
	Approximately 9175 feet upstream from intersection with Flower Mound Rd.	+1139	+1143	

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Lawton

Maps are available for inspection at City Hall, 103 Southwest 4th Street, Lawton, OK 73501.

Unincorporated Areas of Comanche County

Maps are available for inspection at Comanche County Court House, 315 SW 5th Street, Lawton, OK 73501.

Green County, Wisconsin, and Incorporated Areas

Allen Creek	At the confluence with Sugar River	+811	+810	Unincorporated Areas of Green County
	Approximately 250 feet downstream of County Highway E.	+811	+810	
Little Sugar River	At the mouth at Albany Lake	+808	+806	Unincorporated Areas of Green County
	Just upstream of Tin Can Road	+808	+807	
Sugar River	Approximately 7,300 feet upstream of the Dam at Decatur Lake.	+794	+793	Unincorporated Areas of Green County
	Approximately 1,200 feet upstream of Remy Road	None	+856	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Green County

Maps are available for inspection at Government Services Building, N3150 Highway 81, Monroe, WI 53566

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 14, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–25316 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7755]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 27, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7755, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act. Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001, *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Camden County, Georgia, and Incorporated Areas				
St. Marys River	At the Charlton/Nassau/Camden County Boundary	None	+8	Unincorporated Areas of Camden County.
	Approximately 460 feet downstream of the Charlton/Nassau/Camden County Boundary.	None	+8	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Camden County

Maps are available for inspection at Camden County Planning and Building Department, 107 Gross Road, Suite 3, Kingsland, GA 31548.

Rapides Parish, Louisiana, and Incorporated Areas				
Bayou Latanier	Approximately 180 feet downstream of Texas and Pacific Railroad (BFE REMAINS CONSTANT).	None	+68	Unincorporated Areas of Rapides Parish.
	Approximately 535 feet upstream of State Highway 1 (BFE stays constant).	None	+68	
Bayou Maria	Confluence with Red River	+92	+87	Unincorporated Areas of Rapides Parish.
	Approximately 425 feet downstream of Susek Drive intersection.	+95	+96	
Tributary 13	Confluence with Bayou Maria	+92	+87	Unincorporated Areas of Rapides Parish, City of Pineville.
	Approximately 250 feet upstream of Stilley Road	None	+110	
Tributary 7	Confluence with Bayou Maria	+92	+87	Unincorporated Areas of Rapides Parish.
	Intersection with Donohue Ferry Rd	+134	+135	
Tributary 8	Confluence with Bayou Maria	+92	+87	Unincorporated Areas of Rapides Parish, City of Pineville.
	Intersection with Cottingham Expressway	+92	+88	
Bayou Wilson	Approximately 5400 feet upstream of Beauregard Road intersection.	None	+59	Unincorporated Areas of Rapides Parish.
	Approximately 7300 feet downstream of confluence with Bayou Wilson Tributary.	None	+59	
Tributary	Confluence with Bayou Wilson	None	+59	Unincorporated Areas of Rapides Parish.
	Approximately 5000 feet from confluence with Bayou Wilson.	None	+61	
Compton Lake Canal	Approximately 150 feet downstream of intersection with LA HWY 1.	None	+62	Unincorporated Areas of Rapides Parish.
	Approximately 3750 feet upstream of intersection with LA HWY 1.	None	+63	
Kincaid Reservoir	Approximately 2500 feet southeast of SH 28 intersection (BFE IS CONSTANT).	None	+80	Unincorporated Areas of Rapides Parish.
Oden Lake	Approximately 700 feet East of SH 165 (BFE IS CONSTANT).	None	+73	Unincorporated Areas of Rapides Parish.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Poland Lateral	Confluence with Tiger Lake	None	+62	Unincorporated Areas of Rapides Parish.
	Approximately 6400 feet upstream of Pearl Road intersection.	None	+64	
Red River	Approximately 1150 ft downstream of confluence with Huffman Creek.	+92	+87	City of Pineville, City of Alexandria, Town of Boyce, Unincorporated Areas of Rapides Parish.
	Approximately 11,000 ft upstream of Missouri Pacific Railroad intersection.	+98	+91	
Roxana Lateral	Confluence with Bayou Wilson	None	+59	Unincorporated Areas of Rapides Parish.
	Approximately 150 feet downstream of intersection with SH 457.	None	+61	
Sandy Bayou	Confluence with Chatlin Lake Canal	None	+73	City of Alexandria.
	Approximately 80 feet downstream of 3rd Street intersection.	None	+74	
Tyler Lateral	Approximately 470 feet upstream from confluence with Indian Bayou.	None	+62	Unincorporated Areas of Rapides Parish.
	Approximately 325 feet upstream of Tyler Road intersection.	None	+65	
Weems Canal	Approximately 160 feet downstream of SH 71 intersection.	+71	+69	Town of Lecompte.
	Approximately 1200 feet upstream of St. Charles Street intersection.	+72	+73	
Whittington Lateral	Confluence with Compton Lake Canal	None	+64	Unincorporated Areas of Rapides Parish.
	Intersection with Texas And Pacific Railroad (BFE remains constant).	None	+64	

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# Depth in feet above ground.
+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Alexandria

Maps are available for inspection at 1546 Jackson St., Alexandria, LA 71309.

City of Pineville

Maps are available for inspection at 910 Main St., Pineville, LA 71360.

Town of Ball

Maps are available for inspection at 100 Municipal Lane, Ball, LA 71405.

Town of Boyce

Maps are available for inspection at PO Box 146, Boyce, LA 71409.

Town of Lecompte

Maps are available for inspection at 1302 Weems St., Lecompte, LA 71346.

Unincorporated Areas of Rapides Parish

Maps are available for inspection at 701 Murray, Alexandria, LA 71309.

Goodhue County, Minnesota, and Incorporated Areas

Belle Creek	At the confluence with the Cannon River	+708	+709	Unincorporated Areas of Goodhue County.
	Approximately 8,050 feet upstream of 390th Street	None	+1149	
Cannon River	Approximately 4,570 feet upstream of Railroad Bridge	None	+686	Unincorporated Areas of Goodhue County, City of Cannon Falls, City of Red Wing.
	Approximatley 8,120 feet upstream of State Highway 56.	None	+873	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Gilbert Creek	Approximately 115 feet upstream of Railroad Bridge	None	+689	Unincorporated Areas of Goodhue County.
	Approximately 980 feet upstream of County 5 Boulevard.	None	+695	
Hay Creek	Approximately 400 feet upstream of Old West Main Street.	+690	+689	Unincorporated Areas of Goodhue County, City of Red Wing.
	Approximately 3,630 feet upstream of 350th Street	None	+1063	
Little Cannon River	At the confluence with the Cannon River	+793	+790	Unincorporated Areas of Goodhue County, City of Cannon Falls.
	Approximately 7,045 feet upstream of 20th Avenue	None	+1094	
Mississippi River	Located at the Goodhue/Wabasha County Line	+682	+681	Unincorporated Areas of Goodhue County, City of Lake City, City of Red Wing.
	Located at the Goodhue/Dakota County Line	+690	+688	
North Fork Zumbro River	Approximately 7,370 feet downstream of Main Street	+1012	+1008	Unincorporated Areas of Goodhue County, City of Wanamingo.
	Approximately 3,830 feet upstream of Main Street	+1023	+1022	
Pine Island Creek	Approximately 8,550 feet downstream of 230th Avenue.	None	+996	Unincorporated Areas of Goodhue County.
	Approximately 1,790 feet upstream of County 43 Boulevard.	None	+1132	
Wells Creek	At the confluence with the Mississippi River	+681	+682	Unincorporated Areas of Goodhue County.
	Approximately 6,000 feet upstream of County 45 Boulevard.	None	+855	

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* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Cannon Falls

Maps are available for inspection at City Offices Building, 918 River Road, Cannon Falls, MN 55009.

City of Lake City

Maps are available for inspection at City Hall, 205 West Center Street, Lake City, MN 55041.

City of Red Wing

Maps are available for inspection at Community Development Building, 419 Bush Street, Red Wing, MN 55066.

City of Wanamingo

Maps are available for inspection at City Hall, 401 Main Street, Wanamingo, MN 55983.

Unincorporated Areas of Goodhue County

Maps are available for inspection at Land Use Management Office, #102, 509 West Fifth Street, Red Wing, MN 55066.

Merrimack County, New Hampshire, and Incorporated Areas

Merrimack River	Approximately 1 mile downstream of confluence of Contoocook River.	+251	+252	City of Concord.
	Approximately .7 miles downstream of confluence of Contoocook River.	+251	+252	
Warner River	Approximately 0.98 mile downstream of State Route 127.	None	+362	Town of Webster.
	Approximately 1,100 feet downstream of State Route 127.	None	+364	

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* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

+ North American Vertical Datum.
# Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Concord

Maps are available for inspection at City Hall, 41 Green Street, Concord, NH 03301.

Town of Webster

Maps are available for inspection at Town Hall, 945 Battle Street, Webster, NH 03303–7306.

Mitchell County, North Carolina, and Incorporated Areas

Bear Creek	At the confluence with North Toe River	None	+2459	Unincorporated Areas of Mitchell County.
	Approximately 0.4 mile upstream of State Road 1197	None	+2689	
Beaver Creek	At the confluence with North Toe River	+2521	+2515	Unincorporated Areas of Mitchell County, Town of Spruce Pine.
	Approximately 1.9 miles upstream of Beaver Creek Road (State Road 1143).	None	+3350	
Big Crabtree Creek	At the confluence with North Toe River	None	+2411	Unincorporated Areas of Mitchell County.
	Approximatley 1.2 miles upstream of Seven Mile Ridge Road (State Road 1167).	None	+3129	
Big Rock Creek	At the confluence with North Toe River	None	+2124	Unincorporated Areas of Mitchell County.
	Approximately 0.6 mile upstream of NC Highway 226	None	+2841	
Brushy Creek	At the confluence with Big Crabtree Creek	None	+2508	Unincorporated Areas of Mitchell County.
	Approximately 500 feet upstream of Road B	None	+2692	
Cane Creek	At the confluence with North Toe River	None	+2243	Unincorporated Areas of Mitchell County, Town of Bakersville.
	Approximately 800 feet upstream of State Road 1206	None	+2894	
Tributary 6	At the confluence with Cane Creek	None	+2449	Town of Bakersville.
	Approximately 620 feet upstream of Ridgeview Drive	None	+2477	
Tributary 7	At the confluence with Cane Creek	None	+2450	Unincorporated Areas of Mitchell County, Town of Bakersville.
	Approximately 0.6 mile upstream of the confluence wiht Tributary of Cane Creek Tributary 7.	None	+2575	
East Fork Grassy Creek	At the confluence with Grassy Creek	+2616	+2617	Unincorporated Areas of Mitchell County.
	Approximately 300 feet upstream of NC Highway 226	None	+2677	
English Creek	At the confluence with North Toe River	+2513	+2510	Town of Spruce Pine.
	Approximately 0.3 mile upstream of Greenwood Road	None	+2526	
Grassy Creek	At the confluence with North Toe River	+2528	+2525	Unincorporated Areas of Mitchell County, Town of Spruce Pine.
	Approximately 300 feet upstream of Dula Road (State Road 1106).	None	+2656	
Greene Cove Creek	At the confluence with Cane Creek	None	+2600	Unincorporated Areas of Mitchell County.
	Approximately 800 feet upstream of Green Cove Road (State Road 1205).	None	+2671	
Greene Creek	At the confluence with Little Rock Creek	None	+3148	Unincorporated Areas of Mitchell County.
	Approximately 0.5 mile upstream of Green Cove Road (State Road 1223).	None	+3514	
Little Rock Creek	At the confluence with Big Rock Creek	None	+2323	Unincorporated Areas of Mitchell County.
	Approximately 2.0 miles upstream of Greene Creek Road (State Road 1223).	None	+3731	
Little Rose Creek	At the confluence with North Toe River	None	+2560	Unincorporated Areas of Mitchell County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.4 mile upstream of the confluence with North Toe River.	None	+2592	
Nolichucky River	Approximately 5.4 miles upstream of North Carolina/ Tennessee State boundary.	None	+1981	Unincorporated Areas of Mitchell County.
	At the confluence of North Toe River	None	+2044	
North Toe River	At the confluence with Nolichucky River	None	+2044	Unincorporated Areas of Mitchell County, Town of Spruce Pine.
	Approximately 3.5 miles upstream of U.S. Highway 19	None	+2681	
Tributary 67	At the confluence with North Toe River	None	+2453	Unincorporated Areas of Mitchell County.
	Approximately 0.9 mile upstream of the confluence with North Toe River.	None	+2577	
Tributary of Cane Creek Tributary 7.	At the confluence with Cane Creek Tributary 7	None	+2529	Unincorporated Areas of Mitchell County, Town of Bakersville.
	Approximately 0.4 mile upstream of the confluence with Cane Creek Tributary 7.	None	+2569	
White Oak Creek	At the confluence with Cane Creek	None	+2461	Unincorporated Areas of Mitchell County, Town of Bakersville.
	Approximately 0.3 mile upstream of Crimson Laurel Way.	None	+2489	
Tributary 1	At the confluence with White Oak Creek	None	+2472	Unincorporated Areas of Mitchell County, Town of Bakersville.
	Approximately 770 feet upstream of Crimson Laurel Way.	None	+2502	
Young Cove Creek	At the confluence with Cane Creek	None	+2550	Unincorporated Areas of Mitchell County.
	Approximately 940 feet upstream of the confluence with Cane Creek.	None	+2563	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

*National Geodetic Vertical Datum.

Depth in feet above ground.

+North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Bakersville

Maps are available for inspection at Bakersville Town Hall, 26 South Mitchell Street, Bakersville, NC.

Town of Spruce Pine

Maps are available for inspection at Spruce Pine Town Hall, 138 Highlands Avenue, Spruce Pine, NC.

Unincorporated Areas of Mitchell County

Maps are available for inspection at Mitchell County Administration Building, 26 Crimson Laurel Circle, Suite 5, Bakersville, NC.

Kay County, Oklahoma, and Incorporated Areas

Tributary B (Arkansas River)	At the confluence with Tributary C	+940	+941	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately just downstream of the intersection of Hartford Avenue.	+1041	+1037	
Tributary C (Arkansas River)	Upstream of Lake Road at the Confluence with Tributary B.	+938	+941	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 100 feet upstream of the intersection of Donner Avenue.	+1037	+1038	
Tributary D (Arkansas River)	At intersection with Lake Road	+939	+943	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 887 feet upstream from intersection with Kingston Road.	+1040	+1039	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary E (Arkansas River)	Upstream of Virginia Avenue at the intersection of East Overbrook Avenue.	+968	+970	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 300 feet upstream of the intersection with Donahoe Drive.	+991	+994	
Tributary G (Arkansas River)	Approximately 100 feet downstream of Seventh Street at the intersection with Poplar Avenue.	+964	+961	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 100 feet upstream of Second Street	+988	+990	
Tributary G Left Tributary 1 (Arkansas River).	At the confluence with Tributary G (Arkansas River) ..	+963	+962	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 100 feet upstream of Virginia Avenue ..	+965	+966	
Tributary I (Arkansas River) ..	At the intersection with Seventh Street	+940	+945	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 290 feet upstream from intersection with S. 6th Street.	+950	+953	
Tributary L (Bois d'Arc Creek).	At the intersection with North Flormable Street	+957	+958	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 100 feet upstream of Olympia Street ...	+975	+978	
Tributary M (Bois d' Arc Creek).	At the intersection with Highland Avenue	+965	+967	City of Ponca City, Unincorporated Areas of Kay County.
	At intersection with Bradley Avenue	+1034	+1036	
Tributary N (Bois d' Arc Creek).	Approximately 168 feet upstream from intersection with Oriole Street.	+1027	+1034	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 2558 feet upstream from intersection with Oriole Street.	+1044	+1042	
Tributary O (Bois d' Arc Creek).	At the intersection with Liberty Avenue	+984	+986	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 1038 feet upstream from intersection with Ast Street.	+1010	+1008	
Tributary O Tributary (Bois d' Arc Creek).	Approximately 767 feet upstream from intersection with Liberty Avenue.	+991	+990	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 2463 feet upstream from intersection with Liberty Avenue.	+1000	+1003	
Tributary W (Arkansas River)	Approximately 222 feet upstream from intersection with LA Cann Drive.	+934	+933	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 3099 feet upstream from intersection with LA Cann Drive.	+990	+985	

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Blackwell
Maps are available for inspection at 221 West Blackwell, Blackwell, OK 74631.
City of Kaw City
Maps are available for inspection at 115 South Maple, Newkirk, OK 74647.
City of Newkirk
Maps are available for inspection at 107 Main Street, Newkirk, OK 74647.
City of Ponca City
Maps are available for inspection at 516 East Grand, Ponca City, OK 74607.
City of Tonkawa
Maps are available for inspection at 113 South 7th Street, Tonkawa, OK 74653.
Town of Braman

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Maps are available for inspection at 302 Broadway, Braman, OK 74632.

Unincorporated Areas of Kay County

Maps are available for inspection at 115 South Maple, Newkirk, OK 74647.

Adams County, Pennsylvania, and Incorporated Areas

Bermudian Creek	At approximately 1600 feet downstream of Oxford Road LR–01004.	None	+612	Township of Tyrone.
	At approximately 175 feet upstream of Cranberry Road LR–010011.	None	+640	
Little Marsh Creek.	At approximately 735 feet downstream of Berry Patch Lane.	None	+644	Township of Franklin.
	At approximately 935 feet upstream of Hickory Bridge Road TR–315.	None	+702	
Marsh Creek	At approximately 700 feet upstream of Pumping Station Road.	None	+467	Township of Cumberland.
	At approximately 1725 feet downstream of the confluence with Little Marsh Creek.	None	+498	
Toms Creek	At Approximately 3200 feet upstream of Jacks Mountain Road.	None	+630	Township of Hamiltonban.
	At approximately 3500 feet upstream of Jacks Mountain Road.	None	+635	

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Cumberland

Maps are available for inspection at 1370 Fairfield Road, Gettysburg, PA 17325.

Township of Franklin

Maps are available for inspection at 55 Scott School Road, Cashtown, PA 17353.

Township of Hamiltonban

Maps are available for inspection at 23 Carroll's Tract Road, Fairfield, PA 17320.

Township of Tyrone

Maps are available for inspection at 5280 Old Harrisburg Road, York Springs, PA 17372.

Codington County, South Dakota, and Incorporated Areas

East Branch Roby Creek	200 feet east of 11th Street Northeast	None	+1767	Unincorporated Areas of Codington County, City of Watertown.
	14th Avenue Northeast	None	+1777	
	400 feet west of 7th Street Northeast	None	+1760	City of Watertown, Unincorporated Areas of Codington County.
	200 feet west of 11th Street Northeast	None	+1765	
Lake Kampeska	200 feet northeast of intersection of 448th Avenue and U.S. Highway 212.	None	+1725	Unincorporated Areas of Codington County, City of Watertown.
	100 feet west of intersection of 452nd Avenue and Stadheim Drive.	None	+1725	City of Watertown, Unincorporated Areas of Codington County.
Pelican Lake	700 feet north of intersection of 174th Street and 452nd Avenue.	None	+1717	Unincorporated Areas of Codington County, City of Watertown.
	Junction of 21st Street SW and 12th Avenue SW	None	+1717	City of Watertown, Unincorporated Areas of Codington County.
Roby Creek	4500 feet downstream from U.S. Highway 212	None	+1715	City of Watertown.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	100 feet West of U.S. Highway 81	None	+1770	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Watertown

Maps are available for inspection at 23 Second St. NE, Watertown, SD 57201.

Unincorporated Areas of Codington County

Maps are available for inspection at 14 1st Avenue Southeast, Watertown, SD 57201.

Adams County, Washington, and Incorporated Areas

Paha Creek	Approximately 1400 feet downstream of Division Street Bridge.	+1791	+1790	City of Ritzville, Unincorporated Areas of Adams County.
	Approximately 800 feet upstream of Fairgrounds footbridge.	+1807	+1806	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

*National Geodetic Vertical Datum.
+North American Vertical Datum.
Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Ritzville

Maps are available for inspection at 216 E. Main Avenue, Ritzville, WA 99169.

Unincorporated Areas of Adams County

Maps are available for inspection at 210 W. Alder, Ritzville, WA 99169.

Grant County, Washington, and Incorporated Areas

Crab Creek	Just above BNSF Railroad Bridge 338	+1282	+1277	Town of Wilson Creek, Unincorporated Areas of Grant County.
	Approximately 1300 feet upstream of Kappel Road Bridge.	+1284	+1283	
Wilson Creek	At confluence with Crab Creek	+1284	+1283	Town of Wilson Creek, Unincorporated Areas of Grant County.
	At eastern corporate limits of the Town of Wilson Creek.	+1303	+1301	

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* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Wilson Creek

Maps are available for inspection at 254 Railroad Street, Wilson Creek, WA 98860.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Unincorporated Areas of Grant County				
Maps are available for inspection at 124 Enterprise Street SE, Ephrata, WA 98823.				
Green Lake County, Wisconsin, and Incorporated Areas				
Silver Creek	At County Highway A	+803	+802	Unincorporated Areas of Green Lake County.
	Approximately 2.1 miles upstream of Spaulding Hill Road at the County Boundary.	+807	+804	

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* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Green Lake County

Maps are available for inspection at Zoning Department, 492 Hill Street, Green Lake, WI 54941.

Racine County, Wisconsin, and Incorporated Areas				
Bartlett Branch	At the confluence with Pike River	+682	+686	Unincorporated Areas of Racine County.
	Approximately 70 feet downstream of County Highway C.	None	+693	
Chicory Creek	Approximately 570 feet upstream of the confluence with Pike River.	+669	+668	Unincorporated Areas of Racine County, Village of Sturtevant.
	At the downstream side of 105th Street	+723	+722	
East/West Canal	At the confluence with North Cape Lateral	None	+788	Unincorporated Areas of Racine County.
	Approximately 40 feet downstream of U.S. Highway 45.	None	+788	
Fonk's Tributary	Approximately 200 feet upstream of the confluence with Union Grove Industrial Tributary.	None	+746	Unincorporated Areas of Racine County.
	Approximately 4,880 feet upstream of the confluence with Union Grove Industrial Tributary.	None	+781	
Kilbourn Road Ditch	At County Line Road	+729	+726	Unincorporated Areas of Racine County.
	Approximately 2,400 feet downstream of Interstate 94	None	+734	
Lamparek Creek	At the confluence with the Pike River	+661	+660	Unincorporated Areas of Racine County.
	At the downstream side of 105th Street	+714	+713	
Nelson Creek	At County Line Road	None	+619	Unincorporated Areas of Racine County.
	At the upstream side of Garden Drive	None	+642	
North Cape Lateral	Approximately 30 feet upstream of Britton Road	None	+774	Unincorporated Areas of Racine County.
	Approximately 2,350 feet upstream of the confluence with East/West Canal.	None	+789	
Pike River	At County Line Road	+657	+658	Unincorporated Areas of Racine County, City of Racine.
	Approximately 80 feet downstream of Spring Street	None	+688	
Root River	At mouth at Lake Michigan	+583	+584	City of Racine.
	Approximately 825 feet upstream of Memorial Drive	+586	+587	
Sorenson Creek.	At County Line Road	+614	+617	Unincorporated Areas of Racine County, City of Racine.
	Approximately 75 feet downstream of Meachem Road	None	+654	
Union Grove Industrial Tributary..	At County Line Road	+738	+743	Unincorporated Areas of Racine County, Village of Union Grove.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 30 feet downstream of Durand Avenue/State Highway 11.	None	+771	
Unnamed Tributary No. 18 to Kilboum Road Ditch.	Approximately 1,110 feet downstream of Interstate 94	+732	+733	Unincorporated Areas of Racine County.
	Approximately 150 feet downstream of Interstate 94 ..	None	+742	
Unnamed Tributary No. 2 to West Branch Root River Canal.	Approximately 30 feet upstream of Raymond Avenue	+704	+705	Unincorporated Areas of Racine County.
	Approximately 3,300 feet downstream of 65th Drive ...	None	+751	
Unnamed Tributary No. 37 to Des Plaines River.	Approximately 2,675 feet downstream of 69th Street ..	+713	+712	Unincorporated Areas of Racine County.
	Approximately 70 feet downstream of 69th Street	None	+730	
Unnamed Tributary No. 38 to Des Plaines River.	At the confluence with the Des Plaines River	None	+710	Unincorporated Areas of Racine County.
	Approximately 2,750 feet upstream of Durand Avenue/State Highway 11.	None	+762	
Unnamed Tributary No. 39 to Des Plaines River.	At the confluence with the Des Plaines River	None	+710	Unincorporated Areas of Racine County.
	Approximately 170 feet downstream of County Line Road.	None	+746	
Unnamed Tributary to Unnamed Tributary No. 2 to West Branch Root River Canal.	Approximately 250 feet upstream of 65th Drive	None	+720	Unincorporated Areas of Racine County.
	Approximately 125 feet downstream of Colony Avenue.	None	+746	
Waxdale Creek	At the confluence with the Pike River	+670	+671	Unincorporated Areas of Racine County, Village of Sturtevant.
	Approximately 70 feet downstream of West Road	+736	+735	

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* National Geodetic Vertical Datum.

Depth in feet above ground.

+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Racine

Maps are available for inspection at City Hall, 730 Washington Avenue, Racine, WI 53403–1146.

Unincorporated Areas of Racine County

Maps are available for inspection at Planning and Development Department, 14200 Washington Avenue, Sturtevant, WI 53177.

Village of Sturtevant

Maps are available for inspection at Village Hall, 2801 89th Street, Sturtevant, WI 53177–2033.

Village of Union Grove

Maps are available for inspection at Village Hall, 925 15th Avenue, Union Grove, WI 53182–1608.

Walworth County, Wisconsin, and Incorporated Areas

Eagle Spring Lake	All flooding affecting County	None	+822	Unincorporated Areas of Walworth County.
Mukwonago River	Approximately 1,700 feet North of the intersection of Marsh Road and County Highway J.	None	+799	Unincorporated Areas of Walworth County.
	Approximately 1.2 miles Northeast of the intersection of County Highway J and County Highway E.	None	+806	

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* National Geodetic Vertical Datum.

Depth in feet above ground.

+North American Vertical Datum.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Walworth County

Maps are available for inspection at Office of Emergency Management, 1770 County Road NN, Elkhorn, WI 53121.

Washington County, Wisconsin, and Incorporated Areas

Edgewood Creek	At the confluence with North Creek	+946	+947	Unincorporated Areas of Washington County, Village of Kewaskum.
	Approximately 1,120 feet upstream of Kewaskum Village Limits.	None	+981	
Overflow	Approximately 115 feet downstream of Clinton Road	None	+937	Unincorporated Areas of Washington County, Village of Kewaskum.
	At confluence with Edgewood Creek	None	+951	
Kettleview Creek	At the confluence with Kewaskum Creek	+939	+940	Unincorporated Areas of Washington County, Village of Kewaskum.
	Downstream side of County Highway B	None	+1025	
Kewaskum Creek	Just downstream of County Road H	+937	+938	Unincorporated Areas of Washington County, Village of Kewaskum.
	Approximately 800 feet downstream of Badger Road	None	+998	
Overflow	At the confluence with Kettleview Creek	None	+946	Unincorporated Areas of Washington County.
	At the confluence with Kewaskum Creek	None	+952	
Knights Creek	At the confluence with North Creek	+953	+952	Unincorporated Areas of Washington County, Village of Kewaskum.
	Approximately 725 feet downstream of Highland Drive	None	+1032	
Milwaukee River	Approximately 225 feet upstream of River Road	+884	+887	Unincorporated Areas of Washington County, City of West Bend.
	Downstream side of Barton Avenue	+903	+902	
	Upstream side of Hickory Road	None	+835	Unincorporated Areas of Washington County, Village of Newburg.
	Approximately 2,900 feet upstream of Main Street	None	+850	
North Creek	At the confluence with the Milwaukee River	+939	+938	Unincorporated Areas of Washington County, Village of Kewaskum.
	Approximately 100 feet downstream of Highland Drive	None	+1042	
Quass Creek	Just upstream of County Highway I	+873	+875	Unincorporated Areas of Washington County, City of West Bend.
	Approximately 285 feet downstream of Paradise Drive	+981	+979	
Unnamed Tributary to Kewsaskum Creek.	At the confluence with Kewaskum Creek	None	+955	Unincorporated Areas of Washington County.
	Approximately 350 feet downstream of Kettleview Drive.	None	+979	
Unnamed Tributary to Wingate Creek.	At the confluence with Wingate Creek	+873	+874	Unincorporated Areas of Washington County, City of West Bend.
	Approximately 420 feet downstream of Wallace Lake Road.	None	+890	
Wingate Creek	Just downstream of State Highway 33	+871	+870	Unincorporated Areas of Washington County, City of West Bend.
	Approximately 420 feet downstream of Wallace Lake Road.	None	+904	

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* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

+ North American Vertical Datum.
# Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of West Bend

Maps are available for inspection at City Hall, 1115 South Main Street, West Bend, WI 53095.

Unincorporated Areas of Washington County

Maps are available for inspection at County Building, 432 East Washington Street, West Bend, WI 53095.

Village of Kewaskum

Maps are available for inspection at Village Hall, 204 First Street, Kewaskum, WI 53040.

Village of Newburg

Maps are available for inspection at Village Hall, 614 Main Street, Newburg, WI 53060.

Washakie County, Wyoming, and Incorporated Areas

Sage Creek	Downstream—just upstream of confluence with Bighorn River.	None	+4056	City of Worland, Unincorporated Areas of Washakie County.
	Upstream—approximately 400 ft downstream of intersection County Ln 13 and Upper Hanover Canal Rd.	None	+4141	

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* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Worland

Maps are available for inspection at 1001 Big Horn Avenue, Worland, WY 82401.

Town of Ten Sleep

Maps are available for inspection at 1001 Big Horn Avenue, Worland, WY 82401.

Unincorporated Areas of Washakie County

Maps are available for inspection at 1001 Big Horn Avenue, Worland, WY 82401.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 18, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–25307 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07–198; DA 07–4688]

Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Media Bureau extends the comment and reply comment deadlines on the Notice of Proposed Rulemaking ("NPRM") on revisions to the Commission's program access and retransmission consent rules and whether it may be appropriate to preclude the practice of programmers to tie desired programming with undesired

programming. To facilitate the development of a thorough record, the deadline for filing comments in response to the NPRM is extended to January 4, 2008, and the deadline for filing reply comments is extended to January 22, 2008.

DATES: Comments are due on or before January 4, 2008; reply comments are due on or before January 22, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–198, 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: David Konczal, *David.Konczal@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in MB Docket No. 07–198, DA 07–4688, released on November 20, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. 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 the Order

1. On October 1, 2007, the Commission released an NPRM in MB Docket No. 07–198 on revisions to the Commission's program access and retransmission consent rules and whether it may be appropriate to preclude the practice of programmers to tie desired programming with undesired programming. The NPRM set deadlines for filing comments and reply comments at 30 and 45 days, respectively, after publication of the NPRM in the **Federal Register.** A summary of the NPRM was published in the **Federal Register** on October 31, 2007 (72 FR 61590, October 31, 2007). Accordingly, the comment filing dates were established as November 30, 2007 for comments and December 17, 2007 for reply comments.

2. On November 2, 2007, Fox Entertainment Group, Inc. and Fox Television Holdings, Inc. (collectively, "Fox") and Viacom Inc. ("Viacom") filed requests for a 45-day extension of the comment deadline. Similar requests were subsequently filed by NBC Universal, Inc. ("NBCU") and The Walt Disney Company ("Disney"). The parties argue that the issues raised in the NPRM are highly complex and that a 30-day comment period does not enable them to gather the necessary data to respond effectively. The parties argue that additional time will enable them to survey executives in their broadcast and cable divisions and to retain experts to perform economic analyses. The parties state that additional time to respond to the NPRM will serve the public interest by facilitating a more complete record. Fox also contends that the holiday season compounds the difficulties of responding to the NPRM by the comment deadline. Viacom argues that the issues raised in a recent class action lawsuit filed against Viacom and others regarding the offering of bundled and tiered programming packages are closely related to the issues raised in the NPRM. Viacom requests an extension of the comment deadline to ensure a coordinated and comprehensive response to this lawsuit and to the NPRM. The parties further assert that a 45-day extension of the comment deadline will cause no hardship or prejudice to other interested parties or to the Commission.

3. As set forth in Section 1.46 of the Commission's Rules, the Commission's policy is that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. 47 CFR 1.46. In this case, however, an extension of the comment and reply comment period is warranted to enable commenters to gather sufficient data, including economic analyses, to facilitate the development of a thorough record in response to the issues raised in the NPRM. We decline, however, to grant the full 45-day extension requested by the parties. With the additional extension granted herein, interested parties will now have a total of 65 days to prepare comments. We believe that this provides parties with ample time to respond to the issues raised in the NPRM.

4. Accordingly, we hereby grant the Motions for Extension of Time filed in MB Docket No. 07–198 by Disney, Fox, NBCU, and Viacom to the extent detailed above. The time for filing comments is extended to January 4, 2008, and the time for filing reply comments is extended to January 22, 2008.

5. This action is taken pursuant to authority found in Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), and Sections 0.61, 0.283, and 1.46 of the Commission's rules, 47 CFR 0.61, 0.283, and 1.46.

6. Specific instructions for filing comments are located at paragraphs 26–27 of the item as published in the **Federal Register** and at paragraphs 139–142 of the item as released by the Commission and that appears on the Commission's Web site: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–07–169A1.doc.*

Federal Communications Commission.

Steven A. Broeckaert,

Senior Deputy Chief, Policy Division, Media Bureau.

[FR Doc. E7–25130 Filed 12–27–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 071214845–7848–01]

RIN 0648–XE13

Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 90–day Finding for a Petition to Revise the Critical Habitat Designation for the Leatherback Turtle

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

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 90–day finding for a petition to revise leatherback turtle (*Dermochelys coriacea*) critical habitat under the Endangered Species Act of 1973, as

amended (ESA). The leatherback turtle is currently listed as endangered throughout its range, and critical habitat consists of Sandy Point Beach and adjacent waters, St. Croix, U.S. Virgin Islands. The petition seeks to include waters along the U.S. West Coast as critical habitat. We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted.

We are initiating a review of the critical habitat of the species to determine whether the petitioned action is warranted. To ensure a comprehensive review, we solicit information and comments pertaining to this species' essential habitat needs from any interested party.

DATES: Written comments and information related to this petition finding must be received [see **ADDRESSES**] by February 26, 2008.

ADDRESSES: You may submit comments, identified by [0648–XE13], by any one of the following methods: (1) Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*; (2) Fax: 301–427–2522, attention: Therese Conant; and (3) mail: addressed to the Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Therese Conant by phone 301–713–2322, fax 301–427–2522, or e-mail *therese.conant@noaa.gov*; Christina Fahy by phone 562–980–4023, fax 562–980–4027, or e-mail *christina.fahy@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

Critical habitat is defined in the ESA (16 U.S.C. 1531 *et seq.*) as:

"(i) the specific areas within the geographical area occupied by the species, at the time it is listed... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed... upon a determination by the Secretary that such areas are essential for the conservation of the species."

Our implementing regulations (50 CFR 424.12) describe those essential physical and biological features to include, but not be limited to: (1) space for individual and population growth, and normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species. We are required to focus on the primary constituent elements (PCEs), which best represent the principal biological or physical features. PCEs may include, but are not limited to: nesting grounds, feeding sites, water quality, tide, and geological formation. Our implementing regulations (50 CFR 424.02) define "special management considerations or protection" as any method or procedure useful in protecting physical and biological features of the environment for the conservation of the species.

Section 4(b)(2) of the ESA requires us to designate and make revisions to critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned. We are required to consider whether the petition contains information indicating that areas petitioned contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species. Section 4(b)(3)(D)(i) of the ESA requires us to make a finding as to whether a petition to revise critical habitat presents substantial scientific information indicating that the revision may be warranted. Our implementing regulations (50 CFR 424.14) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the revision may be warranted, within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**. See ESA Section 4(b)(3)(D)(ii).

Analysis of Petition

On October 2, 2007, we received a petition from the Center for Biological Diversity, Oceana, and Turtle Island Restoration Network (Petitioners) to revise the leatherback sea turtle critical habitat designation. Current critical habitat consists of terrestrial shoreline at Sandy Point Beach, St. Croix, U.S. Virgin Islands (50 CFR 17.95), and adjacent waters up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17° 42′12″ N. and 64° 50′00″ W (50 CFR 226.207). The Petitioners seek to revise the critical habitat designation to include the area we currently manage under the authority of the Magnuson-Stevens Fishery Conservation and Management Act to reduce leatherback interactions in the California/Oregon drift gillnet fishery targeting swordfish and thresher shark. This area encompasses roughly 200,000 square miles (321,870 km^2) of the Exclusive Economic Zone from 45°deg; N latitude about 100 miles (160 km) south of the Washington/Oregon border southward to Pt. Sur and along a diagonal line due west of Pt. Conception, California, and west to 129° W longitude. Under the current regulations implementing the Highly Migratory Species Fishery Management Plan, drift gillnet gear is prohibited in this area from August 15th through November 15th (50 CFR 660.713).

The petition contains a detailed description of the species' natural history and status, including information on distribution and movements, feeding and prey selection, reproduction, population status and trends, and factors contributing to the current status of the species in the Pacific Ocean. The petition describes the marine area off Oregon and California as unique, characterized by

distinctive oceanographic and geomorphic features that create a dynamic and highly productive ecosystem. The petition describes oceanographic conditions such as upwellings (i.e., the movement of nutrient-rich subsurface waters to the surface) that favor increased zooplankton production. The petitioners cite studies indicating a positive relationship with leatherback presence and these conditions (Benson *et al.*, 2007a) and that leatherbacks migrate to and forage in the area (Benson *et al.*, 2007b).

The Petitioners claim the petitioned area provides space for population growth and normal behavior and is a known crucial feeding site for leatherbacks. The Petitioners believe the area contains physical and biological features essential to the conservation of leatherback sea turtles. They offer that the PCEs should be those habitat components that are essential for feeding, resting, migrating, and include all marine waters, along with associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. The petitioners argue that the area requires special management considerations as evidenced by the existing measures to reduce leatherback interactions with fisheries. They claim the area should be managed for other fisheries, marine debris, vessel strikes, oil spills, coastal development, and changing ocean conditions brought on by global warming.

Finally, the Petitioners request that, if we determine some portion of the petitioned area does not meet the criteria for critical habitat, we analyze whether some subset of this area should be designated as critical habitat.

Petition Finding

Based on the above information and information readily available in our files, and pursuant to criteria specified in 50 CFR 424.14(c), we find the petitioners present substantial scientific information indicating that a revision to the critical habitat designation for leatherbacks may be warranted. Our Southwest Fisheries Science Center has conducted research on leatherbacks foraging within and migrating through the petition area. Several female leatherbacks nesting in Indonesia made trans-Pacific post-nesting migrations to foraging areas off the coasts of Oregon and Washington (Benson *et al.*, 2007a; Benson unpublished data, 2007). Benson *et al.*, (2007b) found that leatherbacks associate with areas along the U.S. West Coast where nutrient-rich, upwelling water is entrained nearshore. These areas provide increased retention of zooplankton, larval fish, crabs, and gelatinous organisms and represent important foraging grounds for leatherbacks.

To ensure that the review to revise critical habitat for leatherbacks is complete and based on the best available data, we solicit information and comments on whether the petitioned area, or some subset, or some adjacent areas along the U.S. West Coast, qualify as critical habitat. Areas that include the physical and biological features essential to the conservation of the species and that may require special management considerations or protection should be identified. As stated earlier, essential features include, but are not limited to, space for individual growth and for normal behavior, food, water, air, light, minerals, or other nutritional or physiological requirements, cover or shelter, sites for reproduction and development of offspring, and habitats that are protected from disturbance or are representative of the historical, geographical and ecological distributions of the species (50 CFR 424.12).

We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

Peer Review

OMB issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all "influential scientific information" and "highly influential scientific information" disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered "influential scientific information," we solicit the names of recognized experts in the field that could serve as peer reviewers of such information we may disseminate as we evaluate this petition. Independent peer reviewers will be selected from the academic and scientific community, applicable tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

Benson, S.R., K.A. Forney, J.T. Harvey, J.V. Carretta, and P.H. Dutton. 2007a. Abundance, distribution, and habitat of leatherback turtles (*Dermochelys coriacea*) off California, 1990–2003). Fisheries Bulletin. 105:337–347.

Benson, S.R., P.H. Dutton, C. Hittipeuw, B. Samber, J. Bakarbessy, and D. Parker. 2007b. Post-Nesting Migrations of Leatherback Turtles (*Dermochelys coriacea*) from Jamursba-Medi, Bird's Head Peninsula, Indonesia. Chelonian Conservation and Biology. 6(1):150–154.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 20, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–25268 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–AU29

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 15A

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

ACTION: Notice of Availability of Amendment 15A to the South Atlantic Snapper-Grouper Fishery Management Plan; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 15A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 15A proposes actions to update management reference points for snowy grouper, black sea bass, and red porgy based on the most recent stock assessments; modify rebuilding schedules for snowy grouper and black sea bass; define rebuilding strategies for snowy grouper, black sea bass, and red porgy; and redefine the minimum stock size threshold for the snowy grouper stock. The measures contained in the subject amendment are intended to satisfy a U.S. District Court Order to establish rebuilding plans for South Atlantic snowy grouper and black sea bass and for the Secretary of Commerce (Secretary) to approve,

amend, or disapprove Amendment 15A by March 14, 2008.

DATES: Comments must be received no later than 5 p.m., eastern time, on February 26, 2008.

ADDRESSES: You many submit comments, identified by "0648–AU29", by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov*.
- Fax: 727–824–8308, Attn: John McGovern.
- Mail: John McGovern, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Requests for copies of Amendment 15A, which includes an environmental impact statement, a regulatory impact review, a regulatory flexibility analysis, and a fishery impact statement, should be sent to the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone 843–571–4366; fax 843–769–4520; e-mail *safmc@safmc.net*.

FOR FURTHER INFORMATION CONTACT: John McGovern, telephone: 727–824–5305; fax: 727–824–5308; e-mail: *John.McGovern@noaa.gov*.

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Stock assessments performed through the Southeast Data Assessment and Review process have revealed that the South Atlantic stocks of snowy grouper (*Epinephelus niveatus*), black sea bass (*Centropristis striata*), and red porgy (*Pagrus pagrus*) are overfished. Furthermore, snowy grouper and black sea bass are undergoing overfishing. The Council is required by the Magnuson-Stevens Act to implement rebuilding plans for these overfished species. The intent of a rebuilding plan is to increase biomass of overfished stocks to a sustainable level (B_{msy}) within a specified period of time.

On August 17, 2007, the United States District Court for the District of Columbia, issued a ruling on Amendment 13C to the FMP (*North Carolina Fisheries Association, Inc., et al.*, v. *Carlos Gutierrez, Secretary, United States Department of Commerce*, Case No. 06–1815 (D.O.C. 2006)). The Court found that a plan to rebuild snowy grouper and black sea bass should have been included in Amendment 13C because those two species were overfished. The Court then issued an Order on October 2, 2007, requiring, among other things, the Secretary to approve, amend, or disapprove Amendment 15A by March 14, 2008. Amendment 15A is intended to fulfill the Court's Order in a timely manner.

Proposed Provisions of Amendment 15A

Amendment 15A proposes updated management reference points for snowy grouper, black sea bass, and red porgy based on the most recent stock assessments; modifies rebuilding schedules for snowy grouper and black sea bass; proposes rebuilding strategies for snowy grouper, black sea bass, and red porgy; and redefines the minimum stock size threshold (MSST) for the snowy grouper stock.

New biological reference points for snowy grouper would include a maximum sustainable yield (MSY) of 313,056 lb (142,000 kg) whole weight (ww), an optimum yield (OY) of 303,871 lb (137,834 kg) ww, and an MSST of 3,498,735 lb (1,587,000 kg) ww that would establish a larger buffer between what is considered to be an overfished and a rebuilt condition. This amendment proposes to establish a 34-year rebuilding schedule for snowy grouper based on the maximum recommended period of time needed to rebuild the stock, where 2006 is year 1. The rebuilding strategy for snowy grouper specifies a 2009 total allowable catch (TAC) of 102,960 lb (46,702 kg) ww that would remain in effect until modified through subsequent action.

Based on the most recent stock assessment, Amendment 15A proposes an MSY for red porgy equal to 625,699 lb (283,812 kg) ww, and an OY equal to 608,099 lb (275,829 kg) ww. The rebuilding strategy for red porgy would maintain a constant fishing mortality rate throughout the stock's rebuilding time frame of 18 years, which began in 1999. A proposed TAC of 395,281 lb (179,296 kg) ww would remain in effect until modified through subsequent action.

Based on the most recent stock assessment for black sea bass in the South Atlantic region, Amendment 15A proposes an MSY equal to 2,777,825 lb (1,260,000 kg) ww, and an OY equal to 2,742,551 lb (1,244,000 kg) ww. Amendment 15A proposes a 10-year rebuilding schedule for black sea bass, based on the maximum recommended period of time needed to rebuild the stock, where 2006 is year 1. The rebuilding strategy for black sea bass would maintain constant catch during the rebuilding time frame, with a proposed 2009 TAC of 847,000 lb (384,193 kg) ww, which would remain in effect until modified through subsequent action.

Procedural Aspects of Amendment 15A

The Council has submitted Amendment 15A for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 15A will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and consistency with the Magnuson-Stevens Act and other applicable laws, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove Amendment 15A, and the associated rationale. Because none of the measures included in the amendment involve regulatory changes, no proposed or final rule is required at this time. If approved, the provisions of Amendment 15A would not be specified in regulations but would be considered to be an amendment to the FMP. Any subsequent regulatory management measures resulting from the rebuilding plan, would be implemented via plan amendment or regulatory amendment with associated proposed rules, public comment, and final rules.

Consideration of Public Comments

Public comments received by 5 p.m. eastern time, on February 26, 2008, will be considered by NMFS in the approval/disapproval decision regarding Amendment 15A.

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

Dated: December 20, 2007

James P. Burgess,

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

[FR Doc. E7–25248 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070717340–7550–01]

RIN 0648–AV40

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2008 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB). This action also proposes to modify existing management measures. Specifically, it would clarify gear requirements for the *Loligo* squid fishery, standardize procedures for closing the Atlantic mackerel (mackerel) and butterfish fisheries, modify incidental possession limits for mackerel and butterfish, and establish a butterfish possession limit. Additionally, this action requests public comment concerning the possibility of an inseason adjustment to increase the mackerel harvest, if landings approach proposed harvest limits. These proposed specifications and management measures promote the utilization and conservation of the MSB resource.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on January 28, 2008.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov.*

You may submit comments, identified by 0648–AV40, by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*;

Fax: (978) 281–9135, Attn: Carrie Nordeen;

Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2008 MSB Specifications".

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at § 648.21 and 600.516(c), require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow *Loligo* squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota (RQ) and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for mackerel.

At its June 12–14, 2007, meeting in Hampton, VA, the Council recommended 2008 MSB specifications. The recommended specifications for *Loligo* squid and *Illex* squid are the same as those implemented in 2007. For mackerel, the Council recommended a reduced ABC, based on an updated fishing mortality target from the most recent stock assessment. The IOY, DAH, DAP, JVP, and TALFF recommended for mackerel are the same as those implemented in 2007. For butterfish, the Council recommended reducing the ABC, IOY, DAH, and DAP to levels approximating recent landings while a butterfish rebuilding program is being developed in Amendment 10 to the FMP. The Council also recommended modifying existing management measures. Specifically, it recommended clarifying gear requirements for the *Loligo* squid and butterfish fisheries, adjusting triggers and incidental possession limits associated with closures of the mackerel and butterfish fisheries, and establishing a butterfish possession limit.

For 2008, the Council recommended the consideration of RQ of up to 3 percent of the IOY for *Loligo* and *Illex* squid, butterfish, and mackerel. The RQ would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2008 based on research priorities previously identified by the Council (71 FR 77726, December 27, 2006). The deadline for submission was February 12, 2007. On June 12, 2007, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panel comments, one project proposal requesting *Loligo* squid set-aside landings was recommended for approval and will be forwarded to the NOAA Grants Office for award, for a total RQ of up to 23 mt. The commercial *Loligo* squid quota in this proposed rule has been adjusted to allow for RQ. If the award is not made by the NOAA Grants Office for any reason, NMFS will give notice of an adjustment to the annual quota to return the unawarded set-aside amount to the fishery.

Disapproval of Increased Incidental Loligo Squid Possession Limit for the Illex Squid Vessels

The issue of incidental catch of *Loligo* squid in the *Illex* squid fishery was identified several years ago when large amounts of *Loligo* squid discards were reported in vessel trip reports by *Illex* squid vessels during closures of the directed *Loligo* squid fishery in the

summer and fall of 2000. Analyses developed for Amendment 9 to the FMP indicated that the *Illex* squid fishery occurs primarily during June–November in offshore waters and that both squid species can co-occur during September–November on the *Illex* squid fishery grounds, when the *Loligo* squid begin to move offshore. Because of the seasonal co-occurrence of the two squid species, members of the directed *Illex* squid fishery testified at Council meetings that the 2,500–lb (1.13-mt) incidental *Loligo* squid possession limit during closures of the *Loligo* squid fishery creates compliance problems for the *Illex* squid fishery because vessels catch more than 2,500 lb (1.13 mt) of *Loligo* squid when the species mix. In an effort to reduce regulatory discarding and allow more accurate quantification of the removals of *Loligo* squid taken in the directed *Illex* squid fishery, the Council recommended increasing the incidental *Loligo* squid possession limit for vessels engaged in the directed *Illex* squid fishery during *Loligo* squid fishery closures. Specifically, during closures of the *Loligo* squid fishery in August–October, *Illex* squid moratorium vessels fishing seaward of the small mesh exemption line (approximately the 50-fm (91-m) depth contour) would be permitted to possess and land up to 5,000 lb (2.27 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board.

This measure is similar to the measure proposed by the Council in the 2007 MSB specifications, but not implemented due to concerns about NMFS's ability to administer the measure effectively. The small mesh exemption line, which approximates the 50-fm (91-m) depth contour, was implemented for the *Illex* squid fishery because *Illex* squid are not generally available to the fishery shoreward of this line. The *Illex* squid fishery is exempt from the 1–7/8-inches (48-mm) minimum mesh requirement for the *Loligo* squid fishery in the exemption area. However, *Loligo* squid are widely distributed shoreward of this line, which would make it difficult to determine if the *Loligo* squid is truly incidentally caught within the *Illex* squid exemption area. Currently, there is no mechanism to determine if *Illex* squid moratorium vessels fish for *Loligo* squid shoreward of the small mesh exemption line. Tools to collect spatial effort information on the *Illex* squid fleet were discussed by the Council, but implementation of those tools would require an FMP amendment or framework adjustment. Therefore, for 2008, the incidental *Loligo* squid possession limit for *Illex* squid moratorium vessels, during closures of the *Loligo* squid fishery, will remain at 2,500 lb (1.13 mt) per trip per day.

2008 Proposed Specifications and Management Measures

TABLE 1.—PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2008 FISHING YEAR.

Specifications	Loligo	Illex	Mackerel	Butterfish
Max OY	26,000	24,000	N/A	12,175
ABC	17,000	24,000	156,000	1,500
IOY	[1]16,977	24,000	[2]115,000	500
DAH	16,977	24,000	[3]115,000	500
DAP	16,977	24,000	100,000	500
JVP	0	0	0	0
TALFF	0	0	0	0

[1] Excludes 23 mt for Research Quota (RQ).
[2] IOY may be increased during the year, but the total ABC will not exceed 156,000 mt.
[3] Includes a 15,000 mt catch of Atlantic mackerel by the recreational fishery.

Atlantic Mackerel

The status of the Atlantic mackerel stock was most recently assessed at the 42nd Stock Assessment Review Committee (SARC) in late 2005. SARC 42 concluded that the mackerel stock is not overfished and overfishing is not occurring. According to the FMP, mackerel ABC must be calculated using the formula ABC = T − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the yield associated with a fishing mortality rate that is equal to the target fishing mortality rate (F). Based on projections from SARC 42, the yield associated with an F of 0.12 in 2008 is 211,000 mt. Canadian catch of mackerel has been increasing in recent years; therefore, the estimate of Canadian catch for 2008 has been increased from the 2007 estimate of 52,000 mt to 55,000 mt. Thus, 211,000 mt minus 55,000 mt results in a proposed 2008 mackerel ABC of 156,000 mt.

NMFS proposes a mackerel IOY of 115,000 mt. The Council believes that this level of harvest would provide the greatest overall benefit to the Nation with respect to food production and recreational opportunities, and would allow for an increase in domestic landings. In recent years, domestic mackerel landings have been increasing due to major investments in the domestic mackerel processing sector. Mackerel landings in 2003 totaled 35,071 mt, while landings for 2006 totaled 58,279 mt. The 115,000-mt IOY is consistent with mackerel regulations at § 648.21(b)(2)(ii), which state that IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides that the specification of TALFF, if any, shall be that portion of the optimum yield (OY) of a fishery that will not be harvested by vessels of the United States. TALFF catches would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with the U.S. industry efforts to expand exports. The Council expressed its concern, supported by industry testimony, that an allocation of TALFF would threaten the expansion of the domestic industry. The Council noted that this would prevent the U.S. industry from taking advantage of declines in the European production of Atlantic mackerel that have resulted in an increase in world demand for U.S. fish. The only economic benefit associated with a TALFF is the foreign fishing fees it generates. On the other hand, there are economic benefits associated with the development of the domestic mackerel fishery. Increased mackerel production generates jobs both for plant workers and other support industries. More jobs generate additional sources of income for people resident in coastal

communities and generally enhance the social fabric of these communities.

For these reasons, and as recommended by the Council, NMFS proposes to specify IOY at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to assist the U.S. mackerel industry to expand. This would yield positive social and economic benefits to both U.S. harvesters and processors. Given the trends in landings, and the industry's testimony that the fishery is poised for significant growth, NMFS concurs that it is reasonable to assume that, in 2008, the commercial fishery will harvest 100,000 mt of mackerel. Thus, DAH would be 115,000 mt, which is the commercial harvest plus the 15,000 mt allocated for the recreational fishery. Because IOY = DAH, this specification is consistent with the Council's recommendation that the level of IOY should not provide for a TALFF.

NMFS proposes to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004), consistent with the Council's recommendation. In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the capability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 2 years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shoreside processing capacity for mackerel has expanded. The Council received testimony from processors and harvesters that the shoreside processing sector of this industry has continued to expand since 2002–2003. Subsequent industry testimony estimated current processing capacity at 2,500 mt per day. The Council also heard from the industry that the availability (i.e., the size, distribution, and abundance) of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. Based on this information, the Council concluded that processing capacity is no longer a limiting factor relative to domestic production of mackerel. Furthermore, the Council concluded that the U.S. mackerel processing sector has the potential to process the DAH, so JVP would be specified at zero.

Closure of the Mackerel Fishery

Regulations at § 648.22(a) specify that NMFS shall close the directed mackerel fishery when 80 percent of the mackerel DAH is landed, if such a closure is necessary to prevent the DAH from being exceeded. To facilitate achieving the mackerel DAH, NMFS is proposing to close the mackerel fishery when 90 percent of the mackerel DAH is projected to be landed in 2008, consistent with the Council's recommendation.

Mackerel Incidental Possession Limit

Regulations at § 648.22(c) specify that, during closures of the mackerel fishery, the incidental possession limit for mackerel is 10 percent, by weight, of the total amount of fish on board. In general, possession limits that are a percent of the total catch on board are difficult to estimate and enforce. At its June 2007 meeting, the Council discussed revising the incidental possession limit for mackerel, such that it is easier to estimate and enforce, and that it is similar to incidental possession limits for squid and butterfish.

The Council considered several competing objectives in the development of a revised incidental possession limit for mackerel. First, the possession limit needed to be low enough to ensure that the mackerel ABC would not be exceeded. Secondly, the possession limit needed to be set high enough to minimize regulatory discarding of mackerel in fisheries where mackerel is taken incidentally, but not so high as to encourage directed fishing. Lastly, because small-scale mackerel fisheries contribute only minimally to the overall mackerel harvest, the Council wanted the incidental possession limit to be high enough to allow small-scale fisheries to continue after the directed fishery was closed. After considering these factors, NMFS is proposing a mackerel incidental possession limit of 20,000 lb (4.54 mt) for 2008, consistent with the Council's recommendation.

Inseason Adjustment of the Mackerel IOY

Regulations at § 648.21(e) provide that specifications may be adjusted inseason during the fishing year by the Regional Administrator, in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30-day public comment period. At the June 2007 Council meeting, in response to recent growth in the domestic harvesting and processing sectors of the mackerel fishery, both the mackerel industry and the Council voiced interest in increasing the 2008 mackerel IOY if landings approach 115,000 mt during the most active part of the fishing year (January–April). However, the mackerel fishing season is short and it would be difficult to implement a separate inseason action during the fishing season. To facilitate a timely inseason adjustment to the mackerel IOY, if necessary, this action proposes and seeks comment on such an inseason adjustment. In 2008, NMFS's Northeast Fishery Statistic Office (FSO) will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office Web site (*http://www.nero.noaa.gov/*). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. If, using landings projections and all other available information, the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2008 fishing year, the Regional Administrator will make available additional quota for a total IOY of 156,000 mt of Atlantic mackerel for harvest during 2008. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

Atlantic Squids

Loligo Squid

While the annual quota and other measures for *Loligo* squid can be specified for up to 3 years, the Council chose to recommend *Loligo* squid specifications and management measures for 1 year only. After a review of available information, the Council recommended no change to the *Loligo* squid Max OY and ABC from 2007; NMFS concurs with this recommendation. Therefore, the proposed 2007 *Loligo* squid Max OY is 26,000 mt and the proposed ABC is 17,000 mt. The Council recommended that the *Loligo* squid RQ for 2007 be up to 3 percent (510 mt) of the ABC. One scientific research project proposal requesting *Loligo* squid RQ was recommended for approval and will be forwarded to the NOAA Grants Office for award. The proposed *Loligo* squid IOY, DAH, and DAP were adjusted to reflect the RQ and equal 16,977 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, there would be no JVP and TALFF in 2008.

Distribution of the *Loligo* Squid DAH

Prior to 2000, the DAH for *Loligo* squid was specified as an annual quota. In 2000, the quota was subdivided into three trimester allocations. During 2001–2006, the annual DAH for *Loligo* squid was allocated into four quarter allocations, as follows: Quarter I

(January–March) with 33.23 percent of the quota, Quarter II (April–June) with 17.61 percent of the quota, Quarter III (July–September) with 17.30 percent of the quota, and Quarter IV (October–December) with 31.86 percent of the quota. In an effort to improve the monitoring and management of the *Loligo* squid fishery, the 2007 DAH was allocated by trimester. Managing the DAH by trimesters, rather than quarters, results in allocations that can be higher than the quarterly allocations. Higher allocations may increase the length of time the fishery is open and allow closure projections to be based on more information, potentially increasing projection accuracy. Additionally, managing by trimesters rather than quarters streamlines administration because only three closures, rather than four, of the directed fishery could occur during a fishing year. For these reasons, NMFS is proposing that the 2008 *Loligo* squid DAH be allocated into trimesters, consistent with the Council's recommendation. The proposed 2008 trimester allocations would be as follows:

TABLE 2. PROPOSED TRIMESTER ALLOCATION OF LOLIGO SQUID QUOTA IN 2008

Trimester	Percent metric tons[1]	RQ (mt)	
I (Jan–Apr)	43	7,300	NA
II (May–Aug)	17	2,886	NA
III (Sep–Dec)	40	6,791	NA
Total	100	16,977	23

[1] Trimester allocations after 23 mt RQ deduction.

For 2008, the Council recommended that the percentage at which the directed *Loligo* squid fishery would close and the handling of quota overages and underages would be the same as in 2007. Therefore, this action proposes the directed *Loligo* squid fishery would close when 90 percent of the DAH is harvested in Trimesters I and II, and when 95 percent of the DAH is harvested in Trimester III. Additionally, it proposes that any underages from Trimesters I and II would be applied to Trimester III, and any overages from Trimesters I and II would be subtracted from Trimester III.

Clarification of *Loligo* Squid Gear Requirements

Regulations at § 648.23(d) specify that net strengtheners have a minimum mesh size of 4–1/2 inches (11.43cm) and that any device, including net strengtheners, may not be used on the top 50 percent of a codend (i.e., the portion of the codend that is not in contact with the ocean floor when the net is fishing) if it constricts the minimum mesh size to less than the required 1–⅞ inch (48 mm). However, any time a 1–⅞-inch (48-mm) codend is used with a 4–½-inches (11.43-cm) net strengthener, the actual mesh size will be less than 1–⅞ inches (48 mm) because the meshes from the codend and the net strengthener will not be in alignment and will overlap. Last fall, the U. S. Coast Guard brought it to NMFS's attention that *Loligo* squid vessels have net strengtheners covering the top 50 percent of the codend. When questioned about the need for and use of net strengtheners, members of the Loligo squid fishing industry explained that codends with a minimum mesh size of 1–⅞ inches (48 mm) are of such fine gauge that they will burst if a net strengthener does not surround the entire circumference of the codend. Therefore, current gear regulations are inconsistent with the way the Loligo squid fishery needs to operate.

At its June 2007 meeting, the Council discussed clarifying *Loligo* squid gear requirements such that net strengtheners would be permissible around the entire circumference of a codend, provided the minimum mesh size was 4–1/2 inches (11.43 cm). Therefore, this action proposes that net strengtheners, splitting straps, and/or bull ropes or wire may be used around the entire circumference of the codend, provided they do not have an effective mesh opening of less than 4–1/2 inches (11.43 cm), diamond mesh, inside stretch measure.

Illex Squid

NMFS proposes to maintain the *Illex* squid specifications in 2008 at the same levels as they were for the 2007 fishing year, consistent with the Council's recommendation. Specifically, this action proposes that the specification of Max OY, IOY, ABC, and DAH would be 24,000 mt. The overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Max OY is specified as the catch associated with a fishing mortality rate of F_{MSY}, while DAH is specified as the level of harvest that corresponds to a target fishing mortality rate of 75 percent F_{MSY}. The biomass target is specified as B_{MSY}. The minimum biomass threshold is specified as ½ B_{MSY}. The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Butterfish

The status of the butterfish stock was most recently assessed at the 38th SARC in late 2004. The assessment concluded that, while overfishing of the stock is not occurring, the stock is overfished because estimates of stock biomass are below the minimum biomass threshold (1/2 B_{MSY}). SARC 38 estimated the butterfish stock at 8,700 mt, ½ B_{MSY} at 11,400 mt, and B_{MSY} at 22,798 mt. Based on this information, the Council was notified by NMFS on February 11, 2005, that the butterfish stock was designated as overfished, pursuant to the requirements of section 304(e) of the Magnuson-Stevens Act, and the Council is developing a rebuilding plan for the butterfish stock in Amendment 10 to the FMP (Amendment 10). One of the goals of Amendment 10 is to develop a program to allow the butterfish stock to rebuild to B_{MSY} and protect the long-term health and stability of the rebuilt stock. Rebuilding of the butterfish stock will be dependent upon increases in recruitment, which recently has been poor to intermediate. Rebuilding is further complicated because the natural mortality of butterfish is high, butterfish have a short lifespan, and fishing mortality is primarily attributed to discards (discards equal twice the annual landings).

While a butterfish rebuilding program is being developed in amendment 10, the Council recommended restricting butterfish landings to recent landings levels to prevent an expansion of the fishery and to protect the rebuilding

stock. Without a current market for butterfish, an intense, directed butterfish fishery has not existed for several years. Since 2003, butterfish landings have ranged between 437mt–554mt. SARC 38 re-estimated butterfish maximum sustainable yield as 12,175 mt and the overfishing threshold as F = 0.38. The MSB FMP specifies that maximum sustainable yield equals MAX OY. Therefore, the Council recommended, and NMFS is proposing, that butterfish MAX OY be set at 12,175 mt in 2008. While a butterfish rebuilding program is being developed in Amendment 10, the Council recommended restricting butterfish landings to recent landings levels to prevent an expansion of the fishery and to protect the rebuilding stock. Without a current market for butterfish, an intense, directed butterfish fishery has not existed for several years. Since 2003, butterfish landings have ranged between 437 mt-554 mt. Based on SARC 38, an F of 0.34 was associated with butterfish catch (landings plus discards) of 2,700 mt. Assuming that butterfish discards equal twice the level of landings, the amount of butterfish discards associated with approximately 500 mt of landings is approximately 1,000 mt. Therefore, in 2008, the proposed specifications would set the IOY, DAH, and DAP at 500 mt and would set ABC at 1,500 mt. Harvest at these proposed levels should prevent overfishing on the butterfish stock in 2008. Additionally, consistent with MSB regulations, the Council recommended, and NMFS is proposing, zero TALFF for butterfish in 2008 because zero TALFF is proposed for mackerel.

Closure of the Butterfish Fishery and the Incidental Butterfish Possession Limit

Existing regulations specify that the butterfish fishery close when the Regional Administrator projects that 95 percent of the butterfish DAH is projected to be landed. Once the butterfish fishery is closed, the current incidental butterfish possession limit is 2,500 lb (1.13 mt) per day. In previous years, when the butterfish DAH was set at approximately twice the level of landings, a 95-percent closure threshold and 2,500-lb (1.13-mt) incidental possession limit encouraged the entire DAH to be taken, while preventing the DAH from being exceeded. However, consistent with the lower butterfish DAH that is proposed for 2008, the Council also wanted to consider a lower fishery closure threshold and incidental possession limit. Council staff used butterfish landings data from 2004–2006 to evaluate a range of closure thresholds (e.g., 80–95 percent) and associated incidental possession limits (e.g., 500 lb (0.23 mt)—2,500 lb (1.13 mt)). The analysis suggested that butterfish were landed at a relatively steady rate throughout the year, but with substantial week-to-week variability. Based on this analysis, the Council recommended that, in 2008, an 80-percent closure threshold and a scaled incidental possession limit, such that a 250-lb (0.11-mt) incidental possession limit would be associated with a fishery closure prior to October 1 and a 600-lb (0.27-mt) incidental possession limit would be associated with a fishery closure on or after October 1. Consistent with the Council's recommendation, this action proposes that, in 2008, if 80 percent of the butterfish DAH is projected to be landed prior to October 1, a 250-lb (0.11-mt) incidental butterfish possession limit would be in effect for the remainder of the year. Additionally, if 80 percent of the butterfish DAH is projected to be landed on or after October 1, a 600-lb (0.27-mt) incidental butterfish possession limit would be in effect for the remainder of the year. These measures should prevent the 500-mt butterfish DAH from being exceeded, while allowing for butterfish taken incidentally in other fisheries to be landed, thus reducing discards.

Incidental possession limits for butterfish apply not only during a fishery closure but also year-round to vessels issued incidental catch permits. While the Council did not explicitly recommend an incidental butterfish possession limit for vessels issued a butterfish incidental catch permit, this action proposes a year-round, 250-lb (0.11-mt) butterfish possession limit for vessels issued incidental butterfish catch permits, similar to the Council's recommended incidental butterfish possession limit during a fishery closure. NMFS invites the Council to comment whether this measure is consistent with the Council's intent.

Butterfish Possession Limits

Regulations at § 648.23(a)(2) specify that trawl vessels possessing 5,000 lb (2.27 mt) or more of butterfish may only fish with nets having a minimum codend mesh size of 3 inches (76 mm). Consistent with the Council's intent to prevent expansion of the butterfish fishery and protect the rebuilding stock as Amendment 10 is being developed, the Council recommended reducing the butterfish possession limit associated with using small mesh (i.e., a minimum mesh size of less than 3 inches (76 mm)), as well as establishing an additional butterfish possession limit for the 2008 fishing year. To discourage targeting butterfish and help ensure the butterfish DAH is available for much of the year, so that butterfish catch does not result in additional discarding, NMFS is proposing reducing the possession limit on trips using small mesh and establishing an additional butterfish possession limit for all trips, consistent with the Council's recommendation. Therefore, this action proposes that trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish may only fish with nets having a minimum codend mesh size of 3 inches (76 mm) and that a vessel issued a butterfish moratorium permit may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip per day.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after pubic comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov*.

Statement of Objective and Need

This action proposes 2008 specifications and management measures for Atlantic mackerel, squid, and butterfish, and modifications to existing management measures to improve the monitoring and management of these fisheries. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Based on permit data for 2006, the number of potential fishing vessels in the 2008 fisheries are as follows: 383 for *Loligo* squid/butterfish, 78 for *Illex* squid, 2,495 for mackerel, and 2,016

vessels with incidental catch permits for squid/butterfish. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

The mackerel IOY proposed in this action (115,000 mt, with 15,000 mt allocated to recreational catch) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 24,294 mt. Landings in 2004 were 55,528 mt, landings in 2005 were 43,246 mt, and landings for 2006 were 58,279 mt. This action also proposes an in-season adjustment, if landings approach the IOY early in the fishing year, to increase the IOY up to the ABC (156,000 mt). Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this proposed action; in fact, an increase in revenues as a result of the proposed action is possible. Based on 2006 data, the mackerel fishery could increase its landings by 56,721 mt in 2008, if it takes the entire IOY. In 2006, the last year with complete financial data, the average value for mackerel was $418 per mt. Using this value, the mackerel fishery could see an increase in revenues of $23,709,378 as a result of the proposed 2008 IOY (115,000 mt), and an additional increase in revenues of $17,138,000 as a result of the proposed adjustment to increase the IOY up to the ABC (156,000 mt).

Additionally, this action is proposing to change the percentage at which the directed mackerel fishery would close (from 80 percent to 90 percent of OY) and the incidental mackerel possession limit after the directed fishery is closed (from 10 percent, by weight, of the total fish on board to a fixed possession limit of 20,000 lb (4.54 mt)). Under these proposed changes, it is likely that a higher level of revenue could be realized by vessels engaged in the directed mackerel fishery compared to the other alternatives. An increase in revenues of 10 percent of OY in the directed fishery could be realized, amounting to a potential increase in landings in the directed fishery on the order of about 10,000 mt. Given recent prices, this would translate into increased revenues of about $4.2 million, or $15,000 per vessel.

The *Loligo* squid IOY (17,000 mt) proposed in this action represents status quo as compared to 2007. *Loligo* squid landings for 2001–2003 averaged 14,092 mt. Landings in 2004 were 15,447, landings in 2005 were 16,984 mt, and landings in 2006 were 15,880 mt. In 2006, the last year for which complete financial data are available, the average value for *Loligo* squid was $1,751 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2008.

The *Illex* squid IOY (24,000 mt) proposed in this action represents status quo as compared to 2007. *Illex* squid landings for 2001–2003 averaged 4,350 mt. Landings in 2004 were 26,098 mt, landings in 2005 were 12,032 mt, and landings in 2006 were 13,944 mt. In 2006, the last year for which complete financial data are available, the average value for *Illex* squid was $578 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2008.

The butterfish IOY (500 mt) proposed in this action represents no constraint to vessels relative to the landings in recent years. Due to market conditions, there has been not been a directed butterfish fishery in recent years; therefore, recent landings have been low. Landings in 2004 were 537 mt, landings in 2005 were 437 mt, and landings in 2006 were 554 mt. Given the lack of a directed butterfish fishery and low butterfish landings, the proposed action is not expected to reduce revenues in this fishery. Based on 2006 data, the value of butterfish was $1,472 per mt.

This action also proposes modifying the trigger for closing the directed butterfish fishery and reducing butterfish possession limits. Specifically, this action is proposing to change to the percentage at which the directed butterfish fishery would close (from 95 percent to 80 percent of DAH) and the incidental butterfish possession limit after the directed fishery is closed (from 2,500 lb (1.13 mt) to either 600 lb (0.27 mt) or 250 lb (0.11 mt)). Additionally, this action proposes a 5,000-lb (2.27-mt) butterfish possession limit for all trips and reducing the possession limit for trips using small mesh (i.e., less than 3 inches (76 mm)) from 5,000 lb (4.54 mt) to 1,000 lb (0.45 mt). These proposed measures potentially limit the amount of fishing effort for butterfish as the stock rebuilds compared to the other alternatives. Therefore, there could be some minor losses in revenue for vessels that wanted to direct on butterfish in the short term (i.e., during the rebuilding period).

Alternatives to the Proposed Rule

The Council analysis evaluated three alternatives for mackerel, and all of them would have set IOY at 115,000 mt, maintained the status quo trigger for closing the directed fishery, and maintained the status quo incidental mackerel possession limit. This IOY and these management measures do not represent a constraint on vessels in this fishery, so no negative impacts on revenues in this fishery are expected as a result of these alternatives. One of these alternatives (status quo) would have set the ABC at 186,000 mt, and the other could have set the ABC at 335,000 mt. These alternatives were not adopted by the Council because that level of ABC is not consistent with the overfishing definition in the FMP, as updated by the most recent stock assessment. Furthermore, alternatives that would set a higher harvest were not adopted because they proposed harvest that was too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors (for a full discussion of the TALFF issue, see the earlier section on Atlantic mackerel).

For *Loligo* squid, all alternatives would have set Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt. While the annual quota under all alternatives represents status quo, alternatives differ in their allocation of the annual quota and incidental *Loligo* squid possession limit for *Illex* squid vessels. Two alternatives would have allocated quotas by trimester. Of these, both include an increase of the *Loligo* squid incidental possession limit for *Illex* squid vessels during August–October closures of the *Loligo* squid fishery; one alternative specifies a 5,000-lb (2.27-mt) limit for vessels fishing seaward of the small-mesh exemption line (approximating the 50-fm (91-m) depth contour), and the other specifies a 10,000-lb (4.54-mt) limit for vessels fishing seaward of a boundary approximating the 80-fm (146-m) depth contour. As described in the preamble

of this proposed rule, there are no tools in place for NMFS to monitor spatial activities of the *Illex* squid fleet; therefore, this possession limit provision of these alternatives will not be implemented because it cannot be administered effectively. The third alternative would allocate quota by quarters (status quo). Difference in seasonal quota distribution may have distributive effects on seasonal participants in the fishery; however, all alternatives are expected to result in the same total landings for 2008.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with this alternative. However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Another alternative considered would have set MAX OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. The Council considered this alternative unacceptable because it was unnecessarily restrictive.

For butterfish, one alternative considered would have set the ABC at 4,525 mt and IOY, DAH, and DAP at 1,861 mt, while another would have set ABC at 12,175 mt and IOY, DAH, and DAP 9,131 mt. These amounts exceed the landings of this species in recent years. Both alternatives would have maintained the status quo trigger for closing the directed fishery, incidental possession limit, and possession limit for trips using mesh smaller than 3 inches (76 mm). Therefore, neither alternative represents a constraint on vessels in this fishery or would reduce revenues in the fishery. However, neither of these alternatives were adopted because they would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 20, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraphs (a)(73), (p)(3), (p)(5), and (p)(11) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(73) Take, retain, possess, or land more mackerel, squid, or butterfish as specified at § 648.25.

* * * * *

(p) * * *

(3) Take, retain, possess, or land mackerel, squid, or butterfish in excess of a possession allowance specified at § 648.25.

* * * * *

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for *Loligo* or butterfish specified in § 648.23, or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless nets or netting is stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a)(3)(ii).

* * * * *

(11) Possess 1,000 lb (0.45 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

* * * * *

3. In § 648.22, paragraph (c) is removed and paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *Closing procedures.* (1) NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the mackerel fishery in the EEZ and the incidental catches specified for mackerel at § 648.25 will be prohibited.

(2) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the *Loligo* quota is harvested in Trimesters I and II, and when 95 percent of the *Loligo* DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(3) NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(4) NMFS shall close the directed butterfish fishery in the EEZ when the Regional Administrator projects that 80 percent of the butterfish DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

* * * * *

4. In § 648.23, paragraphs (a)(4) and (d) are removed and paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 648.23 Gear restrictions.

(a) * * *

(2) Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 7/8 inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1–7/8 inches (48 mm) diamond mesh, inside stretch measure. "Top of the regulated portion of the net" means the

50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 4½ inches (11.43 cm), diamond mesh, inside stretch measure. For the purpose of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Illex fishery.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ and fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request) are exempt from the *Loligo* gear requirements specified at paragraph (a)(3) of this section, provided they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(3) of this section, when the vessel is landward of the specified coordinates.

Point	N. Lat.	W. Long.
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	67°10.0′
M10	41°18.6′	66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′

* * * * *

3. Section 648.25 is added to read as follows:

§ 648.25 Possession restrictions.

(a) *Atlantic mackerel.* During a closure of the directed Atlantic mackerel fishery, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(b) *Loligo.* During a closure of the directed fishery for *Loligo,* vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a *Loligo* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time and may only land *Loligo* once on any calendar day.

(c) *Illex.* During a closure of the directed fishery for *Illex*, vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish.* (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(I)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

[FR Doc. E7–25251 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 72, No. 248
Friday, December 28, 2007

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request, Correction

December 20, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food Safety and Inspection Service

Title: Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products.

OMB Control Number: 0583–0092.

On page 72342 of the **Federal Register** of December 20, 2007, the total burden hours shown was incorrect. The total burden hours should be 155,288.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–25132 Filed 12–27–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to CrispTek, LLC of Columbia, Maryland, an exclusive license to U.S. Patent No. 6,224,921, "Rice Flour Based Low Oil Uptake Frying Batters", issued on May 1, 2001.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as CrispTek, LLC of Columbia, Maryland, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E7–25140 Filed 12–27–07; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council (NUCFAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council (NUCFAC) will meet in Washington, DC. The purpose of the meeting is to discuss emerging issues in urban and community forestry and introduce the new "Council" members.

DATES: The meeting will be held February 5–7, 2008.

ADDRESSES: The meeting will be held at the Doubletree Hotel Downtown, 1515 Rhode Island Avenue, Washington, DC 20005. Written comments and individuals who wish to speak at the meeting or to propose agenda items should send their names and proposals to Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, 201 14th Street SW., MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us* or via facsimile to (202) 690–5792. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the U.S. Forest Service, Sidney R. Yates Building, 201 14th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, (202) 205–

7829, or via e-mail at *nstremple@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public, February 5–7, 2008. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 15, 2008, will have the opportunity to address the Council at those sessions.

Dated: December 19, 2007.

Kent Connaughton,

Associate Deputy Chief, NFS.

[FR Doc. E7–25122 Filed 12–27–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Direction for Processing Interstate Natural Gas Pipeline Proposals on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency directive.

SUMMARY: The Forest Service is amending its Forest Service Manual chapter 2720, to incorporate without change, an interim directive to guide its employees in processing proposals for interstate natural gas pipeline projects. This amendment is designed to update existing direction in the Forest Service Manual chapter 2720, consistent with a May 2002 interagency agreement between the Department of Agriculture and the Federal Energy Regulatory Commission. The agreement establishes procedures for responding to and processing applications for interstate natural gas pipeline projects when the Federal Energy Regulatory Commission will be the lead agency in conducting the required environmental and historic preservation reviews.

DATES: This amendment is effective December 28, 2007.

ADDRESSES: This amendment is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives*. Single paper copies of the Amendment are also available by contacting Julett Denton, Lands Staff (Mail Stop 1124), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1124 (telephone 202–205–1256).

FOR FURTHER INFORMATION CONTACT: Julett Denton, Lands Staff (202–205–1256).

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

SUPPLEMENTARY INFORMATION: The amendment to FSM 2720 provides Forest Service field officers with specific procedures to assure that the agency carries out the streamlining processes in the interagency agreement and directs that field officers fully engage as a cooperating agency in the FERC's processing of these types of applications.

Dated: December 19, 2007.

Abigail R. Kimbell,

Chief, Forest Service.

[FR Doc. E7–25163 Filed 12–27–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor–standing, Metal–top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Notice of Extension of Time Limit for Final Results of Second Antidumping Administrative Review

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

EFFECTIVE DATE: December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0409.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2007, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of this antidumping administrative review. *Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 51781 (September 11, 2007). The period of review for this administrative review is August 1, 2005, to July 31, 2006.

Extension of Time Limits for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245–day period to 365 days and the 120–day period to 180 days.

In the instant review, the Department finds that the current deadline for the final results of January 9, 2008, is not practicable. The Department requires additional time to conduct surrogate value research and review and analyze interested party comments. As a result, the Department has determined to extend the current time limits of this administrative review. For these reasons, the Department is extending by 23 days the time limit for the completion of these final results until no later than February 1, 2008.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: December 20, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–25242 Filed 12–27–07; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Intent Not to Revoke In Part

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

SUMMARY: In response to requests by interested parties,.the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on honey from Argentina. The review covers five firms, two of which were selected as mandatory respondents (see "Background" section of this notice for further explanation). The period of review (POR) is December 1, 2005, through November 30, 2006.

We preliminarily determine that sales of honey from Argentina have not been made below the normal value by both mandatory respondents during the period of review. In addition, we will preliminarily apply the average of the dumping margins calculated for both ACA and Seylinco as the review–specific rate for the three companies subject to this review but not selected as respondents (*i.e.*, Patagonik S.A. (Patagonik), Naiman S.A. (Naiman), and El Mana S.A. (El Mana)). For more detail, *see* the "Background" section below; *see also* "Preliminary Results of Review," below. If these preliminary results are adopted in our final results of administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP). Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

EFFECTIVE DATE: December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke, Deborah Scott, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482–5604, (202) 482–2657, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina. *See Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001). On December 1, 2006, the Department published its opportunity to request a review. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 69543 (December 1, 2006). On December 29, 2006, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2005, through November 30, 2006. Petitioners requested that the Department review entries of subject merchandise made by nine Argentine producers/exporters, six of which also filed individual requests for review with the Department. In addition, the Department received one request from a producer/exporter that was not included in petitioners' request for review. On February 2, 2007, the Department initiated a review of these ten[1] companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007).

On January 23, 2007, the Department issued quantity and value questionnaires to each of the ten companies covered by the review. On March 9, 2007, petitioners timely withdrew their request for review of three of the ten companies. On March 27, 2007, the Department determined that, because it was not feasible to examine all seven of the remaining producers/exporters of subject merchandise, the most appropriate methodology for purposes of this review was to select the four largest producers/exporters by export volume as respondents: ACA, Seylinco, Mielar/CAA, and Nexco S.A. (Nexco). The Department stated it would apply a review–specific average margin to those companies not selected, *i.e.*, Patagonik S.A. (Patagonik), Naiman S.A. (Naiman), and El Mana S.A. (El Mana). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Selection of Respondents," dated March 27, 2007. Also, on March 27, 2007, the Department issued sections A, B, and C of the antidumping questionnaire to all exporters subject to the review.

On April 23, 2007, Nexco withdrew its request for a review; petitioners also withdrew their request for a review of Nexco on April 24, 2007. Accordingly, the Department published a notice of partial rescission in response to petitioners' and respondent's withdrawal of the review of Nexco, as well as petitioners' original request for withdrawal of the three following companies: Agroin Las Piedras Ltda., Seabird Argentina S.A., and Ultramar Argentina S.A. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 33740 (June 19, 2007).

On July 17, 2007, both petitioners and respondent company Mielar/CAA withdrew their requests for an administrative review. Accordingly, on September 4, 2007, the Department published a notice of partial rescission of review with regard to Mielar/CAA and also extended the time limit for issuance of the preliminary results of this administrative review to December 20, 2007. *See Honey from Argentina: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 50661 (September 4, 2007).

With respect to the two remaining mandatory respondents, ACA and Seylinco, the chronology of this review is as follows. We received ACA's response to section A on April 25, 2007, and its response to sections B and C on May 22, 2007. On April 27, 2007, we received Seylinco's response to section A, and we received its response to sections B and C on June 5, 2007. On July 5, 2007, petitioners filed separate deficiency comments regarding the responses by ACA and Seylinco to sections A through C of the Department's questionnaire. ACA submitted a response to petitioners' comments on July 25, 2007, and Seylinco responded to petitioners' comments on July 31, 2007. The Department issued a supplemental questionnaire to ACA for section A on August 24, 2007, to which ACA responded on September 19, 2007. The Department then issued ACA a supplemental questionnaire for sections B and C on September 28, 2007, to which ACA responded on October 31, 2007. The Department issued another supplemental questionnaire to ACA for sections A, B, and C on November 21, 2007. ACA submitted its narrative response and sales files to this supplemental questionnaire on December 4, 2007 and the related attachments on December 5, 2007. Finally, the Department issued a supplemental questionnaire to ACA on December 14, 2007, to which ACA provided a response on December 18, 2007. For Seylinco, the Department issued a supplemental questionnaire for sections A, B, and C on August 31, 2007; Seylinco responded to section A of the supplemental questionnaire on September 21, 2007 and sections B and C on September 27, 2007. On October 3, 2007, we issued a second supplemental questionnaire to Seylinco for sections A, B, and C, to which Seylinco responded

[1] The **Federal Register** notice lists 11 companies; however, in a previous segment of this proceeding the Department treated two affiliates as a single entity. No new evidence has been presented in this segment of the proceeding to warrant changing this treatment.

on October 22, 2007. On October 25, 2007, the Department requested clarification of Seylinco's second supplemental questionnaire response to which Seylinco provided support documentation on November 16, 2007. *See* Memorandum to the File, "Honey from Argentina; Clarification of Respondent's Second Supplemental Response," dated November 9, 2007. Finally, we issued a third supplemental questionnaire to Seylinco on November 26, 2007, to which Seylinco responded on December 5, 2007.

On June 18, 2007, petitioners submitted a letter alleging that ACA had made comparison market sales of honey at prices below the cost of production (COP) during the POR. On August 23, 2007, the Department determined that petitioners' COP allegation provided a reasonable basis on which to initiate a sales below cost investigation for ACA. *See* Memorandum to Richard Weible, Director, Office 7, "Petitioners Allegations of Sales Below the Cost of Production in the December 1, 2005–November 30, 2006 Administrative Review," dated August 23, 2007 (Cost Initiation Memorandum). On September 6, 2007, we issued a memorandum indicating we had selected ACA's three largest beekeeper suppliers as respondents in the sales below cost investigation. *See* Memorandum to Richard Weible, Director, Office 7, "Selection of Cost of Production Respondents," dated September 6, 2007 (Cost Selection Memorandum).

On September 21, 2007, the Department issued section D of the antidumping duty questionnaire to solicit COP data from the three selected beekeeper suppliers (Beekeeper 1, Beekeeper 2, and Beekeeper 3).[2] We received Beekeeper 1's response to section D on October 19, 2007, Beekeeper 3's response on October 22, 2007, and Beekeeper 2's response on October 26, 2007. On November 9, 2007, we issued supplemental questionnaires for section D to each of the beekeepers, to which each beekeeper responded on November 27, 2007. On November 30, 2007, the Department issued another supplemental questionnaire to Beekeepers 1, 2, and 3; each beekeeper provided its response on December 10, 2007.

Scope of the Review

The merchandise covered by this order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise covered by this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under this order is dispositive.

Intent Not To Revoke In Part

The Department's procedures for revoking an antidumping duty order, whether in whole or in part, are found at 19 CFR 351.222. Section 351.222(e) of the Department's regulations requires, *inter alia*, that a company requesting revocation submit the following: (1) a certification that the company has sold the subject merchandise at not less than normal value in the current review period and that the company will not sell at less than normal value in the future; (2) a certification that the company sold subject merchandise in commercial quantities in each of the three years forming the basis of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. In determining whether to revoke an antidumping duty order in part, the Department must ascertain that the party sold merchandise at not less than normal value (*i.e.*, at zero or *de minimis* margins) for a period of at least three consecutive years. *See* 19 CFR 351.222(b)(2); *see also Stainless Steel Flanges from India: Notice of Final Results of Antidumping Administrative Review and Revocation in Part*, 70 FR 39997 (July 12, 2005).

On December 29, 2006, Seylinco submitted a request for revocation of the antidumping duty order with the requisite certifications set forth in 19 CFR 351.222(e). Seylinco based its request on the absence of dumping for the four most recent review periods, 2002–2003, 2003–2004, 2004–2005 and the current administrative review. The Department found zero dumping margins in the 2002–2003, 2003–2004 and 2004–2005 administrative reviews. *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 70 FR 19926 (April 15, 2005); *see also Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006) *and Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 72 FR 25245 (May 4, 2007), respectively.

In the current administrative review, we have preliminarily determined a weighted–average margin of zero percent for Seylinco. The margin calculated during the current review period constitutes one of the reviews cited by Seylinco in support of its request for revocation under section 351.222(b) of the Department's regulations. However, we have also examined Seylinco's shipments over the past three PORs and have preliminarily determined that, pursuant to 19 CFR 351.222(d)(1), Seylinco has not shipped in commercial quantities in each of the three years forming the basis of the request for revocation. Accordingly, we hereby preliminarily find that, relative to shipment levels characteristic of the respondent and the industry as a whole, Seylinco is not eligible for revocation of the order. *See* undated 2004–2005 Memorandum to Richard Weible, Director, through Robert James, Program Manager, from Maryanne Burke, Case Analyst, "Request by Seylinco S.A. (Seylinco) for Revocation in the Antidumping Duty Administrative Review of Honey from Argentina," placed on the record of this review on November 9, 2007.

Product Comparison

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Tariff Act), we considered all sales of honey covered by the description in the "Scope of the Review" section of this notice, *supra*, which were sold in the appropriate third–country markets during the POR to be the foreign like product for the purpose of determining appropriate product comparisons to honey sold in the United States. For our discussion of market viability and selection of comparison market, *see* the "Normal Value" section of this notice, *infra*. We matched products based on the physical characteristics reported by ACA and Seylinco. Where there were no sales of identical merchandise in the third–country market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value (CV), as appropriate.

[2] The three beekeepers' names are business proprietary information.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine normal value based on sales in the home market at the same level of trade (LOT) as export price (EP) or the constructed export price (CEP). The normal value LOT is based on the starting price of the sales in the comparison market or, when normal value is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Tariff Act. In this review, both ACA and Seylinco claimed only EP sales.

To determine whether normal value sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act.

For sales in both the third–country market and the United States, ACA reported two LOTs corresponding to differing channels of distribution: (1) sales to packers and (2) sales to importers. Differing channels of distribution, alone, do not qualify as separate LOTs when selling functions performed for each customer class are sufficiently similar. *See* 19 CFR 351.412(c)(2). We found that the selling functions ACA provided to its reported channels of distribution in the third–country and U.S. markets were virtually the same, varying only by the degree to which testing and warranty services were provided. We do not find the varying degree of testing and warranty services alone sufficient to determine the existence of different marketing stages. Thus, we have preliminarily determined there is only one LOT for ACA's sales in both the comparison and U.S. markets, and have not made a LOT adjustment. *See* "Analysis Memorandum for Preliminary Results of the Antidumping Duty Review on Honey from Argentina for Asociacion de Cooperativas Argentinas" (ACA Preliminary Analysis Memorandum), dated December 19, 2007.

Seylinco reported a single LOT for all U.S. and third–country sales. Seylinco claimed its sales were made directly to unaffiliated customers in both the United States and Germany and that the selling activities in both markets are identical. For Seylinco, we preliminarily determine that all reported sales are made at the same LOT, and therefore we have not made a LOT adjustment. *See* "Analysis Memorandum for Preliminary Results of the Antidumping Duty Review on Honey from Argentina for Seylinco S.A." (Seylinco Preliminary Analysis Memorandum), dated December 19, 2007.

Transactions Reviewed

Section 351.401(i) of the Department's regulations states the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which the material terms of sale are established. For ACA, consistent with its practice, the Department used the reported shipment date as the date of sale for both the third–country and U.S. market.[3] Petitioners have argued the Department should use date of contract as the date of sale in this review, claiming that all of the terms of sale were set at the time of contract and remained unaltered through shipment to both the United States and all third country markets. *See, e.g.*, petitioners' letter dated November 15, 2007. However, we examined this issue thoroughly in the original investigation of honey from Argentina involving ACA and found that changes to the essential terms of sale did and do occur between the contract date and the time of the actual shipment by ACA. *See* Memorandum to the File from Deborah Scott, dated December 19, 2007. As a result, in each subsequent POR, we used the date of shipment for ACA as the date of sale. Furthermore, in the instant POR, we found that actual changes did occur between contract date and shipment date with respect to the type of honey sold to the customer. Consequently, we determine that changes to the essential terms of sale continue to occur between the contract date and shipment date and therefore shipment date continues to be the appropriate date of sale with respect to ACA's sales in the U.S. and comparison markets. For Seylinco, the Department used the invoice date as the date of sale for both its comparison and U.S. market sales. However, in some instances shipment occurred prior to invoice, and consistent with past segments of this proceeding and the Department's practice, we used the shipment date as the date of sale for those sales.

Export Price and Constructed Export Price

Section 772(a) of the Tariff Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. . .," as adjusted under section 772(c). Section 772(b) of the Tariff Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d). ACA and Seylinco have classified their U.S. sales as EP because all of their sales were made before the date of importation directly to unaffiliated purchasers in the U.S. market. For purposes of these preliminary results, we have accepted these classifications. For ACA, we based EP on prices to unaffiliated customers in the United States and made adjustments for movement expenses. For Seylinco, we calculated EP based on the prices to unaffiliated customers in the United States and made adjustments for billing adjustments and movement expenses.

Normal Value

1. Selection of Comparison Market

In accordance with section 773(a)(1)(C) of the Tariff Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or

[3] When shipment occurs prior to invoice date, as in the case of ACA's sales in both the U.S. and third-country markets, it is the Department's practice to use the shipment date as the date of sale rather than the invoice date. *See, e.g., Honey from Argentina: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part*, 70 FR 76766, 76768 (December 28, 2005), unchanged in *Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006); *see also Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003) and the accompanying Issues and Decision Memorandum at Comment 3.

equal to five percent of the aggregate volume of U.S. sales), we compared each company's aggregate volume of home market sales of the foreign like product to its aggregate volume of U.S. sales of subject merchandise. Because Seylinco did not have any home market sales, we preliminarily find that Seylinco's home market does not provide a viable basis for calculating NV. ACA did have some home market sales; however, the volume of its home market sales was less than five percent of the aggregate volume of U.S. sales. As a result, we preliminarily find that ACA's home market does not provide a viable basis for calculating NV.

When sales in the home market are not suitable to serve as the basis for NV, section 773(a)(1)(B)(ii) of the Tariff Act provides that sales to a third–country market may be utilized if (i) the prices in such market are representative; (ii) the aggregate quantity of the foreign like product sold by the producer or exporter in the third–country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (iii) the Department does not determine that a particular market situation in the third–country market prevents a proper comparison with the U.S. price. Seylinco reported Germany as its largest third–country market during the POR in terms of volume of sales. The aggregate quantity of such sales is greater than five percent of sales to the United States, and there is no information on the record to suggest that any other market would provide greater product similarity. The Department preliminarily determines that the prices in Germany are representative and no particular market situation exists that would prevent a proper comparison to EP. As a result, for Seylinco we based NV on its sales to Germany for these preliminary results.

ACA reported its sales to the United Kingdom, the largest third–country market in terms of sales volume when date of shipment is used to determine date of sale. Based on information on the record, we find that while the United Kingdom does constitute the largest third–country market, the sales volumes to ACA's three reported largest third–country markets are comparable. Petitioners have claimed the Department should select one of ACA's other reported third–country markets as the comparison market since prices to the United Kingdom are not representative and the merchandise sold in the other third–country markets was more similar in terms of product standards (*i.e.*, level of contamination) and not homogenized. *See, e.g.*, petitioners' letters dated July 5, 2007 and October 4, 2007.

The record shows, however, that ACA's sales to the United Kingdom have more product matches to its sales in the United States than do ACA's sales to its other two largest third–country markets. *See* section 351.404(e) of the Department's regulations. Further, we do not find that the price differences among ACA's third–country markets support petitioners' assertion that prices to the United Kingdom are not representative. Since we preliminarily find ACA's sales volume to the United Kingdom is greater than five percent of its sales to the United States, prices to the United Kingdom are representative, greater product similarity exists with respect to ACA's sales to the United Kingdom and the United States, and no particular market situation exists that would prevent a proper comparison to EP, in accordance with section 773(a)(1)(B)(ii) of the Tariff Act, we preliminarily find that ACA's sales to the United Kingdom serve as the most appropriate basis on which to base NV.

In summary, therefore, NV for ACA and Seylinco is based on each exporter's third–country market sales to unaffiliated purchasers made in commercial quantities and in the ordinary course of trade. For NV, we used the prices at which the foreign like product was first sold for consumption in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the EP. We calculated NV as noted in the "Price–to-Price Comparisons" section of this notice.

2. Cost of Production

As noted above, in response to petitioners' allegation that ACA sold the foreign like product at prices below its COP, the Department initiated a sales below cost investigation of ACA. With respect to Seylinco, because we did not find sales below cost in the most recently completed segment of this proceeding and because petitioners made no allegation of sales below cost in the context of this review, the Department determined there were not reasonable grounds to believe or suspect that Seylinco made sales in the comparison market at prices below the cost of producing the merchandise in this review. Therefore, the Department did not initiate a sales below cost investigation of Seylinco.

A. Cost of Production Analysis

To calculate a COP and CV for the merchandise under consideration, the Department selected the three largest beekeepers by volume who supplied honey to ACA during the POR. *See* Cost Selection Memorandum.

B. Calculation of COP

We calculated a simple average COP for ACA based on the costs of the three respondent suppliers, Beekeeper 1, Beekeeper 2, and Beekeeper 3. For additional detail, *see* Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Asociacion de Cooperativas Argentinas' Beekeeper Respondents," dated December 19, 2007.

We relied on the COP data submitted by the three respondent beekeepers in their cost questionnaire responses, with the following adjustments. We adjusted the reported feed costs for Beekeepers 1, 2, and 3 to reflect the data available from public sources, as the Beekeepers provided insufficient documentation to support their reported feed costs. In addition, we revised Beekeeper 1's reported general and administrative (G&A) and financial expenses by including the land use cost for Beekeeper 1's dairy and beekeeping activities, as well as the adjusted feed cost and revenue from the sale of by–products, in the denominator used to calculate the G&A and financial expense rate for this beekeeper so that the ratio would be on the same basis as the costs to which it was applied. For Beekeepers 2 and 3 we also adjusted the denominator of the G&A ratio to include the adjusted feed costs.

C. Test of Third–Country Prices and Results of the Cost of Production Test

We calculated a simple average COP using the COP of ACA's three respondent suppliers (Beekeeper 1, Beekeeper 2, and Beekeeper 3) which was applied to these beekeepers as well as all other beekeeper suppliers from whom information was not requested. In determining whether to disregard third–country market sales made at prices below the COP, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, we examined: (1) whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's third–country market sales of a given model (*i.e.*, control number, or CONNUM) were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made

within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's third–country market sales of a given model were at prices less than COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act; and (2) based on our comparison of prices to the COP for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

We found ACA did not have any models for which 20 percent or more of sales volume (by weight) were below cost during the POR. Therefore we did not disregard any of ACA's third–country market sales and included all such sales in our calculation of normal value.

Price–to-Price Comparisons

ACA

We based normal value on the third–country prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Tariff Act. Where appropriate, we made circumstance–of-sale adjustments for credit pursuant to section 773(a)(6)(C) of the Tariff Act. We also made adjustments, where applicable, for other direct selling expenses, in accordance with section 773(a)(6)(C) of the Tariff Act. We preliminarily reclassified some of ACA's reported direct selling expenses (namely, certain of its expenses related to testing) as indirect selling expenses, consistent with our treatment of testing expenses in the 2003–2004 administrative review. *See Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006) and the accompanying Issues and Decision Memorandum at Comment 2. In addition, for those direct selling expenses which ACA reported as being associated with the homogenization process, we preliminarily find these are properly considered as production costs, not selling expenses. Thus, we have not included ACA's testing and homogenization expenses among the direct selling expenses for which we made adjustments in these preliminary results. For more information, see ACA Preliminary Analysis Memorandum.

Seylinco

We based normal value on the third–country prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Tariff Act. Where appropriate, we made circumstance–of-sale adjustments for credit pursuant to section 773(a)(6)(C) of the Tariff Act. We also made adjustments, where applicable, for other direct selling expenses, in accordance with section 773(a)(6)(C) of the Tariff Act. *See* Seylinco Preliminary Analysis Memorandum. Additionally, we adjusted gross unit price for billing adjustments, where applicable.

Currency Conversions

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47049, 47055 (August 7, 2003), remaining unchanged in *Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 69379 (December 12, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the Argentine peso. Therefore, we made currency conversions from Argentine pesos to U.S. dollars based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary. For variables that ACA reported in pounds sterling or euros, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted–average dumping margins exist for the period December 1, 2005 through November 30, 2006:

Exporter	Weighted–Average Margin (percentage)
Asociacion de Cooperativas Argentina	0.00
Seylinco S.A.	0.00
Patagonik S.A.	0.00
Naiman S.A.	0.00
El Mana S.A.	0.00

The Department has, for these preliminary results, applied the average of the rates calculated for the two remaining mandatory respondents, ACA and Seylinco, to the non–reviewed companies, Patagonik, Naiman, and El Mana.

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) a statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting case briefs, rebuttal briefs, and written comments should provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated importer–specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. These rates will be assessed uniformly on all ACA and Seylinco entries made during the POR. For entries made during the POR from the non–reviewed companies, *i.e.*, Patagonik, Naiman, and El Mana, we will apply the average of the assessment rates calculated for ACA and Seylinco. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for all companies covered by this review (*i.e.*, ACA, Seylinco, Patagonik, Naiman, and El Mana) will be the rates established in the final results of review; (2) for any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company–specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all–others rate from the investigation (30.24 percent). *See Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina*, 66 FR 50611 (October 4, 2001); *see also Notice of Amended Final Determination of Sales at Less Than Fair Value; Honey From Argentina*, 66 FR 58434 (November 21, 2001), *and Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672 (December 10, 2001).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 19, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–25261 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From the Republic of Korea: Notice of Extension of Time Limit for the 2006–2007 Administrative Review

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

EFFECTIVE DATE: December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Yasmin Nair or Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–3813 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On June 29, 2007, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain polyester staple fiber ("PSF") from the Republic of Korea ("Korea"), covering the period May 1, 2006, through April 30, 2007. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review, 72 FR 35690 (June 29, 2007). The preliminary results for this review are currently due no later than January 31, 2008.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review and analyze the respondent's sales and cost information and to issue supplemental questionnaires. Thus, it is not practicable to complete this review within the previously established time limit (i.e., by January 31, 2008). Therefore, the Department is extending the time limit for completion of these preliminary results by 120 days to not later than May 30, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 18, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–25313 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas (TRQ) on the Import of Certain Cotton Woven Fabrics for Calendar Year 2008

December 21, 2007.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2008 cotton fabric tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for Calendar Year 2008 of imports of certain cotton fabrics under tariff rate quotas established by Division B, Title IV of the Tax Relief and Health Care Act of 2006 (Public Law No. 109-432). The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

On December 9, 2006, President Bush signed into law the Tax Relief and

Health Care Act of 2006 (Public Law No. 109-432) ("the Act"). Under Division B, Title IV, section 406(b)(1) of the Act, the Secretary of Commerce is required to allocate tariff rate quotas on the import of certain cotton woven fabrics through December 31, 2009. Section 406(b)(1) authorizes the Secretary of Commerce to issue licenses to eligible manufacturers under headings 9902.52.08 through 9902.52.19 of the Harmonized Tariff Schedule of the United States, specifying the restrictions under each such license on the quantity of cotton woven fabrics that may be entered each year on behalf of the manufacturer. Section 406(a)(1) of the Act created an annual tariff rate quota providing for temporary reductions through December 31, 2009 in the import duties of cotton woven fabrics suitable for making cotton shirts (new Harmonized Tariff Schedule of the United States (HTS) headings 9902.52.08, 9902.52.09, 9902.52.10, 9902.52.11, 9902.52.12, 9902.52.13, 9902.52.14, 9902.52.15, 9902.52.16, 9902.52.17, 9902.52.18, and 9902.52.19). Section 406(a)(2) provides that the reduction in duty is limited to 85 percent of the total square meter equivalents of all imported woven fabrics of cotton containing 85 percent or more by weight cotton used by manufacturers in cutting and sewing men's and boys' cotton shirts in the United States and purchased by such manufacturer during calendar year 2000.

The Act requires that the tariff rate quotas be allocated to persons (including firms, corporations, or other legal entities) who, during calendar year 2000, were manufacturers cutting and sewing men's and boys' cotton shirts in the United States from imported woven fabrics of cotton containing 85 percent or more by weight cotton of the kind described in HTS 9902.52.08 through 9902.5219 purchased by such manufacturer during calendar year 2000. On July 24, 2007, the Department published regulations establishing procedures for allocating the TRQ. 72 FR 40235, 15 CFR 336.

On October 22, 2007 the Department published a notice in the Federal Register (72 FR 59513) soliciting applications for an allocation of the 2008 tariff rate quotas with a closing date of November 21, 2007. The Department received timely applications from 5 firms. All applicants were determined eligible for an allocation. Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

FIRMS THAT RECEIVED ALLOCATIONS: HTS headings 9902.52.08, 9902.52.09, 9902.52.10, 9902.52.11, 9902.52.12, 9902.52.13, 9902.52.14, 9902.52.15, 9902.52.16, 9902.52.17, 9902.52.18, and 9902.52.19, woven fabrics of cotton containing 85 percent or more by weight cotton, used by manufacturers in cutting and sewing men's and boys' cotton shirts in the United States. Amount allocated: 3,085,461 square meters.

Companies Receiving Allocation:

The Hancock Company, DBA Gitman & Company - Ashland, PA
Individualized Shirt Company - Perth Amboy, NJ
Kenneth Gordon/IAG, Inc. - New Orleans, LA
The Pickett Co., DBA Measure Up - Lafayette, TN
Retail Brand Alliance - Enfield, CT

Dated: December 21, 2007.

R. Matthew Priest,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E7–25225 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Sapelo Island (Georgia) National Estuarine Research Reserve.

The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 C.F.R. Part 921, Subpart E and Part 923, Subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

This evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of each site visit. Notice is hereby given of the dates of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

Dates and Times: The Sapelo Island (Georgia) National Estuarine Research Reserve evaluation site visit will be held February 11–15, 2008. One public meeting will be held during the week. The public meeting will be held on Wednesday, February 13, 2008, at 6 p.m., at the Sapelo Island Visitor Center, Dock Landing Road, Meridian, Georgia.

ADDRESSES: Copies of the state's most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding this National Estuarine Research Reserve are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: December 21, 2007.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E7–25257 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE63

Endangered Species and Marine Mammals; File No. 10014

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the New Jersey Department of Environmental Protection (NJDEP), Division of Science, Research and Technology, P.O. Box 409, Trenton, NJ 08625–0409 has been issued a permit to take marine mammals and sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 16, 2007, notice was published in the **Federal Register** (72 FR 38825) that a request for a scientific research permit to take sea turtle and marine mammals species had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), 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 permit authorizes the permit holder to conduct research to elucidate the distribution and abundance of baleen whales, odontocete whales, pinnipeds, and sea turtles. Research will include take by survey approach during shipboard and aircraft transect surveys. The study area includes U.S. waters offshore of New Jersey out to a distance of 20 nautical miles. The permit is issued for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 20, 2007.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–25249 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE33

Fisheries of the Northeast Region; Overfished Determination of Summer Flounder

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

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that summer flounder is overfished. NMFS notified the Mid-Atlantic Fishery Management Council (Council) of its determination by letter. The Council is required to take action within 1 year following notification by NMFS that a stock is overfished or existing remedial action taken to end overfishing or rebuild an overfished stock has not resulted in adequate progress.

FOR FURTHER INFORMATION CONTACT: Debra Lambert, telephone: (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS sends written notification to fishery management councils when overfishing is occurring, a stock is approaching overfishing, a stock is overfished, a stock is approaching an overfished condition, or existing action taken to end previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. On December 3, 2007, the NMFS Northeast Regional Administrator sent a letter notifying the Council that summer flounder is overfished. Summer flounder is currently under a rebuilding plan. The Council must therefore ensure that overfishing is ended and that the stock rebuilds on schedule. A copy of the notification letter sent to the Council for the aforementioned determination is available at *http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm.*

Dated: December 20, 2007.

James P. Burgess,

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

[FR Doc. E7–25271 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD81

Notice of Availability of Final Eastern Pacific Northern Fur Seal Stock Conservation Plan

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

ACTION: Notice; response to comments.

SUMMARY: NMFS has revised the conservation plan (Plan) for northern fur seals to incorporate new information obtained since the original plan was completed. The Plan is required by the Marine Mammal Protection Act (MMPA) and was initially completed in 1993. The goal of the Plan is to promote the recovery of northern fur seals to their optimum sustainable population levels. The Plan is available to the public.

ADDRESSES: The Plan is available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/seals/fur.htm.* Copies of the Plan may also be obtained from the NMFS, Protected Resources Division, 222 W. 7th Ave., t43, Anchorage, AK 99513; or from the Alaska Regional Office, Protected Resources Division, 709 W. 9th St., P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Michael Williams, NMFS, Alaska Region, Anchorage Field Office, (907) 271 5006, email: *Michael.Williams@noaa.gov*, or Kaja Brix, NMFS, Alaska Region, (907) 586 7235, email: *Kaja.Brix@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The MMPA requires NMFS to prepare a conservation plan to promote the conservation and recovery of any species or stock designated as depleted. NMFS published the northern fur seal conservation plan in 1993, after the Pribilof Islands stock was listed as depleted. The goal of the Plan is to return the population to its optimum sustainable population (OSP) level. Significant new ecological information is available, and the Plan required updating. New information includes trends in abundance, estimation of lactating female and juvenile male summer foraging habitat, continued entanglement in fishing nets and plastic packing bands, estimates of prey consumption from scats and regurgitations, estimation of migration routes by adult females and weaned pups, development and implementation of comanagement agreements with Alaska Native Tribes, development of oil spill contingency plans, and assessments of interactions with commercial fisheries. The four objectives of the plan are to (1) identify and eliminate or mitigate the cause or causes of human related mortality; (2) assess and avoid or mitigate adverse effects of human related activities on or near the Pribilof Islands and other habitat essential to the survival and recovery of fur seals; (3) continue and as necessary expand research or management programs to monitor trends and detect natural or human related change in fur seals or habitat essential to its survival and recovery; and (4) coordinate and assess the implementation of the conservation plan. The plan will be reviewed and updated every 5 years. The goal of the Plan will be met when the depleted designation for northern fur seals can be removed.

The notice of availability of the draft revised conservation plan was published June 5, 2006 (71 FR 32306), and the comment period closed August 4, 2006. Seven sets of comments were received during the comment period. Summaries of comments and responses to those comments are organized by subject area below.

Harvest Issues

Comment 1: NMFS should verify, assess, quantify, and enforce all potentially illegal harvests as a source of unaccounted mortality.

Response: NMFS Office for Law Enforcement and both tribal governments are cooperating to determine if illegal harvests occur and to develop solutions. If unreported harvests are discovered, these will be included in future summaries of harvest activity.

Comment 2: NMFS should present substantive text from the subsistence harvest Environmental Impact Statement (EIS), including details of recent subsistence harvests such as reduced harvest due to availability or reduced interest and implications for management.

Response: NMFS will incorporate available subsistence harvest data. Although the harvest has been lower since 2000 than in the 1980s and 1990s, the cause for the reduction is unknown.

Comment 3: NMFS should analyze archived samples or data and subsequently collaborate with the tribes to discuss and design any directed subsistence harvest research.

Response: NMFS has coordinated and continues to coordinate any research associated with the subsistence harvest. NMFS is assessing archived samples and data to improve the collection of samples from subsistence harvests.

Fisheries Interactions

Comment 4: NMFS should recognize the establishment of the Marine Conservation Alliance Foundation (MCAF) to fund and coordinate a comprehensive marine debris clean-up program in Alaska. The MCAF program also includes efforts to identify the age composition, and origin of lost or discarded gear.

Response: NMFS recognizes MCAF's efforts as a result of over $1 million in grant funding from NOAA's Marine Debris Program to help reduce the accumulation of derelict fishing gear and marine debris in nearshore areas of Alaska in the past few years.

Comment 5: NMFS should change the disentanglement program emphasis to prioritize adult females. Low impact focal captures of females in rookeries after mid-August can occur after primary breeding males vacate territories.

Response: NMFS continues to evaluate its disentanglement efforts and will modify them as appropriate. Although it would be less disruptive and safer to approach adult females after the adult males have departed their breeding territories, the potential disruption of female-pup pairs must be weighed against the benefits of disentangling adult females.

Comment 6: NMFS should convene an entanglement workshop to discuss the state of entanglement research, appropriate methods, practical hypothesis-driven studies, and resulting management actions.

Response: NMFS agrees and is working to fund, organize and coordinate such a workshop.

Comment 7: NMFS or suitable partners should investigate the use of remote-sensing data on pirate fishing vessel distribution for comparison with satellite tracking data to evaluate the overlap in illegal fishing and migrating/foraging fur seals.

Response: NMFS remains interested in developing partnerships and utilizing remote sensing data to better manage interactions between the fur seals and human activities.

Fisheries Effects-Competition

Comment 8: NMFS should consider the competition hypothesis speculative and inconsistent with the following available data: (1) absence of nutritional stress signals in fur seals sampled on land, (2) similar rates of decline on rookeries where females forage in areas of both high and low commercial fisheries pressure, (3) size at age of pups has been consistent over a long time period suggesting mothers are able to support healthy well-suckled pups, (4) pup mortality rates are quite low compared to mortality rates at other northern fur seal rookery sites and other pinniped populations, and (5) the Pribilof northern fur seal decline has coincided with high levels of pollock abundance in eastern Bering Sea.

Response: Hypothesis testing is the best approach to examine the effects of commercial fishing, and further hypothesis testing is warranted based on overlap between northern fur seal diets and commercial fisheries catch. NMFS (2001) determined conditionally significant adverse effects might be occurring due to the magnitude of overlap and changes in the proportion of trawl effort in the foraging ranges of specific northern fur seal breeding areas.

Comment 9: The following statement is overly broad and inaccurate, "Currently, all marine areas used by northern fur seals are commercially fished".

Response: The statement is a practical generalization that is relevant to all aspects of interactions between foreign and domestic fisheries and northern fur seals throughout their range, not just the Bering Sea. The statement suggests that

fur seals interact with commercial fishing operations in all marine areas of the Bering Sea and North Pacific. NMFS has added clarifications to the statement.

Comment 10: NMFS has not adequately described the effects of competition between northern fur seals and commercial fisheries near the Pribilof Islands. NMFS should include recent temporal and spatial changes in fishing and the relevant focal species. No clear plan exists to test the potential causal relationship between commercial fishing and the current decline. NMFS has documented increasing pollock catches in Pribilof Islands northern fur seal foraging habitat in response to Steller Sea Lion critical habitat protection measures; NMFS identified conditionally significant adverse effects of fishing on northern fur seals (NMFS 2001; NMFS 2005; EA FRFA: NMFS 2006).

Response: NMFS has added additional text reflecting recent literature and previous analyses. The contrasting comments about competition between northern fur seals and commercial fisheries indicate more focused work needs to be done. Further hypothesis testing is warranted based on archived population data, historic fur seal foraging data, environmental data and fishery information to inform future investigations.

Comment 11: NMFS should present management efforts related to protecting fur seal foraging habitat; identifying important marine canyons for foraging; mitigating impacts from the pollock fleet on fur seals; using marine protected areas; prescribing site-specific management actions to address the adverse impacts of commercial fisheries on fur seals. Site-specific examples could include the following: (1) ensure adequate food availability in fur seal foraging habitat, and (2) if adequate prey to achieve optimum sustainable population cannot be quantified and accounted in the total allowable catch specifications, then NMFS should employ the F75 percent (the level of fishing mortality which reduces the estimated spawning biomass to 75 percent of its pre-exploitation level) used by the Convention for Conservation of Antarctic Marine Living Resources for fur seal prey. Actions would include closures of fur seal foraging habitat to trawl fisheries; if fur seal foraging habitat cannot be precisely delineated, expand the Pribilof Islands Area Habitat Conservation Zone to encompass all areas within at least 25 miles of the Pribilof Islands.

Response: Ecosystem complexity, data and model limitations, and indirect linkages confound NMFS current ability to quantify interactions among northern fur seals, their prey, and commercial fisheries. Place-based management of human activities may be a productive and sustainable approach consistent with a growing impetus for ecosystem approaches to management. However, it may not be productive to further alter commercial fishing effort in time and space without additional analysis of archived data and refinements to previous analyses that corroborate the earlier identification of "conditionally significant adverse effects" (NMFS 2001). Moving, reducing, or altering commercial fishing effort to reduce "conditionally significant adverse effects" for northern fur seals may in turn result in significant adverse effects for other components of the ecosystem.

Comment 12: NMFS needs to increase details in section 2.7.4 (Determine impact from fisheries) consistent with section 2.6.4 (Develop oil spill response plans and mitigation strategies).

Response: Section 2.7.4 represents the integration of subheadings 2.7 (Quantify relationships between fur seals, fisheries and fish resources) and 1.1 (Effects of marine debris), and as such covers the details we currently understand and those requiring further investigation. Mitigation and response plans to suspected fishery-related threats must be developed following the outline and priorities described in the Plan.

Comment 13: NMFS should measure the significance of impacts relative to the lack of recovery by northern fur seals to their OSP.

Response: NMFS does not have clear causative factors linked to the lack of recovery of the northern fur seal population. In the absence of such factors it is impossible to measure their influence on the rate recovery to OSP. As those factors are identified they will be incorporated into evaluations of their effect on recovery.

Comment 14: NMFS must assess fisheries effects by manipulating the fishery rather than sampling large numbers of fur seals.

Response: An adaptive management scenario is one way of assessing the impact of fishing on northern fur seals. However, manipulating the fishery is not a substitute for investigating fur seal biology and life history in areas where the interactions indicate problems may exist.

Comment 15: NMFS should prioritize assessment of potential illegal driftnet take of fur seals and the development of a more concrete plan. NMFS should reconsider priority 3 for the observer program; salmon drift gillnet fisheries may be an area of concern.

Response: NMFS is evaluating the likelihood of significant population effects from all of the potential sources identified in the plan to determine their priority along with the funding realities of the implementation costs and population benefits.

Climate Change

Comment 16: NMFS should include a brief section on the indirect behavioral implications of increased temperatures on northern fur seals reproduction and hyperthermia.

Response: The impacts of climate change on northern fur seal behavior, reproduction, and survival are highly uncertain. NMFS will continue to examine the contribution of environmental factors to the health, survival and abundance of northern fur seals. Differential growth of breeding northern fur seal populations worldwide in recent years suggests a complex array of factors influence northern fur seals, but efforts to manage threats and conserve populations will need to be adaptive and supported by an integrated inter-disciplinary research and monitoring program.

Comment 17: NMFS must consider indices of commercial and non-commercial fish abundance are complicated by regime shifts, temporal and spatial changes in sampling, changes in fishery effort, resolution of fisheries and fur seal data, and density dependent fur seal population changes.

Response: NMFS will work to capture the complexity of the ecosystem changes, fish abundance, fishery effort, fur seal response, and climate change. Text related to these factors has been clarified based on the available references.

Comment 18: NMFS should formally recommend the U.S. immediately ratify the Kyoto Protocol.

Response: NMFS, through DOC, will continue to participate in the process to develop the Administration's policies regarding climate change.

Coordination

Comment 19: Coordination of research is necessary to assure results that are applicable to management.

Response: Coordination of research and communication of results of that research are essential, and NMFS has identified this as one of the four primary objectives of the plan. Implementing conservation plan priorities, reviewing conservation action effectiveness, and updating the plan at 5–year intervals also assures relevance to short and long-term management.

Harassment

Comment 20: The human presence and research section should be updated to incorporate summary information from the current environmental analysis of Steller Sea lion and northern fur seal research.

Response: The Plan has been revised to include the main findings from the EIS. The EIS is available on the Internet at *http://www.fakr.noaa.gov/protectedresources/seals/fur.htm.*

Comment 21: Resighting previous marks should be prioritized above new marking to reiterate the importance of a resighting program with any marking program.

Response: Many of the previously marked fur seals from the last large-scale marking program are no longer alive or have lost their marks. NMFS is currently evaluating the applicability of a resighting program based on the few individuals marked from other studies. The results of such a resighting program based on so few marks may have such high variability that the effort is not warranted. Further evaluation is required. Melin et al. (2006) describes the history of northern fur seal marking programs and the results of a 2005 workshop on the topic. NMFS encourages readers to obtain a copy of AFSC Processed Report 2006–15 on the Internet at *http://www.afsc.noaa.gov/Publications/ProcRpt/PR%202006–15.pdf.*

Comment 22: The plan should acknowledge mortality can result from research (e.g., capture myopathy).

Response: NMFS has revised the plan to include actual and potential research mortality.

Comment 23: NMFS must prioritize disturbance research, carefully plan ongoing, additional, or expanded research, use archived data, and support independent review to determine cost-effective and environmentally sensitive fur seal field studies.

Response: NMFS and other northern fur seal research permit holders are authorized to conduct studies within the scope of their permits, much of which is related to research described in the Plan. Those research projects are implemented as funding is available. NMFS is not issuing new permits or major amendments to existing permits until the completion of the Steller sea lion and northern fur seal research EIS. The results of these investigations will inform subsequent study design and the development of hypothesis-driven studies. Those studies will be authorized by current and future scientific research permit applications and modifications that will be reviewed by NMFS, the Marine Mammal Commission and the public. NMFS is examining archived data to better understand potential correlations between research and fur seal survival and reproduction.

Comment 24: An independent workshop to evaluate study design, sample size, appropriate and least intrusive research should be included as a component of the plan.

Response: NMFS will consider convening such a workshop.

Comment 25: Add a subsection titled: 2.6.5. Assess noise pollution.

Response: NMFS continues to evaluate noise related to biologically significant harassment as individual projects are proposed. Given the available evidence regarding the effects of airborne and underwater noise exposure, adding an entire subsection to the topic is not warranted at this time.

Comment 26: Section G.8.1 oversimplifies the problem of harassment associated with aircraft flying near and over resting and breeding northern fur seals.

Response: NMFS disagrees. Currently the intensity and duration of aircraft overflights has been reduced to levels much lower than the early 1990s, and a detailed elaboration of the situation is not warranted.

Comanagement

Comment 27: The priority goal for tribal governments should be to develop a long-term marine mammal research plan as a central part of their comanagement program and strengthen partnering opportunities.

Response: NMFS considers long-term planning and strategic partnering with the tribes to be an essential part of the comanagement process. NMFS intends to work closely with the tribes to develop short and long-term plans together to support ongoing conservation and recovery actions for northern fur seals and Steller sea lions, respectively.

Comment 28: NMFS must make a stronger commitment to environmental justice in the conservation plan.

Response: Local involvement is essential to successful conservation and continues via comanagement to ensure the consumers of northern fur seals are involved in northern fur seal research and management.

Miscellaneous Comments

Comment 29: Consider the following additions to the oil spill response section: (1) mention Island Sentinel in monitoring for spills year-round, (2) implement a local response training program so locals can respond, and (3) plan for use of carcasses for research consistent with bycatch section.

Response: The oil spill response section is based on the current oil spill contingency plan for the Pribilof Islands. NMFS has supported similar revisions to the draft oil spill contingency plans (early 2007) for the Pribilof Islands; however, that plan has not yet been finalized. When the oil spill contingency plan is finalized NMFS will incorporate revisions as appropriate.

Comment 30: Suggest adding new section "B.8 Complex Social Behavior" in "II. CONSERVATION STRATEGY".

Response: NMFS disagrees that such a section is warranted at this time because fur seal social behavior is not characterized or quantified to a level useful for conservation, recovery and research.

Comment 31: References to unpublished and non-refereed literature, some unavailable for review, should not be given the same weight as peer-reviewed literature.

Response: NMFS used the best available science (published and unpublished) and traditional ecological knowledge in developing this plan. References are appropriately cited to acknowledge the source of information.

Comment 32: In section 1.2 "Incidental takes" add to this section the mandatory recording of all northern fur seal sightings from vessels (platforms of opportunity). Observers must be trained and tested for reliability to distinguish fur seals in water from other pinnipeds. Data records should include exact location, distance, and position with respect to vessel, vessel state, animal state, and animal age and sex if possible.

Response: The platform of opportunity program is voluntary and provides marine mammal sighting data to NMFS. In addition, NMFS observers also collect marine mammal sightings and are trained to meet needs across numerous disciplines. Accordingly, marine mammal observations and identification are part of the training received by each observer.

Comment 33: NMFS should include relevant data on behavior and vital rate information from fur seals breeding on Bogoslof Island.

Response: NMFS has added relevant data from northern fur seals breeding on Bogoslof Island.

Comment 34: Consider revising section I.C.3 "Carrying Capacity" to include more information from Fritz et al. (in review) and a summary of recent work by Fowler regarding the concept of carrying capacity in ecosystems.

Response: NMFS has included a summary of Fowler's work evaluating ecosystem carrying capacity. Fritz et al. (in review) continues to develop and, in it's draft stage, is not appropriate to include at this time.

Comment 35: Oil spill simulation models should be updated with the recent satellite and radio tracking data.

Response: NMFS will consider such revisions and their implementation as appropriate. NMFS has and will continue to meet with other federal agencies to determine the state of oil spill risk assessment and oil spill trajectory simulations in northern fur seal marine habitat.

Comment 36: NMFS should add the following section: Determine the importance of social interactions to lifetime reproductive success (e.g., mother-offspring relocation behavior, non-random associations such as between kin, observational learning). Determine how these interactions may be affected by changes in population size, climate, and whether there could be additive or positive feedback effects on a decreasing population (i.e., exacerbate a decline).

Response: NMFS did not add the suggested section regarding social interactions among northern fur seals. NMFS is not aware of any published or unpublished reports on the topic.

Comment 37: The plan needs a clear vision of the specific tasks that can be accomplished in the next 5 years: e.g., COFFS (Consequences of Female Foraging Strategies); population models; diet research.

Response: NMFS has prioritized various conservation actions and research. NMFS will follow the mandates under the relevant legislation to continue to collect basic population data and investigate critical management priorities. The completion of these priorities is funding-dependent.

Comment 38: NMFS should develop criteria for recovery and listing as threatened or endangered under the ESA.

Response: This plan addresses a depleted species as required by the MMPA. An evaluation for listing or recovery criteria for a population listed under the ESA is not appropriate for this document.

Threats Table

Comment 39: The threats table is difficult to understand, is inconsistent, and has arbitrary and non-quantitative scales.

Response: NMFS re-evaluated and revised the threats table to resolve inconsistencies and increase understanding for the reader.

Research Priorities

Comment 40: In section 3.1.5, trends in age structure and age-specific reproductive rates should be separated from the diet studies also recommended in this section. Longitudinal studies of marked females (e.g., Gentry, 1998) or cross-sectional studies of female vibrissae color (Scheffer, 1962; Baba et al., 1991) should be designed to develop stage-based structural models (e.g., Holmes and York, 2003).

Response: NMFS separated and consolidated diet and foraging into sections 2.7.1 and 2.7.2. In addition NMFS discussed numerous factors related to vital rates during a workshop convened in September 2005. A longitudinal and cross-sectional study was discussed at length and deemed the most time and cost-effective approach to obtaining accurate estimates for key vital rates. See response to comment 21.

Comment 41: In section 3.1.5, alternative methods including live-capture at sea should be investigated as a replacement for lethal collections. Japanese scientists have used live captures at sea and in combination with lavage (diet), tooth extraction (age-structure), and ultra-sound or hormone assay (repro) as suitable alternatives for lethal sampling.

Response: NMFS discussed all these factors related to vital rates during a workshop convened in September 2005. See response to comment 21. Also see G.P. Adams, J.W. Testa, C.E.C. Goertz, R.R. Ream, and J.T. Sterling. 2006. Ultrasonographic characterization of reproductive anatomy and early embryonic detection in the northern fur seal (Callorhinus ursinus) in the field. Marine Mammal Science 23(2): 445–452.

Comment 42: NMFS should initiate a survey of late season (Sept/Oct) pup mortality surveys at selected study sites to assess the level of pup mortality following the regular August pup mortality surveys.

Response: NMFS discussed factors related to vital rates during a workshop convened in September 2005. See response to comment 21. Reliable estimates of pup mortality at any time of the year can only be obtained by substantial disturbance and additional mother-pup separations associated with clearing an entire nursery area. Therefore, the recommended surveys are not warranted at this time.

Comment 43: NMFS should use guidance from Bowen et al. (2001) regarding experimental design to measure the success of management actions.

Response: Evaluating fur seal response to conservation actions in this plan is consistent with the guidance of Bowen et al. (2001).

Dated: December 20, 2007.

James H. Lecky,

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

[FR Doc. E7–25281 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE68

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Committee will meet January 9–10, 2008, in Anchorage, AK.

DATES: The meeting will be held on January 9–10, 2008. The meeting will be held on January 9th, from 8:30 a.m. to 5 p.m. and on January 10th, from 8:30 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Hawthorne Suites, 1110 West 8th Avenue, Ballroom B, Anchorage, AK.

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

FOR FURTHER INFORMATION CONTACT: Mark Fina, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will have discussions on the following items: purpose and need statement; potential elements and options; crew proposal and alternatives to those proposals; data issues; Community protections; possible emergency relief from regionalization; Arbitration issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: December 21, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–25177 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Publication of North American Datum of 1983 State Plane Coordinates in feet in Nebraska

AGENCY: National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The National Geodetic Survey (NGS) will publish North American Datum of 1983 (NAD 83) State Plane Coordinate (SPC) grid values in both meters and U.S. Survey Feet (1 ft = 1200/3937 m) in Nebraska, for all well defined geodetic survey control monuments maintained by NGS in the National Spatial Reference System (NSRS) and computed from various geodetic positioning utilities. The adoption of this standard is implemented in accordance with NGS policy and a request from the Nebraska State Surveyor, Nebraska Department of Roads, the Professional Surveyors Association of Nebraska.

DATES: Individuals or organizations wishing to submit comments on the Publication of North American Datum of 1983 State Plane Coordinates in feet in Nebraska, should do by January 28, 2008.

ADDRESSES: Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2), 1315 East-West Highway, Silver Spring, Maryland, 20910, fax 301–713–4324, or via e-mail *Dave.Doyle@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (N/NGS2), 1315 East-West Highway, Silver Spring, MD, 20910; Phone: (301) 713–3178.

SUPPLEMENTARY INFORMATION:

Abstract

In 1991, NGS adopted a policy that defines the conditions under which NAD 83 State Plane Coordinates (SPCs) would be published in feet in addition to meters. As outlined in that policy, each state or territory must adopt NAD 83 legislation (typically referenced as Codes, Laws or Statutes), which specifically defines a conversion to either U.S. Survey or International Feet as defined by the U.S. Bureau of Standards in Federal Register Notice 59–5442. To date, 48 states have adopted the NAD 83 legislation however, for various reasons, only 33 included a specific definition of the relationship between meters and feet. This lack of uniformity has led to confusion and misuse of SPCs as provided in various NGS products, services and tools, and created errors in mapping, charting and surveying programs in numerous states due to inconsistent coordinate conversions.

Dated: December 20, 2007.

David B. Zilkoski,

Director, Office of National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration

[FR Doc. 07–6233 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE67

U.S. Climate Change Science Program Revised Research Plan Summary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Publication of U.S. Climate Change Science Program (CCSP) Revised Research Plan Summary and request for public comments.

SUMMARY: Pursuant to Section 104(f) the Global Change Research Act of 1990 (GCRA), the U.S. Climate Change Science Program Revised Research Plan Summary is being published in the **Federal Register** for a 60-day public comment period. The public comments received on the Revised Research Plan Summary will be considered during the preparation of the final Revised Research Plan as well as the Scientific Assessment document required by Section 106 of the GCRA. The final version of the full Revised Research Plan will be published on the CCSP web site. Public comments received on the Revised Research Plan Summary will be made available upon request.

DATES: Comments must be received by February 26, 2008.

ADDRESSES: A formatted version of The U.S. Climate Change Science Program Revised Research Plan Summary is available on the CCSP Web site at: *http://www.climatescience.gov/Library/stratplan2008/summary/default.htm* Comments should be sent to Dr. Fabien Laurier, Climate Change Science Program Office at: *research-plan-summary@usgcrp.gov*

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Jellison, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 223–6262

SUPPLEMENTARY INFORMATION:

Summary of Revised Research Plan for the US Climate Change Science Program (CCSP)

I. Introduction

About the Revised Research Plan

This Revised Research Plan is an update to the 2003 Strategic Plan of the US Climate Change Science Program (CCSP) (*http://www.climatescience.gov/Library/stratplan2003/final/default.htm*), a document which was developed via a thorough, open and transparent multi-year process involving a wide range of scientists and managers. A significant part of this process was the review of both the draft and final plan by the National Academy of Sciences (*http://www.nap.edu/catalog.php?record_id=11565* for the draft plan; *http://www.nap.edu/catalog.php?record_id=10635* for the final plan). These reviews played an important role in influencing the 2003 Strategic Plan's development.

The Strategic Plan has long-term value to CCSP, but like any strategic plan, it must be supplemented by shorter-term revisions that take into account both advances in the science and changes in societal needs, and CCSP has an ongoing long-range strategic planning process to ensure that these needs are met. The Revised Research Plan (hereinafter referred to as the Research Plan) draws on CCSP's long-range planning process and provides this update, in compliance with the terms of the Global Change Research Act (GCRA) of 1990.

In the Research Plan, the reader will find several things: (1) an updated statement of vision, goals and capabilities consistent with CCSP's current Strategic Plan but reflecting both scientific progress and the evolution of the Program based on accomplishments and evolving societal and environmental needs; (2) a description of the relationship of the Research Plan to the current Scientific Assessment; (3) highlights of ways in which the program

is evolving in the context of the progress made over the years 2003–2007 since the Strategic Plan was put in place, and a description of the priorities that have emerged as a result; and 4) a description of research plans for the coming years, in order to build upon the work envisioned in the Strategic Plan and begun over the past four years.

The purpose of this Summary of the Research Plan is to provide information about the structure, scope and content of the Research Plan, in order to solicit and facilitate public comment about the Plan.

About the Climate Change Science Program

The vision of CCSP is: A nation and the global community empowered with the science-based knowledge to manage the risks and opportunities of change in the climate and related environmental systems. The core precept that motivates the CCSP is that the best possible scientific knowledge should be the foundation for the information required to manage climate variability and change and related aspects of global change. Thus the mission of the CCSP is to:Facilitate the creation and application of knowledge of the Earth's global environment through research, observations, decision support, and communication.

CCSP's five strategic goals are:

- CCSP Goal (1): Improve knowledge of the Earth's past and present climate and environment, including its natural variability, and improve understanding of the causes of observed variability and change
- CCSP Goal (2): Improve quantification of the forces bringing about changes in the Earth's climate and related systems
- CCSP Goal (3): Reduce uncertainty in projections of how the Earth's climate and related systems may change in the future
- CCSP Goal (4): Understand the sensitivity and adaptability of different natural and managed ecosystems and human systems to climate and related global changes
- CCSP Goal (5): Explore the uses and identify the limits of evolving knowledge to manage risks and opportunities related to climate variability and change

In order to understand CCSP's role in fostering and coordinating US federally-funded climate change research, it is important to understand what CCSP is and the role CCSP has in the federal government. CCSP is not a federal agency. Rather, it is a structure and a mechanism for coordinating and integrating federal research on global change, and making recommendations on priorities that federal agencies consider in their planning, as authorized in the Global Change Research Act of 1990 (GCRA). Research on global change, including climate change, is sponsored by thirteen federal agencies; the CCSP agencies also include government entities that do not sponsor research but which play a critical role in the federal process. The latter are the Office of Science and Technology Policy, the Council on Environmental Quality, and the Office of Management and Budget. CCSP fosters coordination of federal global change activities across thematic and crosscutting elements that utilize four core approaches: research, observation, communication and decision support; it also helps to coordinate international research and cooperation. Member agencies include the following:

Agency for International Development
Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Department of Health and Human Services
Department of the Interior
Department of State
Department of Transportation
Environmental Protection Agency
National Aeronautics and Space Administration
National Science Foundation
Smithsonian Institution

The program is led by an interagency committee of senior representatives from the participating departments and agencies that is responsible for overall priority setting, program direction, management review, and accountability to deliver program goals. This committee is chaired by the CCSP Director. Interagency Working Groups for each of the program's research and crosscutting elements plan and implement interagency activities and priorities aligned with CCSP's Goals. These elements include the following: Atmospheric Composition, Climate Variability and Change / Modeling, Water Cycle, Land-Use and Land-Cover Change, Carbon Cycle, Human Contributions and Responses / Decision Support, Observation / Data Management, Communication, and International Research and Cooperation. CCSP has a single office, the function of which is to facilitate the activities of the Program by providing value-added staffing and day-to-day coordination of CCSP-wide program integration, strategic planning, product development, and communication.

Global change research activities across CCSP's thirteen departments and agencies includes research conducted by scientists in federal agencies, academia, industry, and non-profit organizations through a mix of directed and competed programs. The Research Plan provides a summary of ways in which CCSP provides leverage for individual agency efforts through improved coordination and communication, and provides an avenue for integrating and producing reports to Congress that include both research progress and a summary of future plans. CCSP also provides climate-related input to other federal and Administration initiatives (e.g., the Ocean Action Plan, the US Group on Earth Observations), and a way for the federal climate change research establishment to assess joint opportunities and needs for programmatic evolution in response to changing societal and environmental needs.

The Research Plan outlines CCSP's key products. One of these is CCSP's annual report to Congress, which provides a yearly update on key scientific findings and plans for the coming fiscal year. CCSP also sponsors workshops, like the 2005 workshop on Decision Support, which brought together experts and stakeholders on climate change and its impacts and yielded a report of its proceedings (*http://www.climatescience.gov/workshop2005/finalreport/default.htm*). CCSP also contributes expertise and support to other national and international assessments, including the IPCC Fourth Assessment (2007). Other key products of the Program include the aforementioned 2003 CCSP Strategic Plan and a series of twenty-one Synthesis and Assessment Products (in progress) that are one outcome of the substantial stakeholder engagement in the earlier strategic planning process. These Synthesis and Assessment reports provide in-depth "state of the science" information responsive to CCSP overarching strategic goals and related to specific national, regional and sectoral issues. (Please see *http://www.climatescience.gov/Library/default.htm* for information on available products and the status of products in preparation.) In addition, numerous peer-reviewed scientific papers are published each year under the auspices of CCSP.

The Research Plan provides an overview of CCSP Program management and review, including communications; how the Program is structured and how priorities are established and used; existing and planned annual and multi-year internal review processes, NRC reports and assessments; stakeholder

and community engagement and guidance; ties to other national, international and sectoral assessments such as IPCC, WMO-UNEP, Arctic Climate Impact Assessment, and other reports; and linkages to agency budget processes.

II. Progress, Priorities and Plans

Research Progress towards Goals 2003—2007

Section II of the Research Plan provides an overview of the Program's progress and priorities. Significant progress has been made in many areas of climate change research, as evidenced by the development of the 21 Synthesis and Assessment Products; several of these reports are now complete and others are in progress. The accomplishments of the past four years have led not just to advancement of scientific knowledge, but as significantly, to the evolution and refinement of the science questions and approaches needed for current and future global change research. CCSP's strategic goals have a direct relationship, by design, to the research elements outlined in the GCRA. The Research Plan provides a crosscut that relates progress across GCRA research elements to CCSP strategic goals and core approaches, as well as selected highlights of key progress (and the impacts and societal benefits resulting from that progress) across the research elements called for in the GCRA:

(1) Global measurements, establishing and providing stewardship for the worldwide observations necessary to understand the physical, chemical and biological processes responsible for changes in the Earth system on climate-relevant spatial and temporal scales

(2) Documentation of global change, including the development of mechanisms for recording changes that will actually occur in the Earth system over the coming decades

(3) Studies of earlier changes in the Earth system, using evidence from the geologic and fossil record

(4) Predictions, using quantitative models of the Earth system to identify and simulate global environmental processes and trends, and the regional implications of such processes and trends

(5) Focused research initiatives to understand the nature of and interaction among physical, chemical, biological, and social processes related to global change.

Emerging Priorities

CCSP has an ongoing planning process, to determine yearly objectives as well as longer-term strategic approaches. The Research Plan is a reflection of the current stage of these planning activities. CCSP's planning process uses the vision articulated in the Strategic Plan for 2003–2013 as a starting point, and is further informed by CCSP-commissioned reports from the National Research Council (e.g. the 2007 NRC review of CCSP: *http://books.nap.edu/catalog.php?record_id=11934*), as well as CCSP-sponsored stakeholder and scientific outreach, involvement in international global change programs, and a wide range of assessment activities in which CCSP is involved. This approach provides the basis for ongoing assessment and alignment of priorities based on emerging scientific and societal needs.

Any scientific research program must evolve over time based on what has been learned during earlier periods, and CCSP is no exception. This is particularly true for an Earth science related program, in which the past several years have brought dramatic increases in knowledge; significant advances in the length and quality of observational data sets (including more comprehensive observations of climatic phenomena than was previously possible); improvements in the scope, resolution, and quality of models; and the initiation of several major observational efforts that have only now begun to yield results for integrated scientific study, or will appear shortly after the release of the revised Plan.

One of the most significant advancements of recent years is that ongoing monitoring of key Earth systems over the past four years and analysis of records extending back through time have revealed a number of important Earth system changes and previously-unknown processes, including (but not limited to), the continuation of warm years; changes in the cryosphere, e.g. Arctic sea ice coverage, significant changes in ice mass in Greenland and Antarctica, and permafrost temperature; changes in patterns and frequency of wildfire; changes in species distributions; ocean acidification and its consequences; changes in storminess; hydrologic changes; and the recognition of unexpected behavior in seasonal greenness in tropical and temperate forests. Continued collection of paleoenvironmental data has also provided a basis for understanding the importance of not just climate change, but also climate variability and the potential for abrupt changes, to Earth systems. This legacy of past observations is key to understanding potential future changes and impacts.

Long- and short-term monitoring efforts have benefited from advances in technology and analysis capabilities; however, there are significant challenges associated with these gains. These issues were the subject of a CCSP internal workshop on Observations in 2006. Drawing from the report of that workshop, the Research Plan addresses the major issues relative to observations, including: (1) advances and issues in capabilities and their implications; (2) gains and losses in orbital and ground-based observations networks, including NPOESS, Landsat-like systems and other climate sensors; (3) long- vs. short-term observations; (4) advances in (and costs of) computational and data storage and retrieval capacity; and 5) the increased sensitivity, scope and comprehensiveness of climate models and the needs thereof.

In the four years since the 2003 Strategic Plan was published, the climate community has also completed work on several important assessments, including the IPCC 4th Assessment Report (to which CCSP made substantial scientific contributions) and the Synthesis and Assessment Products being developed under the auspices of CCSP, which have helped to integrate many related scientific areas and to provide a comprehensive report on the state of the science. These assessments have had a significant influence on the broader climate policy community, and have helped to shape external dialogues and to frame the new questions that face policymakers. These discussions within the user community have already begun to place increased demands on CCSP to provide more regionally-resolved and sector-specific information about climate, its societal impacts and vulnerabilities, and to provide the rigorous scientific basis to support increased societal planning for adaptation to and mitigation of the effects of climate change.

As a direct result of the past four years of Program activity and progress, as well as recognition of the important changes to earth systems noted above, there are significant new demands on CCSP. The most substantial of these is the need for information at a scale that is pertinent to direct land- and resource management issues, in order to support decision-making. The development of robust partnerships will be an essential component of CCSP's response to these needs. These areas include not just climate change itself but improved understanding of associated issues of climate change impacts, adaptation, vulnerability, and sustainability, as well

as the need for tools for the delivery of information for decision support in a manner that is both timely and useful, and at scales that are relevant, to stakeholders' needs.

This section of the Research Plan contains specific examples of issues and events that influence CCSP's research directions. The list of examples includes such major developments as:

- Dramatic increases in knowledge
- Significant advances in the length and quality of observational data sets
- Improvements in scope, resolution, and quality of models and modeling efforts
- Initiation of major new climate sensors and observational efforts that are now beginning to yield results for integrated scientific study, and potential loss of others
- Completion of important assessments, including the IPCC Fourth Assessment, assessments by WMO/UNEP, the Arctic Climate Impact Assessment, and CCSP's Synthesis and Assessment Products

Research and Programmatic Plans

The sections outlined above are intended to provide an overview of the structure and purpose of CCSP, its products, accomplishments and challenges, and the progress which has led to the emergence of new priorities and changed emphases over the past four years. The remainder of the Research Plan's content is devoted to the articulation of Plans for the Program both programmatically and as related to CCSP's strategic goals, for the period 2008—2010 and beyond.

A sampling of programmatic and research plans is provided in this Summary. However, it is anticipated that the full scope of these plans will be developed with inclusion of the public input that results from the publication of this Summary. Since the public input to this Research Plan will be an essential component in developing the research directions of CCSP, this input will also be considered in the development of the current Scientific Assessment as required by the GCRA. The GCRA requires that the Scientific Assessment integrates, evaluates, and interprets the findings of the [United States Global Change Research] Program. The current Scientific Assessment is under development; it will integrate and draw from many sources, including the 2003 Strategic Plan, the Synthesis and Assessment Products, and this Research Plan, including the public comments received during the Research Plan's development, and other published sources. By promulgating this Summary, CCSP invites and encourages public comment to help inform both the development of the Research Plan and the articulation of CCSP's future research priorities.

In addition to research plans aimed at achieving objectives associated directly with CCSP's strategic goals, CCSP intends to explore ways in which to improve and extend its achievement of programmatic goals. Issues related to the crosscutting elements of modeling, observations systems and networks, stakeholder engagement and communication of CCSP results to the public, to non-governmental organizations, to the climate change technology community and to state and local officials and other decisionmakers are among the areas for needed growth that were identified by the National Research Council in its recent report on CCSP progress (NRC 2007). Over the next three years CCSP will actively consider responses to these needs to determine and implement effective approaches. The CCSP agencies will also continue to take a leadership role in the dissemination of results and products that come from the program's research, observations, and decision support activities. In particular, the program will ensure that the conclusions from its assessment products and activities are widely communicated. In addition, the program will coordinate the development of interagency climate-related communications with those of the member agencies to help assure that the accomplishments of the overall national investment in climate-related science are understood and are widely available to users of the information.

The scope of CCSP scientific research is far-reaching. CCSP Strategic Goals encompass everything from basic scientific research on Earth's past and present climate and climate variability, the forces that result in changes to Earth's climate and related systems, reducing uncertainties in projecting future change and its consequences and the sensitivity/adaptability of both ecosystems and human systems, all the way to the application of the knowledge gained to the decisionmaking process for the management of risks and development of strategies for adaptation to climate change. In the four years since the release of the Strategic Plan, investment in and progress towards CCSP Goals 1 through 3 has been greater than that for Goals 4 and 5. Significant advances have been made in documenting climate changes and understanding the interconnected workings of Earth systems. Improvements in modeling capabilities have fostered a better understanding of forcing factors and couplings between ocean, atmosphere and land systems. Relative to the state of the science four years ago, substantial progress has been made in understanding and predicting climate change and variability at global and continental scales. Accordingly, strides have been made in characterizing and reducing the uncertainties associated with projecting the magnitudes and effects of future climate and related systems change. The value of these results is demonstrated by their inclusion in and importance to the IPCC 4th Assessment.

As stated in Section I above, CCSP's Goals provide the focus and direction for the program, to ensure that knowledge developed by the participating agencies and research elements can be integrated and synthesized, and this remains the overarching strategy for the program. The following descriptions provide a sense of the strategic purpose and scope encompassed by these goals, and the way in which the goals inform research, observations, decision support and communications throughout the program:

CCSP Goal (1): Improve knowledge of the Earth's past and present climate and environment, including its natural variability, and improve understanding of the causes of observed variability and change

Climate conditions change significantly over the span of weeks, seasons, years, decades, and even longer time scales. CCSP research will improve understanding of natural oscillations in climate on time scales from weeks to centuries, including improving and harnessing ENSO forecasts, a large-scale climate oscillation with implications for resource and disaster management. Research will continue to sharpen qualitative and quantitative understanding of climate extremes, and to what degree any changes in their frequency or intensity lie outside the range of natural variability, through improved observations, analysis, and modeling. The program also will continue to expand and refine observations, monitoring, and data/information system capabilities and increase confidence in our understanding of how and why climate is changing. Fostering improved interactions and connectivity between research and ongoing operational measurements and activities continues to be another important aspect of the program's work.

CCSP Goal (2): Improve quantification of the forces bringing about changes in the Earth's climate and related systems

Combustion of fossil fuels, changes in land cover and land use, and industrial activities produce greenhouse gases (GHGs) and aerosols and alter the composition of the atmosphere and physical and biological properties of the Earth's surface. These changes have several important climatic effects, the quantification of which has improved dramatically in recent years but upon which a substantial amount of work remains to be done. Research conducted through CCSP will continue to address the reduction of uncertainty in the sources and sinks of GHGs; aerosols and their precursors; the long range atmospheric transport of GHGs and aerosols and their precursors; and the interactions of GHGs and aerosols with global climate, ozone in the upper and lower layers of the atmosphere, and regional-scale air quality. It will continue to improve quantification of the interactions among the carbon cycle, other biological and ecological processes, and land cover and land use to better project atmospheric concentrations of key greenhouse gases and to support improved decisionmaking. The program will also continue to work towards improved capabilities for developing and applying emissions scenarios in research and analysis, in cooperation with the Climate Change Technology Program (CCTP).

CCSP Goal (3): Reduce uncertainty in projections of how the Earth's climate and related systems may change in the future

While a great deal is now known about the mechanisms that affect the response of the climate system to changes in natural and human influences, many questions remain to be addressed and refined. There is still uncertainty regarding precisely how much climate will change overall and especially in specific regions. A primary objective of CCSP is to continue to develop information and scientific capacity needed to sharpen both qualitative and quantitative understanding through interconnected observations, data assimilation, and modeling activities. CCSP-supported research will continue to address basic climate system properties and the feedbacks or secondary changes that can either reinforce or dampen the initial and ongoing effects of greenhouse gas and aerosol emissions and changes in land use and land cover. The program will also continue to address the potential for future changes in extreme events and uncertainty regarding potential rapid or abrupt changes in climate. CCSP will also continue to build on existing U.S. strengths in climate research and modeling, and to enhance capacity for development of high-end coupled climate and Earth system models.

CCSP Goal (4): Understand the sensitivity and adaptability of different natural and managed ecosystems and human systems to climate and related global changes

Seasonal to annual variability in climate has been connected to impacts on ecosystems and many aspects of human life. Longer time scale natural climate cycles and human-induced changes in climate have additional effects. Improving our ability to assess the potential implications of variations and future changes in climate and environmental conditions on ecosystems and human systems could enable governments, businesses, and communities to mitigate damages and seize opportunities by adapting infrastructure, activities, and plans. CCSP research will increasingly examine the interactions of multiple interacting changes and effects (e.g., the carbon dioxide "fertilization effect", deposition of nitrogen and other nutrients, changes in landscapes that affect water resources and habitats, changes in frequency of fires or pests) to improve knowledge of sensitivity and adaptability of systems to climate variability and change. CCSP research will also improve methods to integrate our understanding of potential effects of different atmospheric concentrations of greenhouse gases and to develop methods for aggregating and comparing potential impacts across different sectors and settings.

CCSP Goal (5): Explore the uses and identify the limits of evolving knowledge to manage risks and opportunities related to climate variability and change

In recent years, the scientific and technical community has begun to develop a variety of products to support management of risks and opportunities related to climate variability and change, but much remains to be done in this area. CCSP will foster additional studies and encourage evaluation and learning from these experiences in order to develop and improve decision support processes and products that use knowledge to the best effect, while communicating levels of uncertainty appropriately. Working in partnership with stakeholders and end-users of this information, CCSP will develop resources (e.g., observations, databases, data and model products, scenarios, visualization products, scientific syntheses, assessments, tools and approaches to engage ongoing consultative mechanisms) to support policymaking, planning, risk reduction and adaptive management.

As shown above, CCSP Goals 1 through 3 remains important, with significant research questions that remain to be articulated and answered. One mechanism by which CCSP undertakes these strategic priorities is through the development of near-term (i.e.1–3 year) interagency implementation priorities. One example of a near-term interagency implementation priority that CCSP has identified as needing intensive effort is a focus on understanding carbon cycling and climate change in high latitude regions, since these regions are among the most rapidly-changing areas of the planet; another is the development of an integrated Earth system analysis capability to focus toward creation of a high-quality record of the state of the atmosphere and ocean since 1979, information that is needed in order to improve the assimilation of land cover and dynamic sea ice modeling into carbon and nutrient cycling and other crucial areas.

The coming years will see substantially increased need for CCSP to accelerate progress on Goals 4 and 5, in order to more fully understand the implications of climate change for both natural and managed ecosystems and to improve the delivery of that information to land and resource managers and other stakeholders. This is an important area of potential growth for CCSP. New foci include improvements in the reliability of ecological forecasting, in order to foster and support natural resource management and decision making; an increased emphasis on the development of an early warning system for the possibility of abrupt climate change to assist managers and decisionmakers in planning for sea level rise and other potential rapid changes; and an increased focus on the development of tools for decision support,; and an increased focus on the development of tools for decision support, to improve delivery of needed information in formats and at scales (particularly regional scales) that maximize their usefulness to stakeholders.

The increased emphasis on decision support and the delivery of needed information to stakeholders and decision-makers discussed above is an example of an evolving overall programmatic priority for CCSP. Further, each of the thirteen participating agencies also has its own priorities that make invaluable contributions to CCSP, and which contribute a large portion of CCSP's progress toward CCSP's strategic goals. In addition, CCSP has identified specific

implementation priorities -- important topics that require the coordinated efforts of multiple agencies. While these implementation priorities are only a part of the overall program, they are vital mechanisms through which CCSP integrates agency activities to create knowledge and products that are greater than the sum of the individual agency efforts. The following are examples of implementation priorities for the next few years that are inherently interagency, and that will contribute to the program's long-term priorities (priorities that are specific to single agencies are not included here).

Enhanced Carbon Cycle Research on High Latitude Systems

The global carbon cycle has been one of the seven interdisciplinary science focus areas for CCSP and its GCRP predecessors for many years. Accomplishments include completion of CCSP Synthesis and Assessment Product 2.2 "State of the Carbon Cycle Report"(*http://www.climatescience.gov/Library/sap/sap2-2/final-report/default.htm*) as well as improved availability of CO2 measurements and advances in coupled carbon-climate modeling and assimilation, plus others. Recognition that high latitude systems are increasingly important sources of atmospheric carbon as regional warming occurs makes it critical to improve our understanding of the carbon dynamics in high latitude systems, and the factors that may lead to changes in those dynamics. These are crucial elements of global carbon modeling and a priority for understanding the linkages and feedbacks between carbon, ecosystems and land cover, hydrology, and climate variability and change.

Quantification of Climate Forcing and Feedbacks by Aerosols, Non-CO2 Greenhouse Gases, Water Vapor, and Clouds

The need to quantify and understand the impacts of radiative forcing on climate has long been important to CCSP/GCRP. Advances have been made in our understanding of climate influences of aerosols, reactive gas emissions and ozone in both the troposphere and stratosphere, and these continue to be important. The next level of complexity adds the importance of water vapor in the upper troposphere and lower stratosphere, as a key component of the atmospheric system. There is now increased recognition of the importance of quantifying the climate forcing associated with aerosols, clouds, the spatially-varying shorter-lived trace gases, as well as upper tropospheric and lower stratospheric ozone. Recent analysis, including that associated with the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, has emphasized this need, and a number of scientific advances and improvement in observation and modeling capability make the timing appropriate for an enhanced focus on this topic.
Development of an Integrated Earth System Analysis Capability: A focus toward creating a high-quality record of the state of the atmosphere and ocean since 1979

Just as the public and decision-makers can today easily access weather maps (i.e., "analyses" of the atmosphere) to support a wide range of applications, tomorrow's decision-makers need tools to visualize the evolving state of the climate system over the entire planet, including its oceans, land surface, and vegetation. Substantial progress has been made in the development of coupled Earth system modeling, particularly with the adoption of a common Earth System Modeling Framework. Historical reanalysis of data for the 20th century, improvements in coupled ocean-atmosphere analysis capabilities and the incorporation of land surface processes, sea ice dynamics and the hydrological cycle will yield an improved record of the state of the atmosphere and ocean. This effort will contribute to the ability to separate natural and human-induced climate forcing of climate variations and change, and will result in improved accessibility of research-based information on climate variations and impacts to decision-makers and the public.

Development of an End-to-End Hydrologic Projection and Application Capability

The need to provide information to water resource managers and other decision makers on issues related to how climate affects water availability, drought, and water quality has long been a component of CCSP activities, and the global water cycle is one of CCSP's identified research elements. An end-to-end system to provide information to water resource managers and other decision makers on issues related to how climate affects water availability, drought, and water quality requires integration and improvement of existing research and monitoring capabilities to reduce uncertainties in hydrological/climate predictions. Assembling the building blocks for the development of an end-to-end global water cycle infrastructure and an development of an observations-based Generalized Hydrological (water, energy, biogeochemical) Modeling/Prediction Framework will help to reduce uncertainties and improve hydrologic predictions, leading to improved decision-support information and resources.

Assessing Abrupt Change in a Warming Climate: Toward Development of an Abrupt Change Early Warning System

Changes in the climate system are considered "abrupt" if they occur more rapidly than the time needed by society and ecosystems to adapt to them (NRC 2002). Possible impacts range from accelerated melting of ice sheets and associated sea level rise, severe and sustained droughts, to systematic changes in weather patterns over broad regions that may result from changes in ocean circulation. CCSP has a research element aimed specifically at climate variability and change, which has fostered considerable progress in our understanding of past abrupt climate events and the potential causes for rapid changes. Given this progress, a near-term emphasis is to reduce the remaining knowledge gaps that limit our ability to provide early warning assessments of the likelihood of future abrupt climate change, at global, national and regional scales, over the remainder of this century. The effort has a special focus on those changes that have the largest potential impacts, with the overarching goal of providing policy- and decision-makers with information needed to better assess and minimize future risks due to abrupt change.

Ecological Forecasting

Ecological forecasting brings together modeling with observations and results from experiments and process studies to predict the impacts of natural and anthropogenic environmental changes on life-sustaining ecosystems. Many CCSP agencies are engaged in activities that include components of an ecological forecasting capability to address critical emerging questions. Progress has been made in such areas as documenting changes occurring in boreal forests. This has set the stage for reducing scientific uncertainty about possible future changes in primary production, biogeochemistry, and biodiversity, to findings that show that global oceanic phytoplankton productivity responds to changes in upper-ocean temperature and stratification. Work for the coming years builds upon earlier investigations to expand the development of models linking geophysical and ecological phenomena, to better characterize the uncertainty associated with linked models, and thus to provide more

reliable ecological forecasts. The result will be an enhanced understanding of ecological response to changing climate as well as improved natural resource management and decision-making.

The full Revised Research Plan includes—for both programmatic and strategic goals—the identification of emerging societal and scientific needs; the changes and shifts in emphasis to major scientific questions that have resulted from advances in knowledge and other accomplishments; the most urgent research needs that have emerged; and the expected outcomes, products, impacts and societal benefits. The brief examples above suggest the direction that CCSP will evolve in the future, towards increased engagement with stakeholders and increased attention towards relevance of scientific results to decisionmaking and policymaking. The full scope of the Research Plan will reflect the public input that results from the publication of this Summary. By publishing this Summary, CCSP invites and encourages public comment to help inform both the development of the Research Plan and the articulation of CCSP's future research priorities.

III. End Matter

In keeping with CCSP policy and its legacy of openness and transparency of process, the Research Plan will close with information regarding the preparation of the Research Plan, including but not limited to, a listing of: (1) Authors; (2) Reviewers; (3) References; (4) Sources of images and other figures; and (5) Important Links and Contact Information.

Dated: December 21, 2007.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. E7–25254 Filed 12–27–07; 8:45 am]

BILLING CODE 3510–12–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 25, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–6247 Filed 12–26–07; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 11, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–6248 Filed 12–26–07; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 4, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–6249 Filed 12–26–07; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday January 18, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–6250 Filed 12–26–07; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Wednesday January 16, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–6251 Filed 12–26–07; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0145]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and

clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Military Pay, Standards and Compliance, Defense Finance and Accounting Service, DFAS–JJFMB/CL, ATTN: Ms. Laurie Eldridge, 1240 East 9th Street, Room 1781, Cleveland, Ohio 44199, or call Ms. Eldridge at (216) 204–3631.

Title, Associated Form, and OMB Number: Claim Certification and Voucher for Death Gratuity Payment; DD Form 397; OMB Control Number 0704–TBD.

Needs and Uses: This information collection allows the government to collect the signatures and information needed to pay a death gratuity. Pursuant to 10 U.S.C. 1475—1480, a designated beneficiary(ies) or next-of-kin can receive a death gratuity payment for a deceased Service member. This form serves as a record of the disbursement of the death gratuity. The DoD Financial Management Regulation (FMR), Volume 7A, Chapter 36, defines the eligible beneficiaries and procedures for payment of the death gratuity. To provide internal controls for this benefit, and to comply with the above-cited statutes, the information requested is needed to substantiate the receipt of the benefit.

Affected Public: Individuals who are beneficiaries of the Service member's death gratuity.

Annual Burden Hours: 1208.

Number of Respondents: 2416.

Responses per Respondent: 1.

Average Burden per Response: .5 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Service Casualty Office completes the upper portion of the DD Form 397 and then provides the form to the beneficiaries. The beneficiaries complete their portion of the DD Form 397 and then sign the form and have it witnessed. Once the documents are completed they are forwarded to DFAS for payment.

Dated: December 14, 2007.

Patricia L. Toppings,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. E7–25193 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0144]

Proposed Collection; Comment Request

AGENCY: Defense Security Service, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Security Service (DSS) announces the proposed revision of a public information collection and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection 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 hours of the information to be collected; and (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents.

DATES: Consideration will be given to all comments received by February 26, 2008

ADDRESS: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rule Making Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160

Instructions: All submissions received must include agency name, docket number and title for this **Federal Register** document. The general policy of comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contract information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Security Service, ATTN: Ms. Valerie Heil, Personnel Security Clearance Office, 1340 Braddock Place, Alexandria, VA 22314, or telephone Ms. Heil at 703–325–6050.

Title; Associated Form; and OMB Number: Personnel Security Investigation Projection for Industry Survey; DSS Form 232; OMB Number 0704–0417.

Needs and Uses: The execution of the DSS Form 232 is an essential factor in projecting the needs of cleared contractor entities for personnel security investigations (PSIs). This collection of information requests the assistance of the Facility Security Officer to provide projections of the numbers and types of PSIs. The data will be incorporated into DSS' budget submissions and used to track against actual PSI submissions. The form will be distributed electronically via a web-based commercial survey tool.

Affected Public: Business, or other profit and non-profit organizations under Department of Defense Security Cognizance.

Annual Burden Hours: 15,188.

Number of Respondents: 12,150.

Responses Per Respondent: 1.

Average Burden Per Response: 75 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Executive Order (EO) 12829, "National Industrial Security Program (NISP)," stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their

respective employees. E.O. 12829 also authorizes the Executive Agent to issue, after consultation with affected agencies, standard forms that will promote the implementation of the NISP.

The Under Secretary of Defense for Intelligence assigned DSS to exercise authority and responsibility for central operational management of DoD PSI workload projections, and monitoring of PSI funding and investigation quality issues for DoD components to include cleared contractors under the National Industrial Security Program. In the past, DSS has relied on historical data for agency budget projections regarding the numbers of PSIs required by cleared contractor entities; however, historical data did not provide a particularly accurate or credible estimate of such workload. In this annual collection of information, DSS asks the Facility Security Officers of cleared contractor entities to provide projections of the numbers and types of personnel security investigations required as well as providing a description of the methodology used for the projections, and the percentage of the cleared contractor's projections representing DoD and non-DoD (NISP) agencies PSI requirements for cleared contractors. The data will be incorporated into DSS' budget submissions and to track against actual cleared contractor's actual PSI submissions.

The Office of Personnel Management (OPM) has responsibility to conduct PSIs and the subsequent periodic reinvestigations (PRs) in accordance with the Code of Federal Regulations, Title 5, Part 736.

Representative of various industry associations, the National Industrial Security Program Policy Advisory Committee (NISPPAC), the Military Services, various elements of the Department of Defense and other Federal Government Agencies are familiar with the annual survey.

Dated: December 7, 2007.

Patricia L. Toppings,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. E7–25195 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–HA–0140]

Proposed Collection, Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to TRICARE Management Activity—Aurora, Special Contracts and Operations Branch, 16401 E. Centretech Pkwy, Attn: Pamela A. Maloney, , Aurora, CO 80011–9066, or telephone Pamela A. Maloney, TRICARE Management Activity, Special Contracts and Operations Branch at (303) 676–3709.

Title; Associated Form; and OMB Number: Mail Order Registration; OMB Control Number 0720–TBD.

Needs and Uses: The information collection requirement is necessary to obtain personal data from TRICARE eligible beneficiaries as application for enrollment into the Department of Defense's TRICARE Mail Order Pharmacy Program.

Affected Public: Individuals or Households.

Annual Burden Hours: 15,000.

Annual Number of Respondents: 60,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are active duty members of the armed forces, eligible retirees and their family members who are the recipients of the TRICARE pharmacy benefits. All eligible beneficiaries must complete the registration form in order to enroll into the program. Once the form is completed and signed by the beneficiary; the form is mailed to the TRICARE Mail Order Pharmacy contractor, Express Scripts Inc. The information on the form is logged into a secure database. The form is destroyed after the data is transferred.

Dated: December 7, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25196 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Defense Advisory Committee on Military Personnel Testing (hereafter referred to as the Committee).

The Committee is a discretionary federal advisory committee established by the Secretary of Defense to provide the Department of Defense independent advice and recommendations on matters pertaining to military personnel testing. The Committee shall review the calibration of personnel selection and classification tests to ensure the accuracy of resulting scores, review relevant validation studies to ensure that the tests have utility in predicting success in technical training and on the job, review ongoing testing research and development in support of the enlistment program, and make recommendations for improvements to make the testing process more responsible to the needs of the Department of Defense and the Military Services.

The Committee shall be composed of not more than seven members, who are eminent authorities in the fields of educational and psychological testing. Committee Members appointed by the Secretary of Defense, who are not federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. Committee Members shall be appointed on an annual basis by the Secretary of Defense, and shall serve terms of three years on the Committee. With the exception of travel and per diem for official travel, they shall serve without compensation. The Under Secretary of Defense (Personnel and Readiness) shall select the Committee's Chairperson.

The Committee shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976, and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Committee nor can they report directly to the Department of Defense or any federal officers or employees who are not Committee Members.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Under Secretary of Defense (Personnel and Readiness). The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Advisory Committee on Military Personnel Testing membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Defense Advisory Committee on Military Personnel Testing.

All written statements shall be submitted to the Designated Federal Officer for the Defense Advisory Committee on Military Personnel Testing, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Advisory Committee on Military Personnel Testing. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–2554, extension 128.

Dated: December 21, 2007.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25227 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Board of Visitors National Defense University (hereafter referred to as the Board).

The Board is a discretionary federal advisory committee established by the Secretary of Defense to provide the Department of Defense independent advice and recommendations on organization management, curricula, instructional methods, facilities and other matters of interest to the National Defense University.

The Board shall be composed of approximately twenty-one members, who are eminent authorities in the fields of national defense, academia, business, national security affairs, and the defense industry. Board Members appointed by the Secretary of Defense, who are not federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. Board Members shall be appointed on an annual basis by the Secretary of Defense, and shall serve no more than fifteen years on the Board. With the exception of travel and per diem for official travel, they shall serve without compensation.

The Board Membership shall select the Board's Chairperson and the Co-Chairperson from the total Board Membership, and this individual shall serve at the discretion of the Chairman of Joint Chiefs of Staff or designee. In addition, the Chairman of the Joint Chiefs of Staff or designated representative may invite other distinguished Government officers to serve as non-voting observers of the Board, and appoint consultants, with special expertise, to assist the Board on an ad hoc basis.

The Board shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976, and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any federal officers or employees who are not Board Members.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the President National Defense University. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Visitors National Defense University membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board of Visitors National Defense University.

All written statements shall be submitted to the Designated Federal Officer for the Board of Visitors National Defense University, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Visitors National Defense University Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Visitors National Defense University. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–2554, extension 128.

Dated: December 21, 2007.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25220 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD–2007–OS–0143]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Add Blanket Routine Uses to Systems of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new "Blanket Routine Use" to DoD systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on January 28, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Defense Privacy Office.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel P. Jenkins at (703) 607–2943.

SUPPLEMENTARY INFORMATION: The Department of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above or at *www.dod.mil/privacy/notices*.

The Office of the Secretary of Defense is proposing to establish a new Department of Defense "Blanket Routine Use" (BRU) that will apply to each of its current Privacy Act system of records unless the system notice for a particular system of records specifically excludes their application. The BRU will permit the sharing of terrorism information, if such information is contained within an identified system, among appropriate Federal, State, local, and tribal entities, as well as with Foreign governments, pursuant to the information sharing environment mandate as prescribed by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, Section 1016, as codified at 6 U.S.C. 485).

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on December 19, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 20, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Department of Defense Blanket Routine Use

Routine Use—Information Sharing Environment

A record from a system of records maintained by a Component consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(4)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, "Information Sharing Environment, November 22, 2006) may be disclosed to a Federal, State, local, tribal, territorial, foreign governmental and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to the detection, prevention, disruption, preemption, and mitigation of the effects of terrorist activities against the territory, people, and interests of the United States of America as contemplated by the Intelligence Reform and Terrorism Protection Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

Note: Information relating to, but not in and of itself constituting, terrorism, homeland security, or law enforcement information, as defined above, may only be disclosed upon a showing by the requester that the information is pertinent to the conduct of investigations of, or the development of analyses regarding, terrorism.

[FR Doc. E7–25283 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary of Defense

[DoD–2007–OS–0137]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Commissary Agency, DOD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Defense Commissary Agency (DeCA) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 28, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Defense Commissary Agency, 1300 E Avenue, Fort Lee, VA 23801–1800.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Williamson at (804) 734–8777.

SUPPLEMENTARY INFORMATION: The Defense Commissary Agency's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 19, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About 'Individuals,' dated December 12, 2000, 65 FR 239.

Dated: December 20, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Z0035–01

SYSTEM NAME:

Financial Transaction Data.

SYSTEM LOCATION:

Defense Commissary Agency, 1300 E Avenue, Fort Lee, Virginia, 23801–1800.

An official listing of locations can be obtained from the Program Management Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active, reserve, and retired uniformed personnel of the military services; their surviving spouses and dependents; recipients of the Medal of Honor; selected military personnel of foreign nations; other organizations and activities of the United States Government and such other personnel and activities as approved by the Secretary of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, address, method of payment, shipping address, email address, telephone number, Social Security Number (SSN), charge and debit card information and expiration date, and Credit Card Identification number (CCID).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DoD 7000.14–R, Department of Defense Financial Management Regulations (FMRs) and E.O. 9397 (SSN).

PURPOSE(S):

To provide support of world-wide system of commissaries selling groceries and household goods to military service members, their families and other authorized recipients. The system will scan products barcodes, determine the product price, calculate the total amount owed by the customer, and accept payment by cash, check, and credit or debit card. In addition, the system has an internet shopping application, Virtual Commissary (VC) that provides the capability to expand the benefits to authorized patrons who do not have access to a commissary. It has the capability to take orders and payments from authorized customers and then forward the order to the appropriate location to be filled.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Virtual Commissary Suppliers/ Companies that will take the information to fulfill customers' orders for merchandise (grocery and household items) purchased through the Virtual Commissary.

To the Department of Treasury for electric check processing and electronic funds transfers related to credit/debit card charges.

The DOD "Blanket Routine Uses" apply to this system of records.

Disclosure to consumer reporting agencies:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and Social Security Number; the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name, Social Security Number, MICR (Magnetic Ink Character Recognition), which is the number found on the bottom of check, and address.

SAFEGUARDS:

Access to records is limited to the custodian of the records or by persons responsible for servicing the records in the performance of their official duties. Records are stored in locked cabinets or rooms and controlled by personnel screening.

Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user authentication code systems. All electronic data is transmitted using approved, secured methods to ensure the data is protected while in transit.

RETENTION AND DISPOSAL:

A minimum of six years and three months.

MANAGER(S) AND ADDRESS:

Program Director, Defense Commissary Agency, ATTN: Program Management Office, 1300 E Avenue, Fort Lee, Virginia, 23801–1800.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Commissary Agency, ATTN: Program Management Office, 1300 E Avenue, Fort Lee, Virginia, 23801–1800.

Requests should contain individual's name and address, telephone, and email address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Commissary Agency, ATTN: Program Management Office, 1300 E Avenue, Fort Lee, Virginia, 23801–1800.

Requests should contain individual's name and address, telephone, email address, Social Security Number (SSN), and MICR (Magnetic Ink Character Recognition; number found on the bottom of check).

CONTESTING RECORD PROCEDURES:

The Defense Commissary Agency rules for accessing records, for

contesting contents, and for appealing initial agency determination can be obtained from the Privacy Act Officer, 1300 E. Avenue, Fort Lee, VA 23801–1800.

RECORD SOURCE CATEGORIES:

Individual.

[FR Doc. E7–25286 Filed 12–27–07; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD–2007–OS–0142]

Privacy Act of 1974; Systems of Records

AGENCY: Department of Defense, Defense Finance and Accounting Service.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 28, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 19, 2007, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: December 20, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7315

SYSTEM NAME:

U.S. Savings Bond System.

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Mechanicsburg—Bldg 308, Naval Support Activity (NSA), 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense Active duty military members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals' name, Social Security Number (SSN) and electronic U.S. Savings Bonds data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Volume 5, Chapter 23; 31 U.S.C. Chapter 33; and E.O. 9397 (SSN).

PURPOSE(S):

To establish a system of record in support of the U.S. Savings Bond Program. This system will allow active duty military members for all branches of the service to request bonds they have purchased through allotment deductions to be kept in safekeeping.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Treasury Department to provide information on U.S. bonds issued to military members.

The DoD 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords are used to control access to the system data, and procedures are in place to detect and deter browsing and unauthorized access.

RETENTION AND DISPOSAL:

Disposition Pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Defense Finance and Accounting Service, Systems Management Directorate, Navy Working Capital Fund Systems Office, 1240 East Ninth Street, Cleveland, OH 44199–8002.

System Manager, Defense Finance and Accounting Service, Information and Technology Directorate, Accounting Systems Division, 1240 East Ninth Street, Cleveland, OH 44199–8002. Telephone number(216) 204–3064.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about them is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Request should contain individual's full name, Social Security Number (SSN), current address, telephone number and provide a reasonable description of what they are seeking.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them that is contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Request should contain individual's full name, Social Security Number (SSN), current address, telephone number and provide a reasonable description of what they are seeking.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing

initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From individuals, Department of Defense Components, such as, United States Air Force, Army, Navy, and Marine Corps.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–25287 Filed 12–27–07; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[USAF–2007–0027]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Officer Procurement Branch, Air Force Personnel Center, announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Officer Procurement Branch (DPSIPR), Air Force Personnel Center, 550 C Street West, Suite 10, ATTN: Ms Adriana Bazan, Randolph AFB, TX 78150–4712, or call HQ AFPC/DPSIPR at 210–565–3711.

Title; Associated Form; and OMB Number: Application for Appointment as Reserve of the Air Force or USAF Without Component, Air Force (AF) Form 24, OMB Number 0701–0096.

Needs and Uses: The information collection requirement is necessary for providing information to determine if applicant meets established qualifications for appointment as a Reserve (Air National Guard of the United States (ANGUS) and United States Air Force Reserve (USAFR)) or in the USAF without component. Use of the Social Security Number (SSN) is necessary to make positive identification of an applicant and his or her records.

Affected Public: Individuals or households.

Annual Burden Hours: 1966.

Number of Respondents: 5899.

Responses Per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This is an information collection from persons applying for appointment as a member of the Reserve of the Air Force or an Air Force member without a component and entry into active duty. The information contained on AF Form 24 supports the Air Force as it applies to direct appointment (procurement) programs for civilian and military applicants. It provides necessary information to determine if an applicant meets established qualifications for appointment to fill authorized USAFR and ANGUS position vacancies and active duty requirements. Eligibility requirements are outlined in Air Force Instruction 36–2005.

Dated: December 19, 2007.

Patricia L. Toppings,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. E7–25166 Filed 12–27–07; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Proposed Range Enhancements at the Barry M. Goldwater Range, Arizona

AGENCY: Department of the Air Force.

ACTION: Notice of Intent (NOI).

SUMMARY: This NOI is being issued pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, et seq.), the Council on Environmental Quality Regulations for implementing procedural provisions of NEPA (40 Code of Federal Regulation (CFR) Parts 1500–1508), and Air Force policy and procedures (32 CFR Part 989) to advise the public of the Air Force's intent to prepare an EIS that will evaluate the environmental effects associated with range enhancements and alternatives within the eastern portion of the Barry M. Goldwater Range (BMGR), Arizona.

The Air Force is also initiating a scoping process and public meetings to assist in determining the extent of issues to be addressed in the EIS. Three scoping meetings will be held, as scheduled below. Each meeting will include an open house where the public may review maps and other displays. Federal, state, and local agencies; Native American tribes; and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed in the preparation of the EIS.

DATES: Public scoping meetings will be held as follows:

Tuesday, January 15, 2008, 6–8 p.m., Glendale High School, Media Center, 6216 W. Glendale Avenue, Glendale, AZ.

Wednesday, January 16, 2008, 6–8 p.m., El Rio Center, 1390 W. Speedway Boulevard, Tucson, AZ.

Thursday, January 17, 2008, 6–8 p.m., Gila Bend Union High School, 308 N. Martin Avenue, Gila Bend, AZ.

SUPPLEMENTARY INFORMATION: The eastern portion of the BMGR (BMGR-East) is assigned to the Secretary of the Air Force and is operated by Luke Air Force Base to train combat aircrews and support personnel.

Periodically, operational and infrastructure upgrades to the range are

needed to keep training both realistic and relevant to current and emerging war fighting technology and tactics. Consequently, the Air Force now proposes upgrades to BMGR-East that include:

*Developing a training area to train in the use of precision-guided munitions in an urban setting (no actual air-to-ground ordnance would be released)

* Reconfiguring targets in tactical and manned ranges, which may include relocating targets within pre-2001 annual explosive ordnance disposal clearance areas within the tactical ranges

* Introducing a remotely operated moving target to provide aircrews with realistic training to engage moving vehicle targets

* Reconfiguring Manned Range 3 to include a helicopter gunnery range with fixed, moving, and pop-up targets

* Modifying the Memorandum of Understanding (MOU) among the Department of the Interior and the Secretaries of the Navy and the Air Force to change the floor for routine flight training operations over portions of the Cabeza Prieta National Wildlife Refuge from 1,500 feet to 500 feet above ground level to support realistic low-level approaches to targets; BMGR-East restricted airspace (R–2301E) is currently authorized for use from the surface to 80,000 feet above mean sea level, but training flight operations, with the exception of certain low-level flights along designated corridors, are limited by the 1994 MOU to 1,500 feet over the National Wildlife Refuge

* Developing an additional target for air-to-ground missiles in the East Tactical Range to allow training in air-to-ground missile delivery from multiple directions; the proximity of the current missile target to the range boundary severely constrains training

* Supporting training by small squads of troops or individual soldiers on foot

* Paving the road from Manned Range 1 to the water well to minimize vehicle wear, maintenance costs, and dust on this heavily used road

* Excavating, transporting, and stockpiling sand and gravel resources to provide an on-range source of these materials for road maintenance as well as target reconfiguration and maintenance

* Constructing a taxiway and air traffic control tower at the Gila Bend Air Force Auxiliary Field to improve airfield safety and expand operational capacity

Anticipated issues to be addressed in the EIS include, but are not limited to, airspace and range operations; water, biological resources (including endangered species), cultural resources; air quality; noise; and public access, health, and safety.

Written comments may be submitted at the meetings. Agencies and the public are also invited to provide written comment via mail on issues that are important to them. These written comments should be mailed to the address listed below, and must be received no later than January 28, 2008 to ensure fullest consideration in the EIS.

FOR FURTHER INFORMATION CONTACT: Direct any written comments or requests for information to Ms. Lisa McCarrick, 56 FW/RMO, 7224 N. 139th Drive, Luke AFB, AZ 85309–1420 (Phone 623/856–9475).

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–25234 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

[USA–2007–0034]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA-AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to U.S. Army Corps of Engineers, 441 G Street, NW., Room 3D72, Washington, DC 20314–1000, or call Department of the Army Reports Clearance Officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Estuary Habitat Restoration Program Project Application; ENG Form 6019–R; OMB Control Number 0710–0014.

Needs and Uses The Corps will solicit applications for estuary habitat restoration projects under section 104 of the Estuary Restoration Act 2000. Requested information will include proposed project location, types and acreage of habitat to be restored, and project description including restoration techniques, project goals and expected benefits, monitoring plan, costs, and other supporting information. Project applications may be submitted either electronically or in paper format. This information is needed to select projects for funding.

Affected Public: State, local, or tribal government and not-for-profit institutions.

Annual Burden Hours: 1,000.

Number of Respondents: 100.

Responses Per Respondent: 1.

Average Burden Per Response: 10 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Information will be collected by voluntary submission of estuary habitant restoration project via e-mail, or paper submissions that may be accomplished by computer disk by regular mail or hand delivery. Supplemental information may also be collected via phone interviews.

Dated: December 19, 2007.

Patricia L. Toppings,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. E7–25167 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[USA–2007–0033]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA-AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of the Army, U.S. Army Corps of Engineers, Institute for Water Resources, Corps of Engineers Waterborne Commerce Statistics Center, 7400 Leake Avenue, New Orleans, LA 70118, ATTN: CEIWR–NDC–C (Mickey LaMaca), or call Department of the Army Reports Clearance Officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Description of Vessels, Description of Operations; ENG Forms 3931 and 3932; OMB Control Number 0710–0009.

Needs and Uses The Corps of Engineers uses ENG Forms 3931 and 3932 as the basic instruments to collect vessel and operating descriptions for use in waterborne commerce statistics. These data constitute the sole source for domestic vessel characteristics and operating descriptions for domestic vessels operating on U.S. navigable waterways. These data are collected from vessel operating companies. These data are essential to plans for maintaining U.S. navigable waterways. These data are also critical to the enforcement of the "Harbor maintenance Tax" authorized under section 1402 of Public Law 99–662

Affected Public: Business or other for-profit.

Annual Burden Hours: 2,048.

Number of Respondents: 3,058.

Responses Per Respondent: 1.

Average Burden Per Response: 40 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collection is the basic data from which the Corps of Engineers compiles and published waterborne commerce statistics. The data is used not only to report to Congress, but also to perform cost benefit studies for new projects, rehabilitation projects, and O&M of existing projects. It is also used by other federal agencies involved in transportation and security. This data collection program is the sole source for domestic navigation statistics.

Dated: December 19, 2007.

Patricia L. Toppings,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. E7–25168 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[USA–2007–0032]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of the Army, U.S. Army Corps of Engineers, Institute for Water Resources, Corps of Engineers Waterborne Commerce Statistics Center, 7400 Leake Avenue, New Orleans, LA

70118, ATTN: CEIWR–NDC–C (Mickey LaMaca), or call Department of the Army Reports Clearance Officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Shipper' Export Declaration (SED) Program; ENG Form 7513; OMB Control Number 0710–0013.

Needs and Uses The Corps uses the data from the program to satisfy its mission. The Corps is responsible for the operation and maintenance of the nation's waterway system to ensure efficient and safe passage of commercial and recreational vessels. The support and management of economically sound navigation projects are dependent upon reliable navigation data as mandated by the River and Harbor Appropriations Act of September 22, 1922 (42 Stat. 1043), as amended and codified in 33 U.S.C. 555. The data collected on the form provides baseline, essential waterborne transportation information necessary for the Corps to perform its mission.

Affected Public: Business or other for-profit.

Annual Burden Hours: 17,000.

Number of Respondents: 14,300.

Responses per Respondent: 6.8.

Average Burden per Response: 11 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

On September 28, 1998, the Office of Management and Budget (OMB) designated the U.S. Army Corps of Engineers (Corps) as the "central collection agency" for the U.S. Foreign Waterborne Transportation Statistics program effective October 1, 1998. The U.S. Bureau of Census (Census) was previously responsible for this program. As central collection agency for foreign waterborne transportation statistics, the Corps is responsible for meeting the needs of other federal agencies that require these data. The Maritime Administration, the U.S. Coast Guard, the Bureau of Transportation Statistics, the Environmental Protection Agency, and the Bureau of Economic Analysis also require these data.

Dated: December 19, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E7–25169 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[USA–2207–0031]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Military Surface Deployment and Distribution Command, Carrier Services Branch, 661 Sheppard Place, Fort Eustis, VA, 23604–1644, or call Department of the Army Reports Clearance Officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Freight Carrier Registration Program (FCRP); SDDC Form 410; OMB Control Number 0702–0121.

Needs And Uses: The FCRP is designed to protect the interest of the Government and to ensure that the Department of Defense deals with responsible carriers having the capability to provide quality and dependable service. Information is vital in determining capability to perform quality service transporting DOD freight. Carriers will furnish SDDC with information to assist in determining through other public records whether the company and its officers are responsible contractors.

Affected Public: Business or other for profit.

Annual Burden Hours: 108.

Number of Respondents: 430.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Freight Carrier Registration Program will be a minimum burden to the carrier industry. The information SDDC collects can now be accessed through the DoD Web site. That will expedite the time to approve the carrier to do business with the DoD.

Dated: December 19, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E7–25170 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[USA–2007–0030]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of

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

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of the Army, U.S. Military Academy, Institutional Research & Analysis, Office of Policy, Planning & Analysis, ATTN: (Dr. William Burke), West Point, New York 10966–5000, or call Department of the Army Reports Clearance Officer at (703) 428–6440.

Title, Associated Form, and OMB Number: West Point Engineering Graduates Surveys; OMB Control Number 0702–0116.

Needs and Uses: An assessment of perceptions of graduates on the effectiveness of the U.S. Military Academy programs and curricula is needed for periodic accreditation by the Accreditation Board or Engineering and Technology. The information collected will be used to evaluate programs/curricula and make changes deemed advisable.

Affected Public: Individual or Households.

Annual Burden Hours: 218.

Number of Respondents: 519.

Responses per Respondent: 1.

Average Burden per Response: 25 minutes.

Frequency: On occasion (Every three years).

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information will be collected via seven surveys, each with content appropriate to graduates of engineering and engineering related courses of study at the U.S. Military Academy. The surveys will go to graduates currently serving as officers in the U.S. Army and to graduates not currently serving. Respondents will be allowed to choose between completing a mailed survey or an Internet based survey.

Dated: December 19, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25171 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket No. USN–2007–0057]

Proposed Collection, Comment Request

AGENCY: Marine Corps Junior Reserve Officer's Training Corps (MCJROTC), DoD.

ACTION: Notice.

SUMMARY: In compliance with 44 U.S.C. Sec. 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, Headquarters, U.S. Marine Corps announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, write to Commanding General, Training and Education Command (C46JR), MCCDC, 1019 Elliott Road, Quantico, VA 22134–5001, or telephone Mr. Robert Davis at (703) 784–0478.

FORM TITLE AND OMB NUMBER: Individual MCJROTC Instructor Evaluation Summary; NAVMC 10942; OMB Control Number 0703–0016.

NEEDS AND USES: This form provides a written record of the overall performance of duty of MCJROTC instructors who are responsible for implementing the MCJROTC curriculum. The Individual MCJROTC Instructor Evaluation Summary is completed by principals to evaluate the effectiveness of individual MCJROTC instructors. The form is further used as a performance related counseling tool and as a record of service performance to document performance and growth of individual MCJROTC instructors. Evaluating the performance of instructors is essential in ensuring that they provide quality training.

Affected Public: Individuals or households.

Annual Burden Hours: 225.

Number of Respondents: 450.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This form provides a written record of the overall performance of duty of MCJROTC instructors who are responsible for implementing the MCJROTC curriculum. The Individual MCJROTC Instructor Evaluation

Summary is completed by principals to evaluate the effectiveness of individual MCJROTC instructors.

The form is further used as a performance related counseling tool and as a record of service performance to document performance and growth of individual MCJROTC instructors. Evaluating the performance of instructors is essential in ensuring that they provide quality training.

Dated: November 30, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25229 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0058]

Proposed Collection, Comment Request

AGENCY: Headquarters, U.S. Marine Corps, DoD.

ACTION: Notice.

SUMMARY: In compliance with 44 U.S.C. Sec. 3506(c)(2)(A)) of the *Paperwork Reduction Act of 1995*, Headquarters, U.S. Marine Corps, announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, write to Commanding General, Marine Corps Recruiting Command, (Code OP), 3280 Russell Road, Quantico, VA 22134–5130, or contact Head, Officer Programs or Deputy, Officer Programs at (703) 784–9449/50/51.

Title; Associated Form; and OMB Number: Academic Certification for Marine Corps Officer Candidate Program; NAVMC Form 10469; OMB Control Number 0703–0011.

Needs and Uses: Used by Marine Corps officer procurement personnel, this form provides a standardized method for determining the academic eligibility of applicants for all reserve officer candidate programs. Use of this form is the only accurate and specific method to determine a reserve officer applicant's academic qualifications. Each applicant interested in enrolling in an undergraduate or graduate reserve officer commission program completes and returns the form.

Affected Public: Individuals or households.

Annual Burden Hours: 875.

Number of Respondents: 3,500.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Used by Marine Corps officer procurement personnel, this form provides a standardized method for determining the academic eligibility of applicants for all reserve officer candidate programs. Use of this form is the only accurate and specific method to determine a reserve officer applicant's academic qualifications. Each applicant interested in enrolling in an undergraduate or graduate reserve officer commission program completes and returns the form.

Dated: December 19, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25253 Filed 12–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 26, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing, or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 20, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation, and Policy Development

Type of Review: New.

Title: Department of Education Guidance on the Collection and Reporting of Racial and Ethnic Data About Students, Teachers, and Education Staff.

Frequency: One Time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 76,758,319.

Annual Burden Hours: 7,851,257.

Abstract: The Department of Education has published final guidance that provides for the collection and reporting of racial and ethnic data on students, teachers, and education staff. These changes are necessary in order to implement the Office of Management and Budget's (OMB) 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity. The final guidance applies to the collection of individual-level data and to the reporting of aggregate racial and ethnic data to the Department by educational institutions and other recipients of grants and contracts.

Additional Information: The Department of Education (ED) is specifically requesting the data providers in each the State Education Agency (SEA) to review the estimation of paperwork burden on those who will collect, maintain, and report this data. This is not a review of the substance of the final guidance. That public discussion took place between the publication of the proposed guidance on August 7, 2006 and the publication of the final guidance on October 17, 2007.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3559. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 07–6223 Filed 12–27–07; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information: Early Reading First Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.359A and B.

DATES: Applications Available: December 28, 2007.

Deadline for Transmittal of Pre-Applications: February 1, 2008.

Deadline for Transmittal of Full Applications: April 18, 2008 (for applicants invited to submit full applications only).

Deadline for Intergovernmental Review: June 16, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program supports local efforts to enhance the oral language, cognitive, and early reading skills of preschool-aged children, especially those from low-income families, through strategies, materials, and professional development that are grounded in scientifically based reading research.

The specific activities for which recipients must use grant funds are identified in section 1222(d) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). This and other relevant provisions of the ESEA are included in the application package.

Priorities: This competition includes one competitive preference priority and three invitational priorities.

Competitive Preference Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from § 75.225 of the Education Department General Administrative Regulations (EDGAR), which apply to this program (34 CFR 75.225).

Competitive Preference Priority—Novice Applicant

For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional five (5) points to a pre-application and an additional five (5) points to a full application that meets this competitive preference priority.

This priority is:

Novice Applicant

The applicant must be a "novice applicant" as defined in 34 CFR 75.225.

Under this competition we are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Intensity

The Secretary is especially interested in preschool programs that operate full-time, full-year early childhood educational programs, at a minimum of 6.5 hours per day, 5 days per week, 46 weeks per year, and that serve children for the two consecutive years prior to their entry into kindergarten.

Scientifically based research on increasing the effectiveness of early childhood education programs serving children from low-income families tells us that children attending such programs that have a greater intensity of service make higher and more persistent gains in the language and cognitive domains than children who attend early childhood programs that have lesser intensity of service. In other words, children who spend more time in high-quality early childhood education programs learn more than children who spend less time in those programs. The purpose of this invitational priority is to encourage preschool programs supported with Early Reading First funds to provide services that are of a sufficient duration and intensity to maximize language and early literacy gains for children enrolled in those programs.

Invitational Priority 2—English Language Acquisition Plan

For applicants serving children with limited English proficiency, the Secretary is especially interested in applications that include a specific plan for the development of English language proficiency for these children from the start of their preschool experience. The Early Reading First program is designed

to prepare children to enter kindergarten with the necessary cognitive, early language, and literacy skills for success in school. School success often is dependent on each child entering kindergarten as proficient as possible in English so that the child is ready to benefit from formal reading instruction in English when he or she starts school.

Note: The term "limited English proficient" is defined in section 9101(25) of the ESEA (20 U.S.C. 7801(25)). That definition is included in the application package.

An English language acquisition plan should, at a minimum: (1) Include a description of the applicant's approach to the development of language, based on the linguistic factors or skills that serve as the foundation for a strong language base, which foundation is a necessary precursor for success in the development of pre-literacy and literacy skills for children with limited English proficiency; (2) explain the instructional strategies, based on best available valid and reliable research, that the applicant will use to address English language acquisition in a multi-lingual classroom; (3) describe how the project will facilitate the children's transition to English proficiency through such means as the use of environmental print in appropriate multiple languages and hiring bilingual teachers, paraprofessionals, or translators to work in the preschool classroom; (4) include intensive professional development for instructors and paraprofessionals on the development of English language proficiency; and (5) include a timeline that describes benchmarks for the introduction of the development of English language proficiency and use of measurement tools.

Ideally, at least one instructional staff member in each Early Reading First classroom should be dual-language proficient in a child's first language and in English to facilitate the children's understanding of instruction and transition to English proficiency. At a minimum, each classroom should include a teacher who is proficient in English.

Invitational Priority 3—Faith-based Organizations

The Secretary is especially interested in applications that propose to engage faith-based and community organizations in the delivery of services under this program.

Program Authority: 20 U.S.C. 6371–6376.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: The Administration has requested $117,666,000 for awards for the Early Reading First program for FY 2008, of which we intend to use an estimated $116,489,340 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $1,500,000–$4,500,000.

Estimated Average Size of Awards: $3,000,000.

Estimated Number of Awards: 25–77.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Under this competition, eligible applicants are (a) one or more local educational agencies (LEAs), including charter schools that are considered LEAs under State law, that are eligible to receive a subgrant under the Reading First program (Title I, Part B, Subpart 1 of the ESEA; (b) one or more public or private organizations or agencies (including faith-based organizations) located in a community served by an eligible LEA; or (c) one or more eligible LEAs, applying in collaboration with one or more eligible organizations or agencies. To qualify under paragraph (b) of this definition, the organization's or agency's application must be on behalf of one or more programs that serve preschool-aged children (such as a Head Start program, a child care program, a family literacy program such as Even Start, or a lab school at a university), unless the organization or agency itself operates a preschool program.

Lists, by State, of LEAs that qualify under paragraph (a) of this definition for this FY 2008 competition are posted on the Early Reading First Web site at *http://www.ed.gov/programs/earlyreading/eligibility.html*. These lists are based on the most recent information provided by each State and the Bureau of Indian Education (BIE) to the Department's Reading First program, and are posted for the convenience of Early Reading First applicants. However, we consider it to be each applicant's responsibility to verify with the Reading First office in its State, or with the BIE, as appropriate, whether a particular LEA is eligible to receive a subgrant under the Reading First program as of the date of publication of this notice in the **Federal Register**. A list of State and BIE contacts for this purpose is also posted at the Early Reading First Web site at *http://www.ed.govprograms/earlyreading/eligibility.html*.

Eligibility determination date: The date governing whether an LEA is eligible to receive a subgrant under the Reading First program is the date of publication in the **Federal Register** of this notice inviting applications for new awards under the Early Reading First program for FY 2008.

Required submission of eligibility information: Each applicant must complete as follows and submit with its pre-application for this competition Pre-Application Form A, Applicant Eligibility, which is included in the application package:

- LEAs included on a posted eligibility list: If the LEA on which you, the applicant, are basing your Early Reading First eligibility *is* included on the State's Reading First subgrant eligibility list posted on the Early Reading First Web site, you must complete Section I of Pre-Application Form A (Applicant Eligibility) and submit that form with your pre-application.
- *LEAs not included on a posted eligibility list:* If the LEA on which you, the applicant, are basing your Early Reading First eligibility is *not* included on the State's Reading First subgrant eligibility list posted on the Early Reading First Web site, you must complete *both* Section I and Section II of Pre-Application Form A (Applicant Eligibility) and submit that form with your pre-application. Section II requires you to verify with your State's Reading First office, or the BIE, as appropriate, that the LEA is in fact eligible to receive a Reading First subgrant as of the date of publication in the **Federal Register** of this notice. You must also submit the name of, and contact information for, the person with whom you verified that information. If you are invited to submit

a full application and we are unable to verify the LEA's eligibility from the contact information that you have provided, we may not consider the LEA as an eligible LEA for the purposes of this competition or we may require you to submit additional written information demonstrating eligibility.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can access the electronic grant application for the Early Reading First Program at *http://www.Grants.gov* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.359, not 84.359A or B). You also can obtain a copy from the Education Publications Center (ED Pubs). To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA numbers 84.359A and B.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of the pre-application and the full application, together with the forms you must submit, are in the application package for this competition.

Pre-Application: All applicants must apply in the pre-application phase; as explained in the application package, only selected applicants will be invited to submit a full application.

Page Limits: You must include in Part I of the pre- and full applications an Abstract briefly describing your proposed project. You must limit each Abstract to one (1) page.

The pre-application narrative and the full application narrative for this program (Part II of the pre- and full applications) are where you, the applicant, address the selection criteria that reviewers use to evaluate your pre- and full applications. You must limit Part II of the pre-application to the equivalent of no more than twelve (12) pages and Part II of the full application to no more than thirty-five (35) pages.

Part III of the pre-application is where you, the applicant, provide the Appendices. Pre-application Appendices are limited to the following: A list and a brief description of the existing preschool programs that the proposed Early Reading First project would support; an English language acquisition plan, if applicable; and endnote citations for research cited specifically in the pre-application narrative. You must limit the list and the brief description of the existing preschool programs to the equivalent of no more than five (5) pages. You must limit any English language acquisition plan to the equivalent of no more than two (2) pages. No page limit applies to the pre-application endnote citations.

Part III of the full application is where you, the applicant, provide a budget narrative that reviewers use to evaluate your full application. You must limit the budget narrative in Part III of the full application to the equivalent of no more than five (5) pages.

Part IV of the full application is where you, the applicant, provide the Appendices. Full application Appendices are limited to the following: A list and a brief description of the existing preschool programs that the proposed Early Reading First project would support; an English language acquisition plan, if applicable; position descriptions (and resumes or curriculum vitae if available) for up to five (5) key personnel; endnote citations for research cited specifically in the full application narrative; and documentation demonstrating the stakeholder support for the project. You must limit the list and the brief description of the existing preschool programs to the equivalent of no more than five (5) pages. You must limit each resume or curriculum vitae to the equivalent of no more than three (3) pages each, and limit the documentation demonstrating stakeholder support for the project to the equivalent of no more than five (5) pages. You must limit any English language acquisition plan to the equivalent of no more than five (5) pages.

For all page limits, use the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application and budget narratives, including titles, headings, quotations, references, and captions included in the body of the narrative.
- Text in charts, tables, figures, and graphs may be single-spaced.
- Use the Modern Language Association (MLA) standard to format endnotes.
- Use one of the following commonly used 12-point fonts, including for text in endnotes, charts, tables, figures, and graphs: Times New Roman, Times, Courier, or CG Times.

The page limits do not apply to any title page or table of contents, or the forms in Part I of the pre- and full applications; or the following portions of the full application: the budget form (ED Form 524) in Part III; or the assurances and certifications and the endnotes in Part IV.

Our reviewers will not read any pages of your pre-application or full application that exceed the page limit if you apply these standards; or exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: December 28, 2007.

Deadline for Transmittal of Pre-Applications: February 1, 2008.

Deadline for Transmittal of Full Applications: April 18, 2008 (for applicants invited to submit full applications only).

Pre- and full applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: June 16, 2008.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Pre- and full applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Pre- and full applications for grants under the Early Reading First program, CFDA Number 84.359A (pre-application) and CFDA Number 84.359B (full application), must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your pre- or full application. You may not e-mail an electronic copy of a grant application to us.

We will reject your pre- or full application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the pre- or full application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the pre- or full application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Early Reading First competition at *http://www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.359, not 84.359A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your pre- and full applications must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the pre- or full application deadline date. Except as otherwise noted in this section, we will not consider your pre- or full application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the pre- or full application deadline date. When we retrieve your pre- or full application from Grants.gov, we will notify you if we are rejecting your pre- or full application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the pre- or full application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the pre- or full application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your pre- and any full application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your pre- or full application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your pre- and full application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully a pre- or full application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your pre- or full application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your pre- or full application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your pre- and full applications as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic pre- and full applications must comply with any page-limit requirements described in this notice.
- After you electronically submit your pre- or full application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your pre- or full application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your pre- or full application and has assigned your pre- or full application a PR/Award number (an ED-specified identifying number unique to your pre- or full application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your pre- or full application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your pre- or full application on the pre- or full application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your pre- or full application electronically or by hand delivery. You also may mail your pre- and full applications by following the mailing instructions described elsewhere in this notice.

If you submit a pre- or full application after 4:30 p.m., Washington, DC time, on the pre- or full application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your pre- or full application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your pre- or full application by 4:30 p.m., Washington, DC time, on the pre- or full application deadline date. The Department will contact you after a determination is made on whether your pre- or full application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your pre- or full application to Grants.gov before the pre- or full application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your pre- or full application in paper format, if you are unable to submit a pre- or full application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the pre- or full application deadline date (14 calendar days or, if the fourteenth calendar day before the pre- or full application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your pre- or full application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the pre- or full application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the pre- or full application deadline date.

Address and mail or fax your statement to: Pilla Parker, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C136, Washington, DC 20202–6132. FAX: (202) 260–7764; or Rebecca Marek, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C138, Washington, DC 20202–6132. FAX: (202) 260–7764.

Your paper pre- or full application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your pre- or full application to the Department. You must mail the original and two copies of your pre- or full application, on or before the pre- or full application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.359A and B), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Numbers 84.359A and B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your pre-or full application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your pre-or full application is postmarked after the pre-or full application deadline date, we will not consider your pre-or full application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper pre-or full application to the Department by hand. You must deliver the original and two copies of your pre-or full application by hand, on or before the pre-or full application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.359A and B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your pre-or full application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including the suffix letter, if any, of the competition under which you are submitting your pre-or full application; and

(2) The Application Control Center will mail to you notification of receipt of your grant application. If you do not receive this notification within 15 business days from the pre-or full application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* This competition has separate selection criteria for pre-applications and full applications.

A. *Pre-application:* The following selection criteria for this competition for the pre-application are from 34 CFR 75.210 of EDGAR. Further information about each of these selection criteria is in the application package. There are two selection criteria, *Need for Project* and *Quality of the Project Design.* The maximum score for the pre-application selection criteria is 100 points.

(i) *Need for project* (0–20 points)

The Secretary considers the need for the proposed project. In determining the

need for the proposed project, the Secretary considers the following factors:

(a) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure. (34 CFR 75.210(a)(2)(iii))

(b) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (34 CFR 75.210(a)(2)(iv))

(ii) *Quality of the project design* (0–80 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(a) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (34 CFR 75.210(c)(2)(xiii))

(b) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements. (34 CFR 75.210(c)(2)(xiv))

(c) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources. (34 CFR 75.210(c)(2)(xvi))

B. *Full Application:* The following selection criteria for those invited to submit full applications are from 34 CFR 75.210 of EDGAR. Further information about each of these selection criteria is in the application package. The maximum score for each criterion is indicated after the title of the criterion. The maximum score for the full application selection criteria is 100 points.

(i) *Quality of the project design* (0–60 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(a) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (34 CFR 75.210(c)(2)(xiii))

(b) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements. (34 CFR 75.210(c)(2)(xiv))

(c) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources. (34 CFR 75.210(c)(2)(xvi))

(ii) *Quality of project personnel* (0–10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (34 CFR 75.210(e)(1), (2))

In addition, the Secretary considers the following factors:

(a) The qualifications, including relevant training and experience, of the project director or principal investigator. (34 CFR 75.210(e)(3)(i))

(b) The qualifications, including relevant training and experience, of key project personnel. (34 CFR 75.210(e)(3)(ii))

(c) The qualifications, including relevant training and experience, of project consultants or subcontractors. (34 CFR 75.210(e)(3)(iii))

(iii) *Adequacy of resources* (0–5 points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(a) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (34 CFR 75.210(f)(2)(ii))

(b) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (34 CFR 75.210(f)(2)(iv))

(iv) *Quality of the management plan* (0–15 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210(g)(2)(i))

(b) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (34 CFR 75.210(g)(2)(ii))

(c) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (34 CFR 75.210(g)(2)(iv))

(v) *Quality of the project evaluation* (0–10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (34 CFR 75.210(h)(2)(i))

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (34 CFR 75.210(h)(2)(iv))

VI. Award Administration Information

1. *Award Notices:* If your pre-application is successful, we notify you in writing and post the list of successful applicants on the Early Reading First Web site at *www.ed.gov/programs/earlyreading/awards.html*. If your full application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your pre-application is not evaluated, or following the submission of your pre-application you are not invited to submit a full application, we notify you. If your full application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more

frequent performance reports under 34 CFR 75.720(c). Early Reading First grantees also are required to meet the annual reporting requirements outlined in section 1225 of the ESEA. For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Secretary has established the following five (5) measures for evaluating the overall effectiveness of the Early Reading First program: (1) The cost per preschool-aged child participating in Early Reading First programs who achieves a significant gain in oral language skills as measured by the Peabody Picture Vocabulary Test-III, Receptive (PPVT–III, Receptive); (2) the percentage of preschool-aged children participating in Early Reading First programs who demonstrate age-appropriate oral language skills as measured by the Peabody Picture Vocabulary Test, Receptive (PPVT–III, Receptive); (3) the average number of letters Early Reading First preschool-aged children are able to identify as measured by the PALS Pre-K Upper Case Alphabet Knowledge subtask; (4) the percentage of preschool-aged children participating in Early Reading First programs who achieve significant gains in oral language skills as measured by the Peabody Picture Vocabulary Test, Receptive (PPVT–III, Receptive); and (5) the Early Reading First teachers' average score on the Literacy Environment Checklist on the Early Language and Literacy Classroom Observation (ELLCO) Toolkit after each year of implementation.

All grantees must provide information on these performance measures in the annual performance report referred to in section VI.3. of this notice.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Pilla Parker, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C136, Washington, DC 20202–6132. Telephone: (202) 260–3710 or by e-mail: *Pilla.Parker@ed.gov;* or Rebecca Marek, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C138, Washington, DC 20202–6132. Telephone: (202) 260–0968 or by e-mail: *Rebecca.Marek@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: December 21, 2007.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E7–25276 Filed 12–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences

AGENCY: Department of Education, Institute of Education Sciences.

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the National Board for Education Sciences. The notice also describes the functions of the committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE: January 24, 2008.

Time: 8:30 a.m. to 5:30 p.m.

ADDRESSES: Institute of Education Sciences Board Room, 80 F St., NW., Washington, DC, 20208.

FOR FURTHER INFORMATION CONTACT: Norma Garza, Executive Director, National Board for Education Sciences, 555 New Jersey Ave., NW., Room 627 H, Washington, DC 20208; phone: (202) 219–2195; fax: (202) 219–1466; e-mail: *Norma.Garza@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

On January 24, from 9 a.m. to 11:45 a.m., the Board will receive reports from the Director of IES and the commissioners of the IES centers on projects underway since October 2007. From 1 p.m. to 1:30 p.m., the Board will review and discuss its ongoing evaluation of IES, after which the Board's Communication and Legislation committees will give their respective reports. Following a summary and review of next steps, the meeting will adjourn at 5:30 p.m.

A final agenda will be available from Norma Garza (see contact information above) on January 14. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting devices, assistance listening devices, or materials in alternative format) should notify Norma Garza no later than January 12. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all committee proceedings and are available for public inspection at 555 New Jersey Ave., NW., Room 627 H, Washington, DC, 20208, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Electronic Access to This Document: You may view this document as well as all other documents of this Department published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll-free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: *http://www.gpoaccess.gov/nara/index.html.*

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. E7–25219 Filed 12–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 19, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP98–18–031.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System submits its Third Revised Sheet 8 to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 12/14/2007.

Accession Number: 20071217–0195.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP06–200–040.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits First Revised Sheet 9H and 9J to its FERC Gas Tariff, Second Revised Volume 1, to become effective 12/19/07.

Filed Date: 12/18/2007.

Accession Number: 20071219–0134.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–34–001.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Kinder Morgan Illinois Pipeline, LLC submits Substitute Original Sheet 123 to FERC Gas Tariff, Original Volume 1, to be effective 12/1/07.

Filed Date: 12/14/2007.

Accession Number: 20071217–0134.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–34–002.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Kinder Morgan Illinois Pipeline LLC submits Amendment 1 to the Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit between KMIP and the Peoples Gas Light and Coke Co.

Filed Date: 12/18/2007.

Accession Number: 20071219–0131.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–36–001.

Applicants: High Island Offshore System, L.L.C.

Description: High Island Offshore System LLC submits Substitute Fourth Revised Sheet 173B, proposed to become effective 12/1/07.

Filed Date: 12/14/2007.

Accession Number: 20071219–0130.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–119–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthrust Pipeline Company submits Second Revised Sheet 6 to Second Revised Volume No 1–A, to be effective January 1, 2008.

Filed Date: 12/14/2007.

Accession Number: 20071214–0050.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–120–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Twelfth Revised Sheet 20 et al to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/14/2007.

Accession Number: 20071217–0136.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–120–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission LLC submits its Twelfth Revised Sheet 20 et al to its FERC Gas Tariff, Second Revised Volume 1, errata filing #1 to its December 14, 2007 filing.

Filed Date: 12/17/2007.

Accession Number: 20071218–0129.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–120–001.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission LLC submits Substitute Eleventh Revised Sheet 25 et al to its FERC Gas Tariff, Second Revised Volume 1, errata filing #2 to its December 14, 2007 filing.

Filed Date: 12/18/2007.

Accession Number: 20071219–0132.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–121–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Co notifies FERC of a receipt point that will no longer provide gathering service effective 12/14/07.

Filed Date: 12/14/2007.

Accession Number: 20071217–0135.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–123–000.

Applicants: Central Kentucky Transmission Company.

Description: Central Kentucky Transmission Co submits Second Revised Sheet 355 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective 5/1/08.

Filed Date: 12/17/2007.

Accession Number: 20071218–0117.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–124–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gas Transmission Corp submits Ninth Revised Sheet 318 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective 5/1/08.

Filed Date: 12/17/2007.

Accession Number: 20071218–0118.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–125–000.

Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Co submits Second Revised Sheet 555 et al to FERC Gas Tariff, First Revised Volume 1, to be effective 5/1/08.

Filed Date: 12/17/2007.

Accession Number: 20071218–0119.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–126–000.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Storage Co, LLC submits First Revised Sheet 203 FERC Gas Tariff, Original Volume 1, to be effective 1/18/08.

Filed Date: 12/17/2007.

Accession Number: 20071218–0120.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–127–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corp submits Tenth Revised Sheet 501 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective 5/1/08.

Filed Date: 12/17/2007.

Accession Number: 20071218–0121.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–128–000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Company submits Eleventh Revised Sheet 1 et al to FERC Gas Tariff, First Revised Volume 1, to become effective 1/16/08.

Filed Date: 12/17/2007.

Accession Number: 20071218–0133.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–129–000.

Applicants: Northern Natural Gas Company.

Description: Petition of Northern Natural Company for a limited waiver of tariff provisions.

Filed Date: 12/18/2007.

Accession Number: 20071219–0133.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7–25203 Filed 12–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 21, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP97–186–005.

Applicants: Trunkline Gas Company.

Description: Trunkline Gas Co, LLC submits Substitute Second Revised Sheet 28 to FERC Gas Tariff, Third Revised Volume 1, to become effective 12/15/07.

Filed Date: 12/19/2007.

Accession Number: 20071220–0199.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP06–540–005.

Applicants: High Island Offshore System.

Description: High Island Offshore System, LLC submits a Report of Refunds.

Filed Date: 12/19/2007.

Accession Number: 20071220–0200.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–130–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits its First Revised Sheet 2 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 12/19/2007.

Accession Number: 20071220–0204.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: RP08–131–000.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Co. submits the Twentieth Revised Sheet 4 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/18/08.

Filed Date: 12/19/2007.

Accession Number: 20071220–0201.

Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7–25204 Filed 12–27–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6694–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental

Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070357, ERP No. D–BLM–J65490–UT, Moab Field Office Planning Area, Resource Management Plan, Implementation, Grand and San Juan Counties, UT.

Summary: EPA expressed environmental concerns about air quality impacts and the; mitigation measures proposed under the Preferred Alternative (Alternative C) not being able to fully address significant environmental impacts associated with travel and recreation management issues. Consequently, EPA recommends specific environmentally-protective mitigation measures be included in the final EIS.

Rating EC2.

EIS No. 20070406, ERP No. D–AFS–L65500–AK, Iyouktug Timber Sales, Proposes Harvesting Timber, Implementation, Hoonah Ranger District, Tongass National Forest, Hoonah, AK.

Summary: EPA expressed environmental concerns about potential adverse impacts to water quality and wetlands. The final EIS should include additional information about effected resources and mitigation measures to avoid or compensate for impacts.

Rating EC2.

EIS No. 20070476, ERP No. D–FRC–G03035–00, Gulf Crossing Project, Construction and Operation of Natural Gas Pipeline to Facilitate the Transport of up to 1.73 Billion Cubic Feet Per Day of Natural Gas, Locate in various Counties and Parishes in OK, TX, LA, and MS.

Summary: EPA expressed environmental concerns about wetland, air quality, and environmental justice impacts, and requested additional information and mitigation measures for these issues.

Rating EC2.

EIS No. 20070443, ERP No. DS–FTA–K54022–CA, Third Street Light Rail Phase 2, Updated Information on the Central Subway Project Area, Funding, San Francisco Municipal Transportation Agency, in the City and County San Francisco, CA.

Summary: EPA does not object to the proposed project.

Rating LO.

Final EISs

EIS No. 20070459, ERP No. F–FRC–E05102–SC, Santee Cooper Hydroelectric Project (FERC. No. 199), Relicensing for Existing 130-megawatt (MW), Santee and Cooper Rivers, Berkeley, Calhoun, Clarendon, Orangeburg and Sumter Counties, SC.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070489, ERP No. F–DOE–A09834–00, FutureGen Project, Planning, Design, Construction and Operation of a Coal Fueled Electric Power and Hydrogen Gas Production Plant, Four Alternative Sites: Mattoon, IL, Tuscola, IL, Jewett, TX, and Odessa, TX.

Summary: EPA does not object to the proposed project.

EIS No. 20070522, ERP No. F–IBR–K39109–CA, Lower Yuba River Accord, Proposal to Resolve Instream Flow Issues Associated with Operation, Yuba River, Yuba County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070494, ERP No. LF–COE–G39050–LA, Mississippi River—Gulf Outlet (MRGO) Deep-Draft Navigation De-Authorization Study, Implementation, St. Bernard Parish, LA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 21, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–25192 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6694–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/17/2007 through 12/21/2007

Pursuant to 40 CFR 1506.9.

EIS No. 20070536, Draft EIS, AFS, 00, National Forest System Lands in Utah Wild and Scenic River Suitability Study for 86 Eligible River Segments for Inclusion in the National Wild and Scenic River System, Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, Wasatch-Cache National Forests in Utah and Portions of National Forests in Colorado and Wyoming, Comment Period Ends: 02/15/2008, *Contact:* Catherine Kahlow 435–783–4338.

This document is available on the Internet at: *http://www.fs.fed.us/r4/rivers/deis_wsr.shtml.*

EIS No. 20070537, Draft EIS, AFS, NM, Perk-Grindstone Fuel Reduction Project, To Protect Life, Property, and Natural Resources, Village of Ruidoso, Lincoln National Forest, Lincoln County, New Mexico, *Comment Period Ends:* 02/11/2008, Contact: Buck Sanchez 505–885–4181.

This document is available on the Internet at *http://www.fs.fed.us/r3/lincoln/Projects/index.shtml.*

EIS No. 20070538, Draft EIS, COE, NC, North Topsail Beach Shoreline Protection Project, Seeking Federal and State Permits to Allow Implementation of a Non-Federal Shoreline and Inlet Management Project, New River Inlet, Onslow County, NC, *Comment Period Ends:* 02/11/2008, *Contact:* Mickey T. Sugg 910–251–4811.

EIS No. 20070539, Final EIS, SFW, CA, Programmatic—South Bay Salt Pond Restoration Project, Restored Tidal Marsh, Managed Ponds, Flood Control Measures and Public Access Features, Don Edward San Francisco Bay National Wildlife Refuge, Alameda, Santa Clara and San Mateo Counties, CA, *Wait Period Ends:* 01/28/2008, *Contact:* Mendel Stewart 510–792–4275 Ext. 23.

EIS No. 20070540, Draft EIS, NOA, 00, Amendment 1 to the Tilefish Fishery Management Plan, Proposed Individual Fishing Quota (IFQ) Program, To Reduce Overcapacity in the Commercial Tilefish Fishery, Maine to North Carolina, *Comment Period Ends:* 02/11/2008, *Contact:* Patricia A. Kurkul 978–281–9200.

EIS No. 20070541, Draft Supplement, NOA, AK, Cook Inlet Beluga Whale Subsistence Harvest Project, Proposes to Implement a Long-Term Harvest Plan and Fulfill the Federal Government's Trust Responsibility, Cook Inlet, AK, *Comment Period Ends:* 02/11/2008, *Contact:* Barbara Mahoney 907–271–3448.

EIS No. 20070542, Revised Draft EIS, BLM, WY, Pinedale Anticline Oil and Gas Exploration and Development Project, Additional Information on Two New Alternatives, Consolidated Development with Year-Round

Development (Construction, Drilling, Completion, and Production), Sublette County, WY , *Comment Period Ends:* 02/11/2008, *Contact:* Caleb Hiner 307–367–5352.

EIS No. 20070543, Final EIS, AFS, 00, Sierra Nevada Forests Management Indicator Species Amendment (MIS), Proposes to Adopt a Common List of Management Indicator Species (MIS), and Amending Land & Resource Management Plans for Following Ten Forests: Eldorado, Inyo, Lassen, Modoc, Plumas, Sequoia, Sierra, Stanislaus and Tahoe National Forests and Lake Tahoe Basin Management Unit, Several Counties, CA and Douglas, Esmeralda, Mineral Counties, NV, *Wait Period Ends:* 01/08/2008, *Contact:* Diana Craig 707–562–8737.

EIS No. 20070544, Final EIS, AFS, OR, Invasive Plant Treatments within the Deschutes and Ochoco National Forests and the Crooked River National Grassland, Reduction of Invasive Plant Infestation and Protection of Uninfested Areas, Implementation, Several Cos. OR, *Wait Period Ends:* 02/11/2008, Contact: Beth Peer 541–383–5300.

EIS No. 20070545, Draft EIS, IBR, ND, Northwest Area Water Supply Project, To Construct a Biota Water Treatment Plant, Lake Sakakawea, Missouri River Basin to Hudson Bay Basin, ND, *Comment Period Ends:* 02/11/2008, *Contact:* Alice Waters 701–221–1206.

EIS No. 20070546, Final EIS, IBR, 00, Red River Valley Water Supply Project, Development and Delivery of a Bulk Water Supply to meet Long-Term Water Needs of the Red River Valley, Implementation, ND and MN, *Wait Period Ends:* 01/28/2008, *Contact:* Todd Dixon 202–513–0675.

Amended Notices

EIS No. 20070416, Draft EIS, BLM, WY, Moxa Arch Area Infill Gas Development Project, Drill, Extract, Remove, and Market Natural Gas Under Valid Existing Oil and Gas Leases, Approval, Right-of-Way Grants and U.S. Army COE Section 404 Permit(s), Lincoln, Uinta and Sweetwater Counties, WY, *Comment Period Ends:* 01/10/2008, *Contact:* Michele Easley 307–828–4524.

Revision of FR Notice Published 10/12/2007: Extending Comment Period from 12/11/2007 to 01/10/2008.

Dated: December 21, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–25194 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–1053; FRL–8511–9]

Board of Scientific Counselors, National Exposure Research Laboratory (NERL) Standing Subcommittee Meeting—2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) National Exposure Research Laboratory (NERL) Standing Subcommittee.

DATES: The meeting (a teleconference call) will be held on Friday, January 18, 2008 from 1 p.m. to 3 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the conference call will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the meeting will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Susan Peterson, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–1053, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2007–1053.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–1053.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, National Exposure Research Laboratory (NERL) Standing Subcommittee—2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2007–1053.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–1053.

Note: This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–1053. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors, National Exposure Research Laboratory (NERL) Standing Subcommittee—2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number

for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Susan Peterson, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–1077; via fax at: (202) 565–2911; or via e-mail at: *peterson.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Participation in the meeting will be by teleconference only—meeting rooms will not be used. Members of the public who wish to obtain the call-in number and access code to participate in the conference call may contact Susan Peterson, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above, by 4 working days prior to the conference call.

The purpose of the meeting is to discuss the subcommittee's input to their draft letter report and follow-up from their December 11–12, 2007 face-to-face meeting. Proposed agenda items for the conference call include, but are not limited to: Review of December 11–12, 2007 face-to-face meeting, discussion of the charge to subcommittee, and subcommittee responses to the charge questions for the draft letter report. The conference call is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Susan Peterson at (202) 564–1077 or *peterson.susan@epa.gov*. To request accommodation of a disability, please contact Susan Peterson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 18, 2007.

Connie Bosma,

Acting Director, Office of Science Policy.

[FR Doc. E7–25284 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007-1174; FRL–8344–9]

Inert Ingredients: Updates to Lists of Inert Ingredients Permitted in Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has released on its website updates to the listings of inert ingredients permitted in pesticide products applied to non-food sites, including those permitted for use in minimum risk pesticides exempted under FIFRA Section 25(b) and those eligible for USDA's National Organic Program. The lists were last updated in 2004.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; fax number: (703) 605–0781; e-mail address: *angulo.karen@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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. 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 a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1174. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility 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*.

II. What Action is the Agency Taking?

EPA has released on its website updates to the listing of inert ingredients permitted in pesticide products. The lists were last updated in 2004. The website address for the updated lists is http://www.epa.gov/opprd001/inerts/lists.html.

EPA's website now provides a list of inert ingredients permitted in pesticide products applied to non-food sites (e.g., ornamental plants, highway right-of-ways, rodent control, etc.). This list has been updated with new inert ingredients approved for use in non-food pesticide products since 2004. The website also provides directions for finding in the electronic Code of Federal Regulations (e-CFR) tolerances and tolerance exemptions for inert ingredients that may be used in pesticide products applied to food commodities. It is important to note that only inert ingredients with tolerances or tolerance exemptions found in the Code of Federal Regulations may be used in food-use pesticide products, and must be in accordance with the uses and limitations (if any).

The Agency's website update includes a list of inert ingredients that may be used in minimum risk pesticides exempted under FIFRA Section 25(b). Stakeholders should now find it easier to locate 25(b)-eligible inert ingredients (called "4A" under an old EPA policy; see Pesticide Registration Notice 2000-6; http://www.epa.gov/PR_Notices).

In addition, EPA's website is providing an easy way for stakeholders to find inert ingredients that are eligible for use under USDA's National Organic

Program (NOP). EPA's website now provides access to a consolidated list of inert ingredients eligible for the NOP through links to USDA's NOP website. In the past, stakeholders had to search the inert ingredient list on EPA's website for NOP-eligible inert ingredients (i.e., inert ingredients considered to be "List 4" under an old policy). It is important to note that all matters of policy concerning the eligibility of inert ingredients for use in the NOP are determined by USDA. EPA's role is to assist USDA by assuring that USDA's policies are implemented with regard to organic claims made on registered pesticide product labeling.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 13, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–25088 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2004–0109; FRL–8346–5]

Draft List of Initial Pesticide Active Ingredients and Pesticide Inerts to be Considered for Screening under the Federal Food, Drug, and Cosmetic Act; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; third extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of June 18, 2007, concerning the draft list of the first group of chemicals that will be screened in the Agency's Endocrine Disruptor Screening Program (EDSP). The draft list was produced using the approach described in the September 2005 notice, and includes chemicals that the Agency, in its discretion, has decided should be tested first, based upon exposure potential.The June 18, 2007 **Federal Register** notice provided for a 90–day public comment period. EPA extended the comment period an additional 60 days in the **Federal Register** of September 12, 2007, and later extended the comment period for 45 days in the **Federal Register** of November 15, 2007. This document is extending the comment period for a third time for an additional 42 days. The new comment period closes February 11, 2008.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2004–0109 must be received on or before February 11, 2008.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of June 18, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Phillips, Office of Science Coordination and Policy (7203M), Office of Prevention, Pesticides, and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–1264; e-mail address: *phillips.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the June 18, 2007 notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

When preparing comments follow the procedures and suggestions given in Unit I.B. of the **SUPPLEMENTARY INFORMATION** of the June 18, 2007**Federal Register** notice.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the public docket, please follow the detailed instructions as provided in Unit I.B.3. of the **SUPPLEMENTARY INFORMATION** of the June 18, 2007 **Federal Register** notice. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Action is EPA Taking?

This document extends the public comment period that was originally established in the **Federal Register** of June 18, 2007 (72 FR 33486) (FRL–8129–3), and was extended in the **Federal Register** of September 12, 2007 (72 FR 52108) (FRL–8146–3), and November 15, 2007 (72 FR 64218) (FR–8156–9).In the **Federal Register** notice of June 18, 2007, EPA announced the draft list of the first group of chemicals that will be screened in the Agency's EDSP. The draft list was developed using the approach described in the **Federal Register** notice of September 27, 2005 (70 FR 56449) (FRL–7716–9). As required by the Federal Food, Drug, and Cosmetic Act (FFDCA), all pesticides must eventually be screened under the EDSP, and this first group is simply a starting point. Because EPA developed this draft list of chemicals based upon exposure potential, it should not be construed as a list of known or likely endocrine disruptors, and it would be inappropriate to do so. Following consideration of comments on this draft list of chemicals, EPA will issue a **Federal Register** notice containing the final list of chemicals. EPA is hereby extending the comment period, which was set to end on December 31, 2007 to February 11, 2008.

III. What is the Agency's Authority for Taking this Action?

Section 408(p) of FFDCA requires EPA to "develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as [EPA] may designate." (21 U.S.C. 346a(p)). The statute generally requires EPA to "provide for the testing of all pesticide chemicals." (21 U.S.C. 346a(p)(3)). However, EPA is authorized to exempt a chemical, by order upon a determination that "the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen." (21 U.S.C. 346a(p)(4)). "Pesticide chemical" is defined as "any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide." (21 U.S.C. 321(q)(1)).

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides.

Dated: December 19, 2007.

James B. Gulliford.

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–25106 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0794; FRL–8345–6]

Review of Chemical Proposals for Addition under the Stockholm Convention on Persistent Organic Pollutants; Solicitation of Information for the Development of Risk Management Evaluations and Risk Profiles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice solicits information relevant to the development of risk management evaluations pursuant to the Stockholm Convention on Persistent Organic Pollutants (POPs) (hereafter Convention) for the following chemicals which are being reviewed for possible addition to the Convention's Annexes A, B, and/or C as POPs: Commercial octabromodiphenyl ether (c-octaBDE) (CAS No. 32536–52–0), pentachlorobenzene (PeCB) (CAS No. 608–93–5), alpha–hexachlorocyclohexane (alpha–HCH) (CAS No. 319–84–6), and beta–hexachlorocyclohexane (beta–HCH) (CAS No. 319–85–7). Additionally, this notice solicits additional information relevant to the development of the risk profile pursuant to the Convention for the following chemical which is also being reviewed for possible addition to the Convention's Annexes A, B, and/or C as POPs: Short–chained chlorinated paraffins (SCCP) (CAS No. 85535–84–8). EPA is issuing this notice to alert interested and potentially affected persons of these proposals and the status of their review under the Convention, and to encourage such persons to provide information relevant to the development of risk profiles and risk management evaluations under the Convention.

DATES: Comments must be received on or before January 22, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0794, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on–line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2006–0794. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0794. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Amy Breedlove, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564-9823; e-mail address: *breedlove.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to chemical substance and pesticide manufacturers, importers, and processors. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that

you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Procedures for preparing confidential information related to pesticides and industrial chemicals.* Procedures for preparing confidential information related to pesticides and industrial chemicals are in Unit I.B.1. Send confidential information about industrial chemicals using the submission procedures under **ADDRESSES**. Send confidential information about pesticides to: Janice K. Jensen, Office of Pesticide Programs (7506P), Environmental Protection, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or hand delivered to: Janice K. Jensen, Government and International Services Branch, Office of Pesticide Programs, Potomac Yard South, 2777 S. Crystal Dr., Rm. #S11315, Arlington, VA 22202. If you have CBI pesticide information to submit or questions about delivering CBI to Janice, please contact her at *jensen.janice@epa.gov*.

3. *Incorporation of comments in U.S. response.* Commenters should note that none of the CBI information received by EPA will be forwarded to the Stockholm Convention Secretariat (hereafter Secretariat). Information from submissions containing CBI may be considered by EPA in the development of the U.S. response. If commenters wish EPA to consider incorporating information in documents with CBI as part of the U.S. response, commenters should provide a sanitized copy of the documents. Sanitized copies must be complete except that all information claimed as CBI is deleted. EPA will place sanitized copies in the public docket.

4. *CD-ROMs.* Please note that due to incoming mail being x-rayed, CD-ROM's tend to melt and become unusable. It is recommended that they not be sent through the mail.

5. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

The Agency is issuing this notice to increase awareness of the proposals concerning the chemicals subject to this notice, and to provide interested persons with an opportunity to provide relevant information to EPA for its consideration in the development of the United States' submissions relevant to Convention Annexes E and F for the chemical substances under review at this time for possible addition to Annexes A, B, and/or C of the Convention. On December 3 and 4, 2007, the Secretariat invited Parties and observers to submit to the POPs Review Committee (POPRC) (via the Secretariat) information specified in Annex E and Annex F of the Convention, and other relevant information (the Secretariat's invitation letters can be found at *http://www.pops.int/documents/meetings/poprc/docs/comments.htm*). The United States is an observer. EPA is requesting that any information be submitted to EPA no later than January 22, 2008. The United States intends to make a submission by February 4, 2008, to meet the Secretariat's deadline. In addition, EPA will consider the information during its review of the draft risk management evaluations developed by ad hoc working groups established under POPRC in the coming months. The chemical listing process is discussed in more detail in Unit II.B. Individuals or organizations that wish to submit information directly to POPRC via the Secretariat should work through their respective observer organizations, if any.

B. The Convention Chemical Listing Process

The Convention is a multilateral environmental agreement designed to protect human health and the environment from persistent organic pollutants. The United States signed the Convention in May of 2001 but has not yet ratified it (and thus is not a Party to the Convention). The United States currently participates as an observer in Convention activities. The Convention, which went into force in May of 2004, requires the Parties to reduce or eliminate the production and use of a number of intentionally produced POPs used as pesticides or industrial chemicals. The Convention also calls upon Parties to take certain specified measures to reduce releases of certain unintentionally produced POPs with the goal of their continuing minimization and, where feasible, ultimate elimination. The Convention also imposes controls on the handling of POPs wastes and on trade in POPs chemicals.

In addition, there are specific science-based procedures that Parties to the Convention must use when considering the addition of new chemicals to the Convention's Annexes. Article 8 of the Convention provides the process that must be followed for listing new chemicals in Annexes A, B, and/or C, and is described in summary in this unit with certain associated implementation procedures being followed by POPRC:

1. A Party to the Convention may submit a proposal to the Secretariat for listing a chemical in Annexes A, B and/or C of the Convention. The proposal shall contain the information specified in Annex D of the Convention ("Information Requirements and Screening Criteria").

2. The Secretariat verifies that the proposal contains the information specified in Annex D of the Convention, and if the Secretariat is satisfied, the proposal is forwarded to POPRC.

3. POPRC examines the proposal, applies the Convention Annex D screening criteria, and determines whether the screening criteria have been fulfilled.

4. If POPRC is satisfied that the criteria have been fulfilled, POPRC, through the Secretariat, will make the proposal and POPRC's evaluation available to all Parties and observers and invite them to submit the information specified in Annex E ("Information Requirements for the Risk Profiles") of the Convention.

5. Draft risk profiles are prepared by ad hoc working groups under POPRC in accordance with Annex E of the

Convention for consideration by POPRC and made available to all Parties and observers to collect technical comments.

6. POPRC reviews the draft risk profile and technical comments, completes the risk profile, and determines whether the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted.

7. If POPRC determines that action is warranted, then POPRC, through the Secretariat, will ask Parties and observers to provide information specified in Annex F ("Information on Socio-Economic Considerations") of the Convention to aid in the development of risk management evaluations (that include an analysis of possible control measures).

8. Draft risk management evaluations are prepared by ad hoc working groups under POPRC in accordance with Annex F of the Convention for consideration by POPRC and made available to Parties and observers to collect technical comments.

9. POPRC reviews the draft risk management evaluation prepared by the ad hoc working group and completes it.

10. On the basis of the risk profile and the risk management evaluation for each chemical, POPRC recommends whether the chemical should be considered by the Conference of the Parties (COP) for listing in Convention Annexes A, B, and/or C. (The type(s) of control measure(s) that might be introduced for a specific chemical would dictate whether the chemical would be listed in Annex A (elimination), Annex B (restriction), and/or Annex C (unintentional production) of the Convention.)

11. The COP makes the final decision on listing the chemical in Annexes A, B, and/or C of the Convention.

EPA anticipates issuing **Federal Register** notices soliciting information, when appropriate, during the listing process.

C. What Information is Being Requested for Risk Management Evaluations?

For the chemicals currently at the risk management stage (see Unit II.G.), EPA is seeking information that is supplementary to the information provided during previous stages in the review process; i.e., information relevant to Convention Annexes D and E; the proposals, evaluations and risk profiles. These documents, as well as the Secretariat's letter soliciting information, are available at the Convention website (*http://www.pops.int/documents/meetings/poprc/poprc.htm*). In addition, POPRC identified specific areas where information and data relevant to the chemicals under consideration would be particularly useful for the future process. This information is discussed in Unit II.G.

When providing information, keep in mind that the possible control measures under the Convention include, among others, the prohibition or severe restriction of production and use. Therefore, the provision of accurate, high-quality information, as described in this notice and in the Secretariat letter soliciting information, is a priority for POPRC's evaluation.

Commenters are invited to provide information they deem relevant to POPRC's development of the risk management evaluation, such as that specified in Annex F of the Convention and other related information, as described in this unit and in Unit II.G. Provide summary information and relevant references for:

1. Efficacy and efficiency of possible control measures in meeting risk reduction goals:

i. Describe possible control measures.

ii. Technical feasibility.

iii. Costs, including environmental and health costs.

2. Alternatives (products and processes):

i. Describe alternatives.

ii. Technical feasibility.

iii. Costs, including environmental and health costs.

iv. Efficacy.

v. Risk.

vi. Availability.

vii. Accessibility.

3. Positive and/or negative impacts on society of implementing possible control measures:

i. Health, including public, environmental and occupational health.

ii. Agriculture, including aquaculture and forestry.

iii. Biota (biodiversity).

iv. Economic aspects.

v. Movement towards sustainable development.

vi. Social costs.

4. Waste and disposal implications (in particular, obsolete stocks of pesticides and clean-up of contaminated sites):

i. Technical feasibility.

ii. Cost.

5. Access to information and public education.

6. Status of control and monitoring capacity.

7. Any national or regional control actions taken, including information on alternatives, and other relevant risk management information.

8. Other relevant information for the risk management evaluation.

9. Other information requested by POPRC.

POPRC would also like to collect more Convention Annex E information and has requested additional or updated information for the following:

- Production data, including quantity and location.
- Uses.
- Releases, such as discharges, losses and emissions.

D. What Information is Being Requested for Risk Profiles?

For chemicals at the risk profile stage (see Unit II.H.), EPA is seeking information that is supplementary to the information in the proposals on the chemicals and POPRC's evaluation of the proposals against the Convention's Annex D screening criteria. The proposals and the evaluations, as well as the Secretariat's letter inviting Parties and observers to provide information, are available at the Convention website: *http://www.pops.int/documents/meetings/poprc/poprc.htm.*

Commenters are invited to provide information they deem relevant to POPRC's development of risk profiles, such as that specified in Annex E of the Convention and other related information, as described in this unit and in Unit II.H.:

1. Sources, including as appropriate:

i. Production data, including quantity and location.

ii. Uses.

iii. Releases, such as discharges, losses and emissions.

2. Hazard assessment for the endpoint(s) of concern (as identified in the proposals and/or POPRC's evaluation of the proposals against the screening criteria of Convention Annex D), including a consideration of toxicological interactions involving multiple chemicals.

3. Environmental fate, including data and information on the chemical and physical properties of a chemical as well as its persistence and how they are linked to its environmental transport, transfer within and between environmental compartments, degradation and transformation to other chemicals.

4. Monitoring data.

5. Exposure in local areas and, in particular, as a result of long range environmental transport, and including information regarding bio-availability.

E. How Should the Information be Provided?

1. EPA requests that commenters, where possible, use the questionnaire developed by POPRC to provide their information. The questionnaire with

explanatory notes can be found on the Convention website at: *http://www.pops.int/documents/meetings/poprc/request.htm*. Information does not need to be provided for each item in the questionnaire. The explanatory notes under each item have been developed by POPRC and are meant to guide and assist the providers of information. Commenters are requested to include clear and precise references for all sources. Without the exact source of the information, POPRC will not be able to use the information. If the information is not readily available in the public literature, commenters may consider attaching the original source of the information to their submission. Commenters should indicate clearly on the questionnaire which chemical the information concerns and use one questionnaire per chemical. If for some reason the questionnaire does not provide an adequate mechanism for a type of comment or information, EPA requests that such comment or information be submitted using a similar format.

2. Although POPRC has developed provisional arrangements for the treatment of confidential information, as mentioned in Unit I.B.3., no CBI will be forwarded to the Secretariat. EPA will, however, consider such information in development of the U.S. response to the Secretariat. Instructions on where and how to submit comments and confidential information can be found in Unit I.B.2. and 3. and **ADDRESSES**.

3. Anyone wishing to have an opportunity to communicate with EPA orally on this issue should consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

F. What is the Agency's Authority for Taking this Action?

EPA is requesting comment and information under the authority of section 102(2)(F) of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, which directs all agencies of the Federal Government to "[r]ecognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions and programs designed to maximize cooperation in anticipating and preventing a decline in the quality of mankind's world environment." Section 17(d) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) also provides additional support in that it directs the Administrator of the EPA "in cooperation with the Department of State and any other appropriate Federal agency, [to] participate and cooperate in any international efforts to develop improved pesticide research and regulations."

G. What is the Status of Chemicals at the Risk Management Stage?

The second meeting of POPRC took place on November 6–10, 2006, in Geneva, Switzerland. EPA provided notice of this meeting and POPRC's intention to consider proposals for the five chemicals listed in this unit in the **Federal Register** notice of October 6, 2006 (71 FR 59108) (FRL–8099–2). Information about the November 2006 POPRC meeting is available at the Convention website *http://www.pops.int*. POPRC had before it five proposals which were submitted for its consideration by Parties to the Convention for addition to Annexes A, B, and/or C of the Convention.

1. Two of the five proposals were for industrial chemicals:

i. Octabromodiphenyl ether.

ii. Short-chained chlorinated paraffins.

2. One of the five proposals was for a chemical with both industrial and pesticidal uses: Pentachlorobenzene.

3. Two of the five proposals were for pesticides:

i. Alpha-hexachlorocyclohexane.

ii. Beta-hexachlorocyclohexane.

In accordance with the procedure in Article 8 of the Convention and discussed in Unit II.B., during the November 2006 meeting, POPRC examined the proposals and applied the screening criteria in Annex D of the Convention. With regard to all five chemicals, POPRC decided that it was satisfied that the screening criteria had been fulfilled and, that further work should therefore be undertaken to develop risk profiles. Therefore, POPRC, through the Secretariat, on December 8, 2006, requested that Parties and observers provide information relevant to POPRC's development of risk profiles for the five chemicals listed in this unit. In addition to the Convention Annex E information discussed in Unit II.D., POPRC determined, and the Secretariat requested in their December 2006 letter, that additional information on the environmental fate of SCCP or information relating to their properties which would enable a fuller evaluation of environmental fate as being particularly useful for the future process. In the **Federal Register** notice of December 20, 2006 (71 FR 76325) (FRL–8109–1), EPA invited commenters to provide EPA with information for the risk profiles.

Using the information in the proposal and information submitted by Parties and observers in response to the Secretariat's request in December 2006 in accordance with paragraph 4(a) of Article 8 of the Convention, risk profiles were prepared for each of the chemicals to, as noted in Convention Annex E, "evaluate whether the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted." The risk profile must further evaluate and elaborate on the information referred to in Annex D of the Convention and include, as far as possible, the information listed in Convention Annex E. A draft outline of the risk profile has been developed by POPRC, available at *http://www.pops.int/documents/meetings/poprc/request.htm*. The draft risk profiles developed by ad hoc working groups established by POPRC were presented in November 2007 at the third meeting of the POPRC (POPRC 3) for consideration.

In accordance with the procedure in Article 8 of the Convention and described Unit II.B., POPRC 3 examined the risk profiles and decided that the chemicals, except for SCCP, are likely, as a result of their long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted. At that meeting, POPRC 3 also examined the draft risk profile for SCCP, but considered that the information available was insufficient to support the Convention Annex E-related decision on likely significant adverse effects from long-range environmental transport and did not approve the risk profile for the chemical. Therefore, POPRC 3 agreed to defer its final Convention Annex E- related decision on SCCP to its fourth meeting. POPRC, through the Secretariat, as described in Unit II.H., has asked for additional information for the SCCP risk profile.

The next step in the process for substances found by POPRC to be likely, as a result of their long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted is for POPRC to prepare a risk management evaluation that includes an analysis of possible control measures, which as noted in Annex F ("Information on Socio-Economic Considerations") of the Convention should encompass "the full range of options, including management and elimination." The risk management evaluation shall further evaluate and elaborate on the information referred to in Annexes D and E of the Convention. Relevant information should include socio-economic considerations

associated with possible control measures (see Unit II.C.) and should reflect due regard for the differing capabilities and conditions among the Parties. A draft outline of the risk management evaluation has been developed by POPRC and is available at *http://www.pops.int/documents/meetings/poprc/request.htm*. The risk management evaluation will take into account information to be submitted by Parties and observers as requested by POPRC through the Secretariat on December 4, 2007. Draft risk management evaluations developed by ad hoc working groups established under POPRC will be considered by the full POPRC and proceed as discussed in Unit II.B.

In addition to the Convention Annex F information discussed in Unit II.C., POPRC 3 identified the following specific areas where information and data relevant to the chemicals under consideration would be particularly useful for the future process.

1. *Commercial octabromodiphenyl ether (c-octaBDE).* When evaluating commercial c-octaBDE against the criteria contained in Annex D of the Convention and during the preparation of the risk profile as described in Annex E of the Convention, there was a further need identified for information on octabromodiphenyl ether (octaBDE) and nonabromodiphenyl ether (nonaBDE) related to risk estimations and bioaccumulation, including the environmental and health relevance of debromination. The POPRC 3 invited the intersessional working group on c-octaBDE to explore the information and if appropriate revise the risk profile for consideration by POPRC at its fourth meeting. Therefore, in addition to Convention Annex F information, POPRC is seeking:

i. Information on octa-BDE and nona-BDE related to risk estimation and bioaccumulation.

ii. Information on quantitative assessments of the role of debromination.

iii. Toxicological and ecotoxicological information for the commercial mixture and its components.

Further, EPA notes that:

• The POPRC 3 Convention Annex E/risk profile–related decision on c-octaBDE actually was based on the hexabromodiphenyl ether (hexaBDE) through nonaBDE congeners that are components of the commercial mixture.

• The POPRC 3 Convention Annex F/risk management-related recommendation that related to the commercial pentabromodiphenyl ether risk management evaluation actually covered the tetrabromodiphenyl ether and pentabromodiphenyl ether congener components of that commercial mixture. (These decisions will be reflected in the POPRC 3 final report which will be available at: *http://www.pops.int/documents/meetings* once it is finalized.)

Given this history, EPA believes there is a reasonable possibility that the POPRC will consider recommending the listing of the component congeners of c-octaBDE at its next meeting in October 2008 (POPRC 4). As such, EPA believes the type of information described in Annex F of the Convention (as described in Unit II.C.) relating to the hexaBDE through nonaBDE congeners that are components of the commercial mixture would be of use to POPRC, and is interested in information in this regard to inform its decisions and recommendations at POPRC 4.

2. *Pentachlorobenzene (PeCB).* At its third meeting of POPRC, it was noted that there were information gaps in the risk profile regarding environmental burden caused by intentional use and unintentional releases of PeCB. It was discussed that the comparison of exposure and effect data would provide a more complete basis for decisionmaking on the relative risk posed by a substance and such information is particularly important with a substance like PeCB that has both intended uses and unintentional sources. Quantitative data would provide useful understanding of the toxicity of the chemical and enable a clearer estimation of the costs and benefits that might be expected from listing it. Therefore, in addition to seeking information under the headings listed in Convention Annex F information, POPRC is seeking:

i. Information related to environmental burden caused by intentional use of PeCB.

ii. Information related to environmental burden caused by unintentional releases of PeCB.

H. What is the Status of the Chemical at the Risk Profile Stage?

In accordance with paragraph 7(a) of Article 8 of the Convention POPRC at its third meeting in November 2007 examined the draft risk profile for SCCP and considered that the information available was insufficient to support a decision on the risk profile. Therefore, POPRC agreed to defer its final decision to its fourth meeting and in its letter of December 3, 2007, the Secretariat invited Parties and observers to submit to the Secretariat additional information specified in Annex E of the Convention, particularly information on toxicity and ecotoxicity.

In addition, EPA is interested in receiving other information that would help support a determination of whether SCCP are likely, as a result of long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted. In particular, EPA would be interested in comparisons of toxicity or ecotoxicity data with detected or predicted levels of the substances resulting or anticipated from long-range environmental transport.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: December 20, 2007.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. E7–25226 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0369; FRL–8343–3]

Chloroneb; Notice of Receipt of Requests to Voluntarily Terminate Certain Uses of Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily terminate certain uses of its products containing the pesticide chloroneb. The requests would terminate chloroneb's use on residential lawns and turf, as well as on lawns and turf at parks and schools. The requests would not terminate the last chloroneb products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 28, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPP–2004–0369, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2004–0369. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025; fax number: (703) 308–8005; e-mail address: *livingston.wilhelmena@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from registrants, The Andersons Lawn and Fertilizer Division, Inc., and PBI/Gordon Corporation to terminate certain uses of three chloroneb product registrations. Chloroneb is a fungicide currently registered for use on commercial turf (golf course tees, greens, collars, aprons, and spot treatment on fairways, as well as athletic fields used only by professional athletes), and ornamentals. In letters dated January 19, 2007, and January 3, 2007, The Andersons Lawn and Fertilizer Division, Inc., and PBI/Gordon Corporation requested EPA to terminate certain uses of pesticide product registrations identified in Table 1 of Unit III. Specifically, the registrants' requests to revise their labels to reflect the cancellation order published in the **Federal Register** issue of August 16, 2006 (71 FR 47213) (FRL–8083–2), as requested by the technical registrant, Kincaid Inc., and accepted by the

Agency to terminate the use of chloroneb on residential lawns and turf, as well as on lawns and turf of parks and schools. The action on the registrants' requests will not terminate the last chloroneb products registered in the United States.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to terminate certain uses of chloroneb product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The chloroneb registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued terminating the affected registrations.

TABLE 1.—CHLORONEB PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR TERMINATION OF CERTAIN USES

Registration Number	Product Name	Company
2217–692	Teremec SP Turf Fungicide	PBI/Gordon Corporation
9198–182	Proturf Fungicide II	The Andersons Lawn Fertilizer Division, Inc.

TABLE 1.—CHLORONEB PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR TERMINATION OF CERTAIN USES—Continued

Registration Number	Product Name	Company
9198–204	9198–182	The Andersons Lawn Fertilizer Division, Inc.

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY TERMINATION OF CERTAIN USES

EPA Company Number	Company Name and Address
2217	PBI/Gordon Corporation 1217 West 12th St. P.O. Box 014090 Kansas City, Missouri 64101–0090
9198	The Andersons Lawn Fertilizer Division, Inc. P.O. Box 119 Maumee, Ohio 43537

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Chloroneb

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before January 28, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the termination action.

In any order issued in response to these requests for termination of certain uses of a product registration, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 2 of Unit III.: Registrants may sell and distribute existing stocks for 1 year from the date of the use termination request. The product may be sold, distributed, and used by people other than the registrant until existing stocks have been exhausted, provided that such sale, distribution, and use complies with the EPA-approved label and labeling of the product.

If the request for voluntary use termination is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 13, 2007.

Steve Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–25101 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–2007–0244; FRL–8345–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective by June 25, 2008 or January 28, 2008 for registrations for which the registrant requested a waiver of the 180–day comment period. The Agency will consider withdrawal requests postmarked no later than June 25, 2008 or January 28, 2008, whichever is applicable. Comments must be received on or before June 25, 2008 or January 28, 2008, for those registrations where the 180–day comment period has been waived.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before June 25, 2008 or January 28, 2008 for registrations for which the registrant requested a waiver of the 180–day comment period.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0244, by one of the following methods:

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, 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 a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2007–0244. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility 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.*

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDES

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
000100–00889	Mertect 340-F Fungicide	Thiabendazole	Sugar Beet
000100–00999	Paclobutrazol Technical	Paclobutrazol	Residential Turf Uses
000100–01014	Paclobutrazol 2SC	Paclobutrazol	Residential Turf Uses
000464–00688	UCARCIDE 25 Antimicrobial	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control
000464–00690	UCARCIDE 225 Antimicrobial	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control
000464–00691	UCARCIDE 250 Antimicrobial	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control
000464–00692	UCARCIDE 45 Antimicrobial	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control
000464–00693	UCARCIDE 15 Antimicrobial	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control
000464–00700	UCARCIDE 14 Antimicrobial	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control
000464–00702	UCARCIDE 42 Antimicrobial	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control
000464–00704	UCARCIDE 50 Antimicrobial	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDES—Continued

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
000464–00707	AQUACAR 504 Water Treatment Microbiocide	Glutaraldehyde	Once-Through Cooling Water Systems and Macrofouling Control
000829–00286	SA-50 Dithane M-45	Mancozeb	Pachysandra
005481–00526	Thimet 10-G	Phorate	Wheat
005481–00527	Thimet 15-G	Phorate	Wheat
010163–00219	MSR 50% Concentrate	Oxydemeton-methyl	Sorghum
010163 01–01–6322	MSR Spray Concentrate	Oxydemeton-methyl	Sorghum
019713–00497	Drexel Acephate 75SP	Acephate	Trees, Shrubs, Flowers
033560 03–35–6043	Bareground 21	Sodium Chlorate	Ditch Bank/Right of WAy
033560 03–35–6046	Weed and Grass Killer	Sodium Chlorate	Ditch Bank/Right of WAy
033560 03–35–6047	Ureabor	Sodium Chlorate	Ditch Bank/Right of WAy
033560 03–35–6048	Monbor-Chlorate	Sodium Chlorate	Ditch Bank/Right of WAy
043410–00033	CHEM-TEK 100	Thiabendazole	Sugar Beet
043813–00016	WOCOSEN 250 EC	Propiconzole	Apparel, Furnishings (except shower curtains), and carpet fibers
043813–00019	WOCOSEN 100SL	Propiconzole	Apparel, Furnishings (except shower curtains), and carpet fibers
043813–00037	WOCOSEN 500SL	Propiconzole	Apparel, Furnishings (except shower curtains), and carpet fibers
043813–00041	WOCOSEN 150 EC	Propiconzole	Apparel, Furnishings (except shower curtains), and carpet fibers
043813–00043	WOCOSEN 450 EC	Propiconzole	Apparel, Furnishings (except shower curtains), and carpet fibers
066330–00297	Iprodione 4L AG	Iprodione	Rice
066330–00354	Acephate 75 SP	Acephate	Cotton Seed Hopper Box Treatment
070506–00001	Acephate 75 WSP	Acephate	Hopper Box Cotton Seed Treatment
070506–00002	Acephate 90 WSP	Acephate	Hopper Box Cotton Seed Treatment
073220–00012	Quali-Pro T-Nex AQ	Trinexapac-ethyl	Perennial Ryegrass Grown for Seed
083504–00001	Fosetyl-Al Technical	Fosetyl-Al	Tobacco

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 25, 2008 or January 28, 2008 for registrations for which the registrant requested a waiver of the 180–day comment period to discuss withdrawal of the application for amendment. This time period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion. A request to waive the 180–day comment period has been received for the following registrations: 829-286; 19713-497; 43410-33; 70506-1; 70506-2,

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE PRODUCTS

EPA Company no.	Company Name and Address
000100	Syngenta Crop Protction, Inc., ATTN: Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419.
000464	The Dow Chemical Company, Agent for: Dow Chemical Co., 1500 East Lake Cook Road, Buffalo Grove, IL 60089.
000829	Southern Agricultural Insecticides, Inc., P.O. Box 218, Palmetto, FL 34220.
005481	AMVAC Chemical Corporation, d/b/a AMVAC, 4695 MaCarthur Court, Suite 1250, Newport Beach, CA 92660.
010163	GOWAN Co., P.O. Box 5569, Yuma, AZ 85366.
019713	Drexel Chemical Co., 1700 Channel Avenue, Memphis, TN 38106.
033560	Pro Serve, Inc., 400 East Brooks Rd., Memphis, TN 38109.
043410	Agri-Chem Consulting, Inc., 27536 CR 561, Tavares, FL 32778.
043813	Janssen Pharmaceutica Inc., Plant Protection Division, 1125 Trenton-Harbourton Rd., Titusville, NJ 08560.
066330	Arysta Lifescience North America Corporation, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
070506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
073220	Tab Regulatory Consulting, LLC, Agent for: Farmsaver.com, LLC, P.O. Box 805, Collierville, TN 38027.
083504	Kerley Trading, Inc., P.O. Box 15627, Phoenix, AZ 85060.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to John Jamula at the address listed under **FOR FURTHER INFORMATION CONTACT.** The Agency will consider written withdrawal requests postmarked no later than June 25, 2008.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 18, 2007.

Kathryn Bouve,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E7–25285 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007-1008; FRL–8347–4]

Pesticides; Draft Guidance for Pesticide Registrants on Label Statements Regarding Third-Party Endorsements and Cause Marketing Claims; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of October 31, 2007, announcing the availability of and seeking comment on the draft Pesticide Registration Notice (PR Notice) entitled "Label Statements Regarding Third-Party Endorsements & Cause Marketing Claims." This document is extending the comment period for 90 days, from December 31, 2007, to March 27, 2008.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1008 must be received on or before March 27, 2008.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of October 31, 2007.

FOR FURTHER INFORMATION CONTACT: Nicole Zinn, Immediate Office, (7501P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-308-7076; e-mail address: *zinn.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

When preparing comments follow the procedures and suggestions given in Unit I.B of the **SUPPLEMENTARY INFORMATION** of the October 31, 2007 **Federal Register** document.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the public docket, please follow the detailed instructions as provided in **ADDRESSES** and Unit I.B of the **SUPPLEMENTARY INFORMATION** of the October 31, 2007 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of October 31, 2007, 72 FR 61638 (FRL–8152–6). In that document, EPA announced the availability of and sought comment on the draft Pesticide Registration Notice (PR Notice) entitled "Label Statements Regarding Third-Party Endorsements & Cause Marketing Claims." In response to requests from multiple entities, EPA is hereby extending the comment period, which was set to end on December 31, 2007, to March 27, 2008.

III. What is the Agency's Authority for Taking this Action?

This action is taken as provided in Section 21(c) of the Federal, Insecticide, Fungicide, and Rodenticide Act, which reads:

In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide product registration or any other actions authorized under this subchapter, the Administrator may, at the Administrator's discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as the Administrator deems proper.

List of Subjects

Environmental protection, Pesticides and pests, Administrative practice and procedure, Agricultural commodities.

Dated: December 19, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7–25089 Filed 12–28–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8511–8; Docket ID No. EPA–HQ–ORD–2007–1141]

Draft Toxicological Review of Acrylamide: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period.

SUMMARY: The EPA is announcing a public comment period to review the final draft document titled, "Toxicological Review of Acrylamide: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–07/009), related to the human health assessment for acrylamide. The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 60-day public comment period begins on December 28, 2007 and ends February 26, 2008. Technical comments should be in writing and must be received by EPA by February 26, 2008.

ADDRESSES: The draft "Draft Toxicological Review of Acrylamide: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–07/009) is available primarily via the Internet on NCEA's home page under the Recent Additions menu at *www.epa.gov/ncea*. A limited number of paper copies are available by contacting the IRIS Hotline at (202) 566–1676, (202) 566–1749 (facsimile), or *hotline.iris@epa.gov*. If you are requesting a paper copy, please provide your name, mailing address, the document title, and the EPA number of the requested publication.

Technical comments may be submitted electronically via *www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

For general information about the IRIS assessment process, terms, and existing values go to NCEA's home page via the Internet and click on "IRIS" in the Quick Finder section at *www.epa.gov/ncea* (or go to *http://www.epa.gov/iriswebp/iris/index.html*). For information on the status and estimated completion dates of the Toxicological Review of Acrylamide go to the IRIS home page and click on "IRIS Track" in the left hand column (or go to: *http://cfpub.epa.gov/iristrac/index.cfm)*.

If you have questions or need information regarding communications and outreach, contact Linda Tuxen, National Center for Environmental Assessment; telephone: 703–347–8609; facsimile: 703–347–8699; e-mail: *tuxen.linda@epa.gov*.

For technical and scientific questions concerning the draft Toxicological Review of Acrylamide, contact the Chemical Manager, Robert DeWoskin, National Center for Environmental Assessment; telephone: 919–541–1089; facsimile: 919–541–0248; e-mail: *dewoskin.rob@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Acrylamide is a monomer used primarily in the production of polyacrylamide polymers. Polyacrylamides are used as a flocculent in water purification, oil recovery, and soil stabilization; and in the manufacturing of a wide range of products as a coating, matrix, additive, or stabilizer. Human exposure to acrylamide occurs primarily in the workplace from dermal contact and inhalation of dust and vapor during processing or use. The public may be exposed to acrylamide through emissions from production facilities, use in consumer products, contaminated drinking water, and cigarette smoke. In early 2002, Swedish scientists reported high concentrations of acrylamide in certain fried, baked, and deep-fried foods. Subsequent research demonstrated that acrylamide forms "de novo" (i.e., newly formed, not present as an environmental contaminant) during high temperature cooking of carbohydrate-rich foods that contain asparagine and in a few other food processes. Considerable research is on-going to assess the level of and the potential risk from exposure to

acrylamide in food (additional information is available on the U.S. FDA's Internet site for acrylamide: *http://www.cfsan.fda.gov/lrd/pestadd.html#acrylamide*).

This public review draft of "Toxicological Review of Acrylamide" is an update and reassessment of the human health effects that may result from exposure to acrylamide. The acrylamide oral and inhalation reference values and carcinogenicity classification have been revised based upon new data and changes in guidance that have occurred since the previous assessment in 1988.

IRIS is a database of human health effects that may result from exposure to various chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose response evaluation) of the risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How to Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–1141 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T).

U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.

- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–1141. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials can be accessed either electronically in *www.regulations.gov* or in hard copy from the OEI Docket in the EPA Headquarters Docket Center.

Dated: December 18, 2007.

Rebecca M. Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E7–25282 Filed 12–27–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by (Pub. L.) 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: January 16, at 9:30 a.m. to 12 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Introduction of SAAC members, ethics training, report to congress, 2007 SAAC recommendations update, bank operating issues and processes, business development update and "Attracting the interest of new U.S. companies to the African market".

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations please contact, prior to January 16, 2008, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Barbara Ransom, Room 1241, 811 Vermont

Avenue, NW., Washington, DC 20571, (202) 565–3525.

Kamil Cook,

Deputy General Counsel.

[FR Doc. 07–6193 Filed 12–27–07; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 18, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on (PRA) of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information 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 PRA comments should be submitted on or before February 26, 2008. 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: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0932.

Title: Application for Authority to Make Changes in a Class A TV Broadcast Station.

Form Number: FCC Form 301–CA.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 400.

Estimated Time per Response: 7 hours.

Frequency of Response: On occasion reporting requirement.

Total annual burden: 2,800 hours.

Total annual costs: $2,279,200.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC 301–CA is to be used in all cases by a Class A television station licensees seeking to make changes in the authorized facilities of such station. The FCC 301–CA requires applicants to certify compliance with certain statutory and regulatory requirements. Detailed instructions provide additional information regarding Commission rules and policies.

Class A applicants are also subject to third party disclosure requirement of section 73.3580 which requires local public notice in a newspaper of general circulation of the filing of all applications for major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

The FCC 301–CA is designed to track the standards and criteria which the Commission applies to determine compliance and to increase the reliability of applicant certifications. They are not intended to be a substitute for familiarity with the Communications Act and the Commission's regulations, policies, and precedent.

OMB Control Number: 3060–1001.

Title: Application for Extension of Time to Construct a Digital Television Broadcast Station.

Form Number: FCC Form 337.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 300.

Estimated time per response: 30 minutes to one hour.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Total annual burden: 250 hours.

Total annual cost: $150,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The FCC Form 337, Application for Extension of Time to Construct a Digital Television (DTV) Broadcast Station, is used by all DTV permittees to apply for extension of time within which to construct a commercial or noncommercial educational DTV broadcast station. This form must be filed at least sixty, but not more than ninety, days prior to the applicable construction deadline.

Applicants who file this form based on financial hardships must retain documentation fully detailing and supporting their financial representations as well as any steps taken to overcome the circumstances preventing construction.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–25215 Filed 12–27–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

December 18, 2007.

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, 44 U.S.C. Sections 3501-3520. 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 Paperwork Reductions Act (PRA) comments should be submitted on or before January 28, 2008. 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 FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* or by U.S. mail to Leslie F. Smith, Federal Communications Commission, Room 1-C216, 445 12th Street, SW., Washington, DC 20554 at 202–418–0217.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call 202–418–0217. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the title of the ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0741.

Title: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96–98, *Second Report and Order and Memorandum Opinion and Order, et al.*

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,166 respondents; 39,303 responses.

Estimated Time per Response: 0.5—8 hours.

Frequency of Response: On occasion reporting requirements; recordkeeping; third party disclosure.

Obligation to Respond: 47 U.S.C. 251.

Total Annual Burden: 68,588 hours.

Total Annual Cost: $0.00.

Privacy Impact Assessment: There are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Section 251 of the Communications Act of 1934, as amended, 47 U.S.C. 251, is designed to accelerate private sector development and deployment of telecommunications technologies and services by spurring competition. These OMB collections are designed to help implement certain provisions of section 251, and to eliminate operational barriers to competition in the telecommunications services market. Specifically, these OMB collections will be used to implement (1) local exchange carriers' ("LECs") obligations to provide their competitors with dialing parity and non-discriminatory access to certain services and functionalities; (2) incumbent local exchange carriers' ("ILECs") duty to make network information disclosures; and (3) numbering administration. This collection also is being revised to remove two information collection requirements—*submission of toll dialing parity implementation plans and justification for non-compliance.* The sections containing those expired deadlines, 47 CFR 51.211 (a)—(f) and 47 CFR 51.213(d), (e), have been eliminated. See Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau, WC Docket No. 02–313, 21 FCC Rcd 9937, 9942, paras. 20–21 (2006) (WCB Biennial Reg. Review).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–25216 Filed 12–27–07; 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

December 19, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information 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 PRA comments should be submitted on or before February 26, 2008. 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: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0311.

Title: 47 CFR 76.54, Significantly Viewed Signals, Method to Be Followed for Special Showings.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Frequency of Response: On occasion reporting requirement requirement; Third party disclosure requirement.

Estimated Time per Response: 1–15 hours.

Total Annual Burden: 20,610 hours.

Total Annual Costs: $200,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.54(c) is used to notify interested parties, including licensees or permittees of television broadcast stations, about audience surveys that are being conducted by an organization to demonstrate that a particular broadcast station is eligible for significantly viewed status under the Commission's rules. The notifications provide interested parties with an opportunity to review survey methodologies and file objections. 47 CFR 76.54(e) and (f), are used to notify television broadcast stations about the retransmission of significantly viewed signals by a satellite carrier into these stations' local market.

OMB Control Number: 3060–0960.

Title: 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules; 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection; 47 CFR 76.127, Satellite Sports Blackout Rules.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,428.

Estimated Time Per Response: 0.5 -1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 12,402 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.122, 76.123, 76.124 and 76.127 are used to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network, syndicated, and sports programming in the broadcasters' recognized market areas. Rule sections 76.122 and 76.123 implement statutory requirements to provide rights for in-market stations to assert non-duplication and exclusivity rights.

OMB Control Number: 3060–0991.

Title: AM Measurement Data.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,900.

Estimated Hours per Response: 0.50–25 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Total Annual Burden: 29,225 hours.

Total Annual Cost: $73,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In order to control interference between stations and assure adequate community coverage, AM stations must conduct various engineering measurements to demonstrate that the antenna system operates as authorized. The following rule sections are included with this collection.

47 CFR 73.54(c) requires that AM licensees file a letter notification with the FCC when determining power by the direct method. In addition, section 73.54(c) requires that background information regarding antenna resistance measurement data for AM stations must be kept on file at the station.

47 CFR 73.54(d) requires AM stations using direct reading power meters to either submit the information required by (c) or submit a statement indicating that such a meter is being used.

47 CFR 73.61 requires that each AM station using directional antennas make field strength measurement as often as necessary to insure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must make field strength measurements as often as necessary. Also, all AM stations using directional antennas must make partial proofs of performance as often as necessary.

47 CFR 73.62(b) requires an AM station with a directional antenna system to measure and log every monitoring point at least once for each mode of directional operation within 24 hours of detection of variance of operating parameters from allowed tolerances.

47 CFR 73.68(b) requires that licensees of existing AM broadcast stations with antenna monitor sampling systems meeting the performance standards specified in the rules may file informal requests for approval of their sampling systems.

47 CFR 73.68(d) requires that a request for modification of the station license be submitted to the FCC on FCC 302–AM when the antenna sampling system is modified or components of the sampling system are replaced. Immediately prior to modification or replacement of components of the sampling system and after a verification that all monitoring point values and operating parameters are within the limits or tolerances, the licensee is required to record certain indications for each radiation pattern.

47 CFR 73.69(c) requires AM station licensees with directional antennas to file an informal request to operate without required monitors with the Media Bureau in Washington, DC, when conditions beyond the control of the licensee prevent the restoration of an antenna monitor to service within a 120 day period. This request is filed in conjunction with section 73.3549.

47 CFR 73.69(d)(1) requires that AM licensees with directional antennas request to obtain temporary authority to operate with parameters at variance with licensed values when an authorized antenna monitor is replaced pending issuance of a modified license specifying new parameters.

47 CFR 73.69(d)(5) requires AM licensees with directional antennas to submit an informal request for modification of license to the FCC within 30 days of the date of antenna monitor replacement.

47 CFR 73.154 requires the result of the most recent partial proof of performance measurements and analysis to be retained in the station records and made available to the FCC upon request. Maps showing new measurement points shall be associated with the partial proof in the station's records and shall be made available to the FCC upon request.

47 CFR 73.158(b) requires a licensee of an AM station using a directional antenna system to file a request for a corrected station license when the description of monitoring point in relation to nearby landmarks as shown on the station license is no longer correct due to road or building construction or other changes. A copy of

the monitoring point description must be posted with the existing station license.

47 CFR 73.3538(b) requires a broadcast station to file an informal application to modify or discontinue the obstruction marking or lighting of an antenna supporting structure.

47 CFR 73.3549 requires licensees to file with the FCC requests for extensions of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the Emergency Alert System codes. Such requests musts contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–25218 Filed 12–27–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed By the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 18, 2007.

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 (PRA), 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the 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 PRA comments should be submitted on or before February 26, 2008. 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: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, send them to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Leslie F. Smith via the Internet at *PRA@fcc.gov* or call (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0149.

Title: Application and Supplemental Information Requirements—Part 63, Section 214, Sections 63.01–63.601.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 45 respondents.

Estimated Time per Response: 5 hours.

Obligation to Respond: Required to obtain or retain benefits.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Total Annual Burden: 225 hours.

Total Annual Cost: $0.00.

Privacy Act Impact Assessment: No impacts.

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: Section 214 of the Communications Act of 1934, as amended, requires that the FCC review the establishment, acquisition, operation, line extension, and service discontinuance by interstate common carriers. This OMB collection pertains primarily to 47 CFR Section 63.71 of the Commission's rules, which governs the application process for receiving discontinuance, impairment or reduction in service authority. The Commission will use the information to determine if affected respondents are in compliance with its rules and the requirements of Section 214 of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–25221 Filed 12–27–07; 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

December 18, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information 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 PRA comments should be submitted on or before February 26, 2008. 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: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0888.

Title: Section 76.7, Petition Procedures; Section 76.9, Confidentiality of Proprietary Information; Section 76.61, Dispute Concerning Carriage; Section 76.914, Revocation of Certification; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time per Response: 4—40 hours (average).

Total Annual Burden: 11,000 hours.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Total Annual Costs: $200,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.7 is used to make determinations on petitions and complaints filed with the Commission. Parties (cable operators and broadcast stations) are permitted to file Section 76.7 petitions (with audience surveys) to demonstrate significantly viewed status under rule Section 76.54. Satellite carriers can also file such Section 76.7 petitions to demonstrate significantly viewed status under Section 340 of the Act. Moreover, authorize parties can file Section 76.7 petitions in order to file a complaint under the Section 340 enforcement provisions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–25224 Filed 12–27–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 20, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information 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 PRA comments should be submitted on or before February 26, 2008. 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: You may submit all PRA comments by email or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0996.

Title: AM Auction Section 307(b) Submissions.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 450.

Estimated Hours per Response: 0.5 to 3 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,100 hours.

Total Annual Costs: $132,500.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: When Congress granted auction authority in the Balanced Budget Act for commercial broadcast and secondary broadcast services, it did not eliminate or revise 47 U.S.C. Section 307(b) of the Communications Act. Section 307(b) requires that the Commission effect a fair, efficient, and equitable distribution of radio stations throughout the United States.

Section 307(b) information was previously collected in the framework of comparative hearing proceedings when mutually exclusive AM applications proposing to serve different communities were filed, or when non-mutually exclusive AM applications proposed a change in community of license. Since the comparative hearing process was discontinued as a result of the implementation of competitive bidding, the Commission must now collect the 307(b) information and undertake a Section 307(b) analysis in the context of the auction proceedings. For example, for mutually exclusive AM applications proposing to serve different communities, the process is performed prior to conducting the auction.

In order to evaluate Section 307(b) considerations, the Commission requires the submission of supplemental information subsequent to the AM auction filing window application (FCC Form 175 and technical information) submission. Section 307(b) information is not collected in the initial auction filing window application because Section 307(b) considerations are not pertinent to all window filed application—Section 307(b) is relevant only when the mutually exclusive AM application group consists of applications to serve different communities of license, or when a non-mutually exclusive AM application proposes a major modification of facilities, seeking a community of license change. Specifically, where the mutually exclusive group consists of proposals to serve different communities of license, each applicant within the group must submit an

amendment containing supplemental information such as the following: (1) The area and population within the proposed 2 mV/m and 0.5 mV/m contours; (2) the number of stations licensed to the proposed community of license; (3) the number of stations providing protected service to the proposed community of license; (4) the population (according to the latest Census data) of the proposed community of license; (5) a description of the civic, cultural, religious, social or commercial attributes of the proposed community of license; and (6) any other information determined relevant. The Commission will dismiss, without further processing, the previously filed AM auction filing window application and technical proposal of any applicant that fails to file an amendment addressing the Section 307(b) criteria, where required. Mutually exclusive AM applicants may not use this as an opportunity to change the technical proposal specified in the AM auction filing window application. The Section 307(b) amendment must be based on the technical proposal as specified in the AM auction filing window application.

Non-mutually exclusive applicants proposing a change in community of license must provide Section 307(b) information, demonstrating the merits of locating the station in the new community, as opposed to the former community of license.

In addition, certain mutually exclusive application groups containing major modification applications are permitted to resolve their mutual exclusivities through settlement agreements. These agreements must comply with 47 CFR 73.3525, Agreements for Removing Application Conflicts (approved under OMB 3060–0213). To facilitate processing, eligible applicants who intend to settle should promptly notify the Commission in writing that a pre-auction settlement is forthcoming.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–25228 Filed 12–27–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 20, 2007.

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, 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 (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 February 26, 2008. 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 PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the OMB ROCIS Web site at: *http://www.reginfo.gov/public/PRAMain*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0713.

Title: Alternative Broadcast Inspection Program (ABIP) Compliance Notification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 53 respondents; 2,650 responses.

Estimated Time Per Response: .084 hours (5 minutes).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 223 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. The total annual burden hours have been adjusted slightly due to a change in the estimated time per response (from .083 to .084 hours).

The Alternative Broadcast Inspection Program (ABIP) is an agreement between the FCC's Enforcement Bureau and an entity, usually a state broadcast association, in which the entity arranges for the inspection of the broadcast station to determine compliance with FCC regulations. The inspections are conducted on a voluntary basis and the entities notify the local FCC District Office or Resident Agent office, in writing via letter of those stations that pass the ABIP inspection and have been granted a Certificate of Compliance. The FCC's Enforcement Bureau (EB) standardized the existing ABIP in 2003 to establish a specific, uniform arrangement for the inspection of broadcast stations.

This information will be used by FCC to determine which broadcast stations are in compliance with FCC rules and will not be subject to routine inspections conducted by the FCC's District Offices. Without this information, the FCC would not be able to determine which stations should be exempt from random inspections.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–25239 Filed 12–27–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 07–4732]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the "Bureau") debars Mr. Brown from the schools and libraries universal service support mechanism (or "E-Rate Program") for a period of three years based on his conviction of mail fraud in connection with his participation in the program. The Bureau takes this action in order to protect the E-Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Mr. Richard E. Brown receives the debarment letter or December 28, 2007, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau debarred Mr. Brown from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.521 and 47 CFR 0.111(a)(14). Attached is the debarment letter, DA 07–4732, which was mailed to Mr. Brown and released on November 27, 2007. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail at *http://www.bcpiweb.com*.

Federal Communications Commission.

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The debarment letter, which attached the suspension letter, follows:

November 27, 2007

DA 07–4732

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND E-MAIL

Mr. Richard E. Brown, c/o Douglas McNabb, Esq., McNabb Associates PC., JP Morgan Chase Tower, 600 Travis Street, Suite 7070, Houston, TX 77002.

Re: Notice of Debarment, File No. EB–07–IH–5369

Dear Mr. Brown:

Pursuant to section 54.521 of the rules of the Federal Communications Commission (the "Commission"), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or "E-Rate program") for a period of three years.[1]

On September 25, 2007, the Enforcement Bureau (the "Bureau") sent you a Notice of Suspension and Initiation of Debarment Proceedings (the "Notice of Suspension").[2] That Notice of Suspension was published in the **Federal Register** on October 10, 2007.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to and were convicted of three counts of mail fraud, in violation of 18 U.S.C. 1341, for activities in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.[6] You admitted to participating in schemes to defraud the E-Rate program where fictitious bills for upgrades that were never performed and inflated bills for engineering upgrade projects totaling approximately $956,203 were ultimately submitted to the Universal Service Administrative Company for reimbursement from the E-Rate fund.[7] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.521(c) of the Commission's rules.[8] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[9] Debarment excludes you, for the debarment period, from activities "associated with or related to the schools and libraries support mechanism," including "the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism."[10]

Sincerely,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Calvin B. Kurimai, Esq., Assistant United States Attorney, Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

September 25, 2007

DA 07–4036

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED AND E-MAIL

Mr. Richard E. Brown, c/o Douglas McNabb, Esq., McNabb Associates PC,

[1] *See* 47 CFR 0.111(a)(14), 54.521.

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Scott A. Federowicz, Notice of Suspension and Initiation of Debarment Proceedings, 22 FCC Rcd 17341 (Inv. & Hearings Div., Enf. Bur. 2007) (Attachment 1).

[3] 72 FR 57574 (October 10, 2007).

[4] See Notice of Suspension, 22 FCC Rcd at 17343.

[5] See 47 CFR 54.521(e)(3) and (4). That date occurred no later than November 9, 2007. See supra note 3.

[6] See Notice of Suspension, 22 FCC Rcd at 17342.

[7] See id.

[8] Id. at 17343; 47 CFR 54.521(c).

[9] See Notice of Suspension, 22 FCC Rcd at 17343–44.

[10] See 47 CFR 54.521(a)(1), 54.521(a)(5), 54.521(d); Notice of Suspension, 22 FCC Rcd at 17344.

JP Morgan Chase Tower, 600 Travis Street, Suite 7070, Houston, TX 77002.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–07–IH–5369

Dear Mr. Brown:

The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction for mail fraud in violation of 18 U.S.C. 1341 in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").[11] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[12]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[13] You pled guilty to three counts of mail fraud for activities in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.[14] While employed at Southwestern Bell Communications ("SBC"), the prime contractor servicing these school districts, you recommended subcontractors to perform telecommunications upgrades in four Connecticut school districts. You also reviewed invoices submitted by the subcontractors to SBC for payment that SBC then submitted to the Universal Service Administrative Company ("USAC") for reimbursement from the E-Rate fund.[15] You admitted to participating in schemes to defraud the E-Rate program where fictitious bills for upgrades that were never performed were submitted to USAC for reimbursement from the E-Rate fund.[16] In another fraudulent scheme in which you admitted to being a participant, engineering services for upgrade projects were billed at inflated rates and the associated invoices were also submitted to USAC for E-Rate reimbursement.[17] In sum, these schemes generated approximately $1,564,768 in fictitious expenses and approximately $956,203 of these expenses ultimately were submitted to the USAC for reimbursement from E-Rate fund.[18]

Pursuant to section 54.521(a)(4) of the Commission's rules,[19] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[20] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[21]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[22] Such requests, however, will not ordinarily be granted.[23] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[24] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[25]

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[26] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[27] Absent extraordinary circumstances, the Bureau will debar you.[28] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[29] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt

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[11] Any further reference in this letter to "your conviction" refers to your February 13, 2007 guilty plea and subsequent conviction of three counts of mail fraud. *United States* v. *Richard E. Brown*, Criminal Docket No. 3:07–CR–29 (RNC), Plea Agreement (D.Conn. filed Feb. 13, 2007 and entered Feb. 14, 2007) ("Brown Plea Agreement"); *United States* v. *Richard E. Brown*, 3:07–CR–29 (RNC), Judgment (D.Conn. filed Sept. 6, 2007 and entered Sept. 7, 2007) ("Brown Judgment").

[12] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[13] See Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225, ¶ 66 (2003) ("Second Report and Order"). The Commission's debarment rules define a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized." 47 CFR 54.521(a)(6).

[14] See generally *United States* v. *Richard E. Brown*, Criminal Docket No. 3:07–CR–29 (RNC), Information (D.Conn. filed and entered Jul. 28, 2006) ("Information"); Brown Plea Agreement at 1; Brown Judgment at 1.

[15] See Information at 2–3.

[16] See Information at 1–8.

[17] See Information at 8–10.

[18] See Information at 3, 5, 8; *http://www.usdoj.gov/usao/ct/Press2007/20070829–3.html* (Department of Justice Press Release dated August 29, 2007) (last accessed September 12, 2007) ("DOJ August 29 Press Release"). See also Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Scott A. Federowicz, c/o Paul H.D. Stoughton, Conway & Stoughton, LLP, Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–07–IH–5171, (rel. June 27, 2007) ("Federowicz Suspension Letter"); 72 FR 39425 (Jul. 18, 2007).

[19] 47 CFR 54.521(a)(4). See Second Report and Order, 18 FCC Rcd at 9225–9227, ¶¶ 67–74 (2003).

[20] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[21] Second Report and Order, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[22] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[23] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70.

[24] 47 CFR 54.521(e)(5).

[25] See Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[26] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.521(c). Such activities "include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR] 54.500 et seq.)." 47 CFR 54.521(a)(1).

[27] See Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

[28] Second Report and Order, 18 FCC Rcd at 9227, ¶ 74.

[29] See id., 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

of a debarment notice or publication of the decision in the **Federal Register**.[30]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[31] The Bureau may, if necessary to protect the public interest, extend the debarment period.[32]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail *at vickie.robinson@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

[30] Id. The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[31] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 CFR §§ 54.521(d), 54.521(g).

[32] Id.

cc: Calvin B. Kurimai, Esq., Assistant United States Attorney Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. E7–25133 Filed 12–27–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy for Section 19 of the Federal Deposit Insurance Act

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final agency policy statement (amended).

SUMMARY: On October 13, 2006, Section 19 of the Federal Deposit Insurance Act was modified to address institution-affiliated parties participating in the affairs of Bank Holding Companies and Savings and Loan Holding Companies. The FDIC is introducing a footnote to its Statement of Policy for Section 19 of the Federal Deposit Insurance Act ("SOP") that will provide the public with a better understanding of the FDIC's scope given the Federal Reserve System's and Office of Thrift Supervision's new authority under Section 19. The FDIC is not seeking comment on the footnote clarifying the SOP, and the change is effective upon publication in the **Federal Register**.

DATES: The change to the policy statement is effective December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Martin P. Thompson, Review Examiner (202) 898–6767, or John P. Henrie, Field Supervisor, (678) 916–2220 in the Division of Supervision and Consumer Protection; or Michael P. Condon, Counsel, (202) 898–6536, or Richard Bogue, Counsel, (202) 898–3726, in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829, prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party ("IAP"), owning or controlling, directly or indirectly, an insured depository institution ("insured institution"), or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by Section 19. The FDIC's SOP was enacted in November 1998 to provide the public with guidance relating to Section 19, and the application thereof.

The Financial Services Regulatory Relief Act of 2006[1] modified Section 19 to address IAPs affiliated with Bank Holding Companies and Savings and Loan Holding Companies. The FDIC has amended the SOP to introduce a technical change that will provide the public with a better understanding of the FDIC's scope given the FRS' and OTS' new authority under Section 19.

II. Clarifying Amendment to the Statement of Policy

FDIC Statement of Policy for Section 19 of the FDI Act

1. The first sentence of the first paragraph of subsection A is amended by adding footnote number 1.

A. Scope of Section 19

Section 19 covers institution-affiliated parties, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an insured institution.[1] * * *

By Order of the Board of Directors.

Dated at Washington, DC, the 19th day of December 2007.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E7–25128 Filed 12–27–07; 8:45 am]

BILLING CODE 6714–01–P

[1] This Statement of Policy applies only to insured depository institutions and their institution-affiliated parties. In addition to the requirement to file an application with the FDIC, such individuals may also need to comply with any filing requirements established by the Board of Governors of the Federal Reserve System under 12 U.S.C. § 1829(d), in the case of a bank holding company, or with the Office of Thrift Supervision under 12 U.S.C. § 1829(e), in the case of a savings and loan holding company.

FEDERAL HOUSING FINANCE BOARD

[No. 2007-N–14]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions Notice of Annual Adjustment of the Limits on Annual Compensation for Federal Home Loan Bank Directors

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) has adjusted the cap on average total assets that defines a "Community Financial Institution" and the limits on annual compensation for Federal Home Loan Bank (Bank) directors based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI-U) as published by the Department of Labor (DOL). These changes take effect on January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Office of Supervision, by telephone at 202–408–2872, by electronic mail at sweeneyp@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006–4001.

SUPPLEMENTARY INFORMATION:

A. Statutory and Regulatory Background

Section 2(13) of the Federal Home Loan Bank Act (Bank Act) and § 925.1 of the Finance Board regulations define a Bank member that is a "Community Financial Institution" (CFI) by the member's total asset size. See 12 U.S.C. 1422(13)(A) and 12 CFR 925.1. The Bank Act requires the Finance Board annually to adjust the CFI asset cap to reflect any percentage increase in the preceding year's CPI-U as published by the DOL. See 12 U.S.C. 1422(13)(B).

Section 7(i)(2)(B) of the Bank Act and § 918.3(a)(1) of the Finance Board regulations require the Finance Board to make similar annual adjustments to the annual compensation limits for members of the boards of directors of the Banks. See 12 U.S.C. 1427(i)(2) and 12 CFR 918.3(a).

B. Calculating the Annual Adjustments

The annual adjustments to the CFI asset cap and Bank director compensation limits reflect the percentage by which the CPI-U published for November of the preceding calendar year exceeds the CPI-U published for November of the year before the preceding calendar year (if at all). Thus, the adjustments that take effect on January 1, 2008, are based on the percentage increase in the CPI-U from November 2006 to November 2007. The Finance Board uses November data to provide notice of the changes to the annual limits before the January 1st effective date. This practice is consistent with that of other federal agencies.

The DOL encourages use of CPI-U data that have not been seasonally adjusted in "escalation agreements" because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to 5 years following the original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the Finance Board is using data that have not been seasonally adjusted.

The unadjusted CPI-U was 4.3 percent higher in November 2007 than in November 2006. Based on this change, the Finance Board made the following adjustments, which take effect on January 1, 2008:

CFI Asset Cap: The CFI Asset Cap, which was $599 million for 2007, is $625 million in 2008. The Finance Board arrived at the adjusted limit of $625 million by rounding to the nearest million.

Annual Compensation Limits: The annual compensation limits for the Banks' boards of directors in 2008 are as follows: for a chairperson—$31,232; for a vice-chairperson—$24,986; for members of a board of directors—$18,739. The Finance Board arrived at the adjusted annual compensation limits by rounding to the nearest dollar.

Dated: December 19, 2007.

By the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

[FR Doc. E7–25156 Filed 12–27–07; 8:45 am]

BILLING CODE 6725–01–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. Chapter 409 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

CEC International, 17800 Castleton Street, Ste. 418, City of Industry, CA 91748. *Officer:* Jenny Tsao, CFO, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

AAC Perishable Logistics, Inc., 6300 N.W. 97th Ave., Miami, FL 33178. *Officer:* Carlos Del Corral, President, (Qualifying Individual).

Access International Services, Corp., 8008 N.W. 68 Street, Miami, FL 33166. Gustavo A. Lopez, Vice President, (Qualifying Individual), Maria J. Rivas, President.

USTC America, Inc., 3550 Wilshire Blvd., Ste. 1020, Los Angeles, CA 90010. *Officer:* Jong Soo Park, President, (Qualifying Individual).

Thunderbolt Global Logistics, LLC, 2200 Broening Highway, Ste. 241, Baltimore, MD 21224. *Officers:* James Simon Shapiro, Member, (Qualifying Individual), Stuart M. Tobin, Managing Member.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Shipping Logistics LLC, 15550 Vickery Drive, Ste. 100, Houston, TX 77032. *Officer:* Mary K. Francis, Owner, (Qualifying Individual).

Dated: December 21, 2007.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–25238 Filed 12–27–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 9, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Russell H. Loewenstein, Orleans, Nebraska, individually and as a member

of the Loewenstein group; and Karl Randecker, Jr., Cozad, Nebraska, individually and as a member of the Randecker group; to acquire control of Stamford Banco, Inc., Stamford, Nebraska, and thereby indirectly acquire control of Community Bank, Alma, Nebraska.

Board of Governors of the Federal Reserve System, December 21, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–25158 Filed 12–27–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 2008.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. National Australia Bank Limited, Melbourne, Australia; to become a bank holding company, by acquiring 100 percent of the voting shares of Great Western Bancorporation, Inc., Omaha, Nebraska, and thereby indirectly acquire voting shares of Great Western Bank, Watertown, South Dakota.

Board of Governors of the Federal Reserve System, December 21, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–25157 Filed 12–27–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Evaluation of the Effectiveness of AHRQ's Grant-Supported Research on Healthcare Costs, Productivity, and Market Forces." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by February 26, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by E-mail at *doris.lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477 or by E-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Evaluation of the Effectiveness of AHRQ's Grant-Supported Research on Healthcare Costs, Productivity, and Market Forces"

The proposed information collection will support AHRQ's efforts to systematically review the effectiveness of its grant-supported research on healthcare costs, productivity, and market forces since the late 1990s. In the first phase of its ongoing evaluation, AHRQ determined it had funded 149 grants in the area of cost, productivity, organization and market forces since the late 1990s (Krissik, Lake and Gold, 2007). Prior to this proposed information collection, no evaluation of these grants and their effects has been conducted. Collecting such information through a survey of the 149 grantees will assist AHRQ in its mission of supporting the synthesis and dissemination of available scientific evidence for use by patients, consumers, practitioners, providers, purchasers, policymakers, and educators. The survey will provide information on grant activities that is not currently available, including up-to-date information on grantee dissemination activities and feedback on AHRQ's role in supporting research and dissemination.

A survey of the universe of grantees who were funded to carry out the above-described health services research work offers a rational and scientific approach to collecting data on the impact of AHRQ's research in this area that is otherwise not currently available. The survey will be an integral part of AHRQ's overall evaluation, which attempts to describe the research and the pathways through which research findings that it has supported are disseminated and used. The survey interviews principal investigators about their grant research projects and will capture data that systematically track grant outcomes, providing information on: (1) The main substantive findings from the work and the ways they have been communicated; (2) known impacts of the work to date; (3) linkage of work to other research in the field; (4) grantee ratings of the support that AHRQ provided before, during, and after award and how AHRQ services for grantees could be improved; and, (5) grantee perceptions of AHRQ's role in research funding in this area and how sponsor interest influences the topics that are addressed.

Method of Collection

A web-based questionnaire will be used to conduct the survey with AHRQ grantees. A self-administered mode was selected for this survey because respondents may need to look up information in order to answer some questions. A self-administered mode allows respondents to complete the survey at their own pace and schedule. If requested, a hardcopy of the

questionnaire will be mailed to the respondent.

ESTIMATED ANNUAL RESPONDENT BURDEN

Form Name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
AHRQ Grantee Survey	149	1	2	298
Total	149	na	na	298

ESTIMATED ANNUALIZED RESPONDENT COST BURDEN

Form Name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
AHRQ Grantee Survey	149	298	$42.98	$12,808
Total	149	298	na	$12,808

*Based upon the mean of the average wages for teachers (college and university), National Compensation Survey: Occupational Wages in the United States 2005, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The proposed information collection is part of a larger evaluation of the effectiveness of AHRQ's grant-supported research on healthcare costs, productivity, and market forces, which includes a systematic review of the research that AHRQ has funded, in-depth interviews with grantees and grant document review, case studies to assess the effects and dissemination pathways of market forces research, and preparation of reports and briefings. The cost to conduct the survey of identified grantees is $38,962.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) 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. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 17, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–6187 Filed 12–27–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Focus Groups on Consumer Engagement in Developing Electronic Health Information Systems." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by February 26, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

"Focus Groups on Consumer Engagement in Developing Electronic Health Information Systems"

This project will consist of focus groups to gain insights into healthcare consumers' awareness and perceptions of Health Information Technology (IT), and how best to engage consumers in the development of these technologies. AHRQ has so far invested significant resources in initiatives to promote the planning and development of new Health IT that should improve healthcare, lower healthcare costs, and improve patient safety. For such benefits to be maximized, it is important to understand how consumers view Health IT and how to engage them in the design and implementation of future innovations.

AHRQ will conduct 20 focus groups (in addition to two pretest groups) with healthcare consumers, that is persons who have visited a healthcare provider (either for their own health or the health of a family member) in the previous two years. For the most part, the groups will be homogenous with respect to the presence or absence of either of the following characteristics: (a) Managing a chronic health condition (or the condition of a close family member), or (b) Having visited at least three healthcare providers in the past two years.

Participants will be covered by a range of health insurance plans, and persons not covered by health insurance will also be recruited. Some groups will include only persons enrolled in a

Health Maintenance Organization (HMO).

The data to be collected for this project will be in two forms: (a) answers to a screener questionnaire designed to identify and recruit eligible participants, and (b) verbal reports—i.e., focus group participants' answers to questions posed by the moderator and reactions to comments of other group members. The focus group discussions will be audio-taped with participants' consent and transcribed for analysis purposes.

Method of Collection

Participants will be screened for eligibility and recruited for the focus groups by telephone. The focus group sessions will be conducted in-person with approximately 10 persons per group. The focus group discussion will take approximately 2 hours, and we have assumed a 20-minute travel time (each way) per participant. Thus, focus group participation will require 2.67 hours per response.

Estimated Annual Respondent Burden

TABLE 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Recruiting Screener	2,200	1	5/60	183
Focus Group Discussion Guide	220	1	2.67	587
Total	2,420	na	na	770

TABLE 2.—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Recruiting Screener	2,200	183	$17	$3 111
Focus Group Discussion Guide	220	587	17	9,979
Total	2,420	770	na	13,090

*Based upon the mean hourly wage of full-time workers, third-quarter of 2007. Current Population Survey, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Based on the current budget for the project, the total cost to the Federal Government is $257,474 ($251,114 of contractor costs + $6,360 of travel and time cost for AHRQ employees) for the 18-month period from Oct. 1st, 2007 to March 31st, 2009. The annualized cost is approximately $171,649. This amount includes all direct and indirect costs of the design, data collection, analysis, and reporting phases of the study. The costs of Federal employees for monitoring the contract are $5,660.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 17, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–6188 Filed 12–27–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Announcement of Availability of Funds for Grants regarding National Research Service Award Institutional Research Training Grant (T32) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: National Research Service Award Institutional Research Training Grant (T32) applications.

Date: January 31–February 1, 2008 (Open on January 31 from 8:30 a.m. to 8:45 a.m. and closed for the remainder of the meeting).

Place: Gaithersburg Marriott Washingtonian Center, Marriott

Conference Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: December 19, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–6216 Filed 12–27–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–237]

Identification Of Priority Data Needs for Six Priority Hazardous Substances

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Request for public comments on the identification of priority data needs for six priority hazardous substances and an ongoing call for voluntary research proposals.

SUMMARY: This notice makes available for public comment the priority data needs for six priority hazardous substances (see Table 1) as part of the continuing development and implementation of the ATSDR Substance-Specific Applied Research Program (SSARP). The notice also serves as a continuous call for voluntary research proposals.

The exposure and toxicity priority data needs in this notice were distilled from the data needs identified in ATSDR's toxicological profiles by the logical scientific approach described in a decision guide published in the **Federal Register** on September 11, 1989 (54 FR 37618). The priority data needs represent essential information to improve the database for conducting public health assessments. Research to address these priority data needs will help to determine the types or levels of exposure that may present significant risks of adverse health effects in people exposed to the hazardous substances.

The priority data needs identified in this notice reflect the opinion of ATSDR, in consultation with other federal programs, about the research needed pursuant to ATSDR's authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund), or CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)]. The needs identified here do not represent the priority data needs for any other agency or program.

Consistent with Section 104(i)(12) of CERCLA as amended [42 U.S.C. 9604(i)(12)], nothing in this research program shall be construed to delay or otherwise affect or impair the President, the Administrator of ATSDR, or the Administrator of the Environmental Protection Agency (EPA) from exercising any authority regarding any other provision of law, including the Toxic Substances Control Act of 1976 (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), or the response and abatement authorities of CERCLA.

ATSDR worked with other federal programs to determine common substance-specific data needs and mechanisms to implement research that may include authorities under TSCA and FIFRA, private-sector voluntarism, or the direct use of CERCLA funds.

When deciding the type of research that should be done, ATSDR considers the recommendations of the Interagency Testing Committee (ITC) established under Section 4(e) of TSCA. Federally funded projects that collect information from 10 or more respondents and that are funded by cooperative agreements are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. If the proposed project involves research on human subjects, the applicants must comply with Department of Health and Human Services regulations (45 CFR part 46) regarding the protection of human subjects. The applicants must assure that the project will be subject to initial and continuing review by the appropriate institutional review committees. Overall, by providing additional scientific information for the risk assessment process, data generated from this research will support other researchers who are conducting human health assessments involving these six substances.

Table 1 presents the priority data needs for six priority substances. The six substances are included in the ATSDR Priority List of Hazardous Substances (70 FR 72840, December 7, 2005). ATSDR invites comments from the public on the individual priority data needs and the priority data needs documents for these substances. After considering the comments, ATSDR will publish the final priority data needs for each substance. These priority data needs will be addressed by the mechanisms described in the "Implementation of Substance-Specific Applied Research Program" section of this **Federal Register** Notice.

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR SIX PRIORITY HAZARDOUS SUBSTANCES

Substance	Priority data needs
Aluminum	Exposure levels in humans living near hazardous waste sites. Exposure levels in children. Dose-response data for acute-duration[1] oral exposure.
Cresol	Exposure levels in humans living near hazardous waste sites. Exposure levels in children. Dose-response data for acute-duration[1] oral exposure.
Diazinon	Developmental toxicity data for oral exposure.
Dichloropropenes	Dose-response data for acute-duration[1] inhalation exposure. Immunotoxicity battery via inhalation exposure.
Guthion	Studies of developmental toxicity via oral exposure with emphasis on neurodevelopmental toxicity.
Phenol	Exposure levels in humans living near hazardous waste sites. Exposure levels in children. Two-year oral carcinogenicity bioassay.

[1] 14 days or less.

Note: Consult the priority data needs documents for details on how these priority data needs were determined.

Voluntary Research. This notice also serves as a continuous call for voluntary research proposals. Private-sector organizations may volunteer to conduct research to address specific priority data needs in this notice by submitting a letter of intent to ATSDR (see **ADDRESSES** section of this notice). A Tri-Agency Superfund Applied Research Committee (TASARC), comprised of scientists from ATSDR, the National Toxicology Program (NTP), and EPA, will review all proposals.

The substance-specific priority data needs were based on, and determined from, information in corresponding ATSDR toxicological profiles. Background technical information and justification for the priority data needs in this notice are in the priority data needs documents. These documents are available on ATSDR's Web site at *http://www.atsdr.cdc.gov/pdns/*. Printed copies of these documents are also available for review by requesting them in writing from ATSDR (see **ADDRESSES** section of this notice).

DATES: Comments concerning the priority data needs for the six substances must be received by *90 days from the publication date.* Regarding ATSDR's call for voluntary research proposals, the agency considers voluntary research crucial to the continuing development of SSARP and believes this effort should be an open and continuous one. Therefore, private-sector organizations are encouraged to volunteer to conduct research to address the identified priority data needs until ATSDR announces that other research has been initiated for a specific priority data need.

ADDRESSES: The priority data needs documents are available on ATSDR's Web site at *http://www.atsdr.cdc.gov/pdns/*. Submit comments to Nickolette Roney, Applied Toxicology Branch, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road, NE., Mailstop F–32, Atlanta, Georgia 30333; e-mail: *NRoney@cdc.gov*. Information about pertinent ongoing or completed research that may fill priority data needs cited in this notice should be similarly addressed. Also, use the same address to request printed copies of the priority data needs documents and to submit proposals to conduct voluntary research.

FOR FURTHER INFORMATION CONTACT: Nickolette Roney, Applied Toxicology Branch, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road, NE., Mailstop F–32, Atlanta, Georgia 30333; e-mail: *NRoney@cdc.gov*; telephone: (770) 488–3332; fax: (770) 488–4178.

SUPPLEMENTARY INFORMATION:

Background

CERCLA, as amended by SARA [42 U.S.C. 9604(i)], requires that ATSDR (1) Develop jointly with EPA a list of hazardous substances found at National Priorities List (NPL) sites (in order of priority), (2) prepare toxicological profiles of these substances, and (3) ensure the initiation of a research program to address identified priority data needs associated with the substances.

SSARP was initiated in 1991. A list of priority data needs for 38 priority hazardous substances was announced in the **Federal Register** on October 17, 1991 (56 FR 52178). The list was subsequently revised, based on public comments, and was published in final form on November 16, 1992 (57 FR 54150). In 1997, after releasing for public comment, ATSDR finalized the priority data needs for a second list of 12 substances that priority data needs list was announced in the **Federal Register** on July 30, 1997 (62 FR 40820). ATSDR then identified priority data needs for a third list of 10 hazardous substances; this list was released as a draft for public comment and published in its final form on April 29, 2003 (68 FR 22704). On September 8, 2006, ATSDR released priority data needs for two hazardous substances as a draft for public comment (71 FR 53102).

This ATSDR SSARP supplies the necessary information to improve the database to conduct public health assessments. This link between research and public health assessments, and the process for distilling priority data needs for ranked hazardous substances from the data needs identified in associated ATSDR toxicological profiles, are described in the ATSDR "Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles" (54 FR 37618, September 11, 1989).

Implementation of Substance-Specific Applied Research Program

In Section 104(i)(5)(D), CERCLA states that it is the sense of Congress that the costs for conducting this research program should be borne by the manufacturers and processors of the hazardous substances found under the Toxic Substances Control Act of 1976 (TSCA); by registrants under the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA); or by cost recovery from responsible parties under CERCLA. To execute this statutory intent, ATSDR developed a plan whereby parts of SSARP are being conducted through regulatory mechanisms (TSCA/FIFRA), private-sector voluntarism, and the direct use of CERCLA funds.

CERCLA also requires that ATSDR consider recommendations of the Interagency Testing Committee, established under Section 4(e) of TSCA, on the types of research to be done. ATSDR actively participates on this committee.

The mechanisms for implementing SSARP are discussed next. The status of SSARP in addressing priority data needs of the first 60 priority hazardous substances through these mechanisms was described in a **Federal Register** Notice on December 13, 2005 (70 FR 73749).

A. TSCA/FIFRA

In developing and implementing SSARP, ATSDR and EPA established procedures to identify those priority data needs of common interest to multiple Federal programs. Where practicable, these data needs will be addressed through a program of toxicologic testing under TSCA or FIFRA. This part of the research will be conducted according to established TSCA/FIFRA procedures and guidelines.

B. Private-Sector Voluntarism

As part of SSARP, on February 7, 1992, ATSDR announced a set of proposed procedures for conducting voluntary research (57 FR 4758). Revisions based on public comments were published on November 16, 1992 (57 FR 54160). ATSDR strongly encourages private-sector organizations to propose research to address priority data needs at any time until ATSDR announces that research has already been initiated for a specific priority data need. Private-sector organizations may volunteer to conduct research to address specific priority data needs identified in this notice by submitting a letter of intent.

The letter of intent should be a brief statement (1–2 pages) that identifies the priority data need(s) to be filled and the methods to be used. TASARC will review these proposals and recommend to ATSDR the voluntary research projects that should be pursued- and how they should be conducted-with the volunteer organizations. ATSDR will enter into only those voluntary research projects that lead to high-quality, peer-reviewed scientific work. Additional details regarding the process for voluntary research are in the **Federal Register** Notices cited in this section.

C. CERCLA

Those priority data needs that are not addressed by TSCA/FIFRA or initial voluntarism will be considered for funding by ATSDR through its CERCLA budget. Much of this research program is envisioned to be unique to CERCLA—for example, research on substances not regulated by other programs or research needs specific to public health assessments. A current example of the direct use of CERCLA funds is a cooperative agreement with the Minority Health Professions Foundation (MHPF) that supports the MHPF's Environmental Health, Health Services, and Toxicology Research Program.

Mechanisms to address these priority data needs may include a second call for voluntarism. Again, scientific peer review of study protocols and results would occur for all research conducted under this auspice.

Substance-Specific Priority Data Needs

Table 1 identifies the priority data needs. ATSDR encourages private-sector organizations and other governmental programs to use ATSDR's priority data needs to plan their research activities.

Dated: December 19, 2007.

Ken Rose,

Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E7–25213 Filed 12–27–07; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–222 and CMS–R–268]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of currently approved collection; *Title of Information Collection:* Independent Rural Health Center/Freestanding Federally Qualified Health Center Cost Report and Supporting Regulations 42 CFR 413.20 AND 42 CFR 413.24; *Use:* Providers of service in the Medicare program are required to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. The Form CMS–222 cost report is needed to determine the amount of reasonable cost due to the providers for furnishing medical services to Medicare beneficiaries; *Form Number:* CMS–222 (OMB# 0938–0107); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 3,159; *Total Annual Responses:* 3,159; *Total Annual Hours:* 157,950.

2. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Survey Tool for *http://www.medicare.gov* and *http://www.cms.hhs.gov; Use:* The purpose of this submission is to request a revision of 0938–0756 (CMS-R–268) to continue to collect information from Internet users as they exit from the Websites Medicare.gov and CMS.hhs.gov. As part of the revised collection we are combining the content from the collection 0938–0900 that was discontinued on 5/31/2007. The packages are being combined to eliminate a duplication of effort. We are requesting a three-year clearance, so that the feedback received through the survey can be used continually to update and improve the sites. To ensure that we gather information about user reactions to the Websites, we have developed a survey tool that users can complete when they exit either site or by accessing a link on the bottom bar on the page. The responses on this survey tool will help CMS to make appropriate changes to the Websites in the future. The survey tool contains questions about the information that visitors are seeking from the sites, the degree to which either site was useful to them, the improvements that they would like to see in the sites, and their general comments. *Form Number:* CMS–R–268 (OMB# 0938–0756); *Frequency:* On occasion; *Affected Public:* Individuals and households, Private sector—Business or other for-profit; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours:* 1,167.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on February 26, 2008. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 20, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–25289 Filed 12–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7007–N]

Medicare Program; Request for Nominations for the Advisory Panel on Medicare Education

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations for individuals to serve on the Advisory Panel on Medicare Education (the Panel) to fill current vacancies and vacancies that will become available in 2008. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on the effectiveness of consumer education strategies concerning the Medicare program.

DATES: *Deadline for Nominations by Regular Mail:* Friday, January 18, 2008 at 5 p.m., e.s.t.

Deadline for Nominations by Electronic Mail: Friday, January 25, 2008 at 5 p.m., e.s.t.

ADDRESSES: *Regular Mail:* Lynne G. Johnson, Office of External Affairs, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S1–05–06, Baltimore, MD 21244–1850.

Electronic Mail: *Lynne.Johnson@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Lynne G. Johnson, Health Insurance Specialist, Division of Forum and Conference Development, (410) 786–0090. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/FACA/04_APME.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *Lynne.Johnson@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is "in the public interest in connection with the performance of duties imposed * * * by law." Section 1804 of the Social Security Act (the Act) requires the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for "activities * * * to broadly disseminate information to Medicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options." To help inform these activities, section 1114(f) of the Act and section 222 of the Public Health Service Act (42 U.S.C. 217a) authorize the creation of an advisory panel. The Secretary signed the charter establishing this Panel on January 21, 1999 and approved the renewal of the charter on November 14, 2006. The establishment of the charter and the renewal of charter were announced in the February 17, 1999 **Federal Register** (64 FR 7899), and the March 23, 2007 **Federal Register** (72 FR 13796), respectively. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (the Administrator) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. The Secretary delegates authority to the Administrator.

The goals of the Panel are as follows:

- To provide recommendations on the development and implementation of a national Medicare education program that describes the options for selecting a health plan and prescription drug benefits under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To make recommendations on how to expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The Panel shall consist of a maximum of 20 members. The Chair shall either be appointed from among the 20 members, or a Federal official will be designated to serve as the Chair. The charter requires that meetings shall be held approximately 4 times per year. Members will be expected to attend all meetings. The members and the Chair shall be selected from authorities knowledgeable in the fields of senior citizen advocacy; outreach to minority communities; health communications; disease-related health advocacy; disability policy and access; health economics research; health insurers and plans; providers and clinicians; labor and retirement, and web education. Members of the general public are invited to apply.

This notice is an invitation to interested organizations or individuals to submit their nominations for membership on the Panel. The Secretary or his designee will appoint new members to the Panel from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure an appropriate balance of membership.

II. Nomination Requirements

Each nomination must state that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a resume or description of the nominee's experience and a brief biographical summary. In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts. Self-nominations will also be accepted. All nominations must be received at the appropriate address listed in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice.

Authority: Sections 9(a) and 10 of Public L. 92–463 (5 U.S.C. App. 2, sections 9(a) and 10); 41 CFR Part 102–3; Sections 1114(f), 1804, and 1851(d) of the Social Security Act (42 U.S.C. 1314(f), 1395b–2, and 1394w–21(d)); and Section 222 of the Public Health Service Act (42 U.S.C. 217a).

Dated: December 3, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7–24273 Filed 12–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2269–N]

RIN 0938–AO75

Medicaid Program; Fiscal Year Disproportionate Share Hospital Allotments and Disproportionate Share Hospital Institutions for Mental Disease Limits

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final Federal share disproportionate share hospital (DSH) allotments for Federal fiscal year (FFY) 2006 and the preliminary Federal share DSH allotments for FFY 2008. This notice also announces the final FFY 2006 and the preliminary FFY 2008 limitations on aggregate DSH payments that States may make to institutions for mental disease and other mental health facilities. In addition, this notice includes background information describing the methodology for determining the amounts of States' FFY DSH allotments.

DATES: *Effective Date:* December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

A. Disproportionate Share Hospital Allotments for Federal Fiscal Year 2003

Under section 1923(f)(3) of the Social Security Act (the Act), States' Federal

fiscal year (FFY) 2003 disproportionate share hospital (DSH) allotments were calculated by increasing the amounts of the FFY 2002 allotments for each State (as specified in the chart, entitled "DSH Allotment (in millions of dollars)," contained in section 1923(f)(2) of the Act) by the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the prior fiscal year. The allotment, determined in this way, is subject to the limitation that an increase to a State's DSH allotment for a fiscal year cannot result in the DSH allotment exceeding the greater of the State's DSH allotment for the previous fiscal year or 12 percent of the State's total medical assistance expenditures for the allotment year (this is referred to as the 12 percent limit).

Most States' actual FY 2002 allotments were determined in accordance with the provisions of section 1923(f)(4) of the Act. However, as indicated previously, the calculation of States' FFY 2003 allotments was not based on the actual FFY 2002 DSH allotments; rather, section 1923(f)(3) of the Act requires that the States' FY 2003 allotments be determined using the amount of the States' FY 2002 allotments specified in the chart in section 1923(f)(2) of the Act. The exception to this is the calculation of the FFY 2003 DSH allotments for certain "Low–DSH States" (defined in section 1923(f)(5) of the Act). Under the Low–DSH State provision, there is a special calculation methodology for the Low–DSH States only. Under this methodology, the FFY 2003 allotments were determined by using (that is, increasing) States' actual FFY 2002 DSH allotments (not their FFY 2002 allotments specified in the chart in section 1923(f)(2) of the Act) by the percentage change in the CPI–U for the previous fiscal year.

B. DSH Allotments for FFY 2004

Section 1001(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) amended section 1923(f)(3) of the Act to provide for a "Special, Temporary Increase In Allotments On A One-Time, Non-Cumulative Basis." Under this provision, States' FFY 2004 DSH allotments were determined by increasing their FFY 2003 allotments by 16 percent, and the fiscal year DSH allotment amounts so determined were not subject to the 12 percent limit.

C. DSH Allotments for Non-Low DSH States for FFY 2005, and Fiscal Years Thereafter

Under the methodology contained in section 1923(f)(3)(C) of the Act, as amended by section 1001(a)(2) of the MMA, the non-Low-DSH States' DSH allotments for FFY 2005 and subsequent fiscal years continue at the same level as the States' DSH allotments for FFY 2004 until a "fiscal year specified" occurs. The "fiscal year specified" is the first fiscal year for which the Secretary estimates that a State's DSH allotment equals (or no longer exceeds) the DSH allotment as would have been determined under the statute in effect before the enactment of the MMA. We determine whether the fiscal year specified has occurred under a special parallel process. Specifically, under this parallel process, a "parallel" DSH allotment is determined for FFYs after 2003 by increasing the State's DSH allotment for the previous fiscal year by the percentage change in the CPI–U for the prior fiscal year, subject to the 12 percent limit. This is the methodology as would otherwise have been applied under section 1923(f)(3)(A) of the Act notwithstanding the application of the provisions of MMA. The "fiscal year specified," is the fiscal year in which the parallel DSH allotment calculated under this special parallel process finally equals or exceeds the FY 2004 DSH allotment, as determined under the MMA provisions. Once the fiscal year specified occurs for a State, that State's fiscal year DSH allotment will be calculated by increasing the State's previous actual fiscal year DSH allotment (which would be equal to the FY 2004 DSH allotment) by the percentage change in the CPI–U for the previous fiscal year, subject to the 12 percent limit. The following example illustrates how the fiscal year DSH allotment would be calculated for fiscal years after FFY 2004.

Example—In this example, we are determining the parallel FFY 2008 DSH allotment. A State's actual FFY 2003 DSH allotment is $100 million. Under the MMA, this State's actual FFY 2004 DSH allotment would be $116 million ($100 million increased by 16 percent). The State's DSH allotment for FFY 2005 and subsequent fiscal years would continue at the $116 million FFY 2004 DSH allotment for fiscal years following FFY 2004 until the "fiscal year specified" occurs. In the separate parallel process, we determine whether the fiscal year specified has occurred by calculating the State's DSH allotments in accordance with the statute in effect before the enactment of the MMA. Under this special process, we would continue to determine the State's parallel DSH allotment for each fiscal year by increasing the State's parallel DSH allotment for the previous fiscal year (as also determined under the special parallel process) by the percentage change in the CPI–U for the previous fiscal year, and subject to the 12 percent limit. Assume for purposes of this example that, in accordance with this special parallel process, the State's parallel FFY 2007 DSH allotment was determined to be $115 million and the percentage change in the CPI–U for FFY 2007 (the previous fiscal year) relevant for the calculation of the FFY 2008 DSH allotment was 2.3 percent. That is, the percentage change for the CPI–U for FFY 2007, the year before FFY 2008, was 2.3 percent. Therefore, the State's special parallel process FFY 2008 DSH allotment amount would be calculated by increasing the special parallel process FFY 2007 DSH allotment amount of $115 million by 2.3 percent; this results in a special DSH allotment process amount for FFY 2008 of $117.6 million. Since $117.6 million is greater than $116 million (the actual FFY 2004 DSH allotment calculated under the MMA), we would determine that FFY 2008 is the "fiscal year specified" (the first year that the FFY 2004 allotment equals or no longer exceeds the parallel process allotment). We would then determine the State's FFY 2008 allotment as the State's actual FFY 2007 DSH allotment ($116 million) increased by the percentage change in the CPI–U for FFY 2007 (2.3 percent). Therefore, the State's FFY 2008 DSH allotment would be $118.67 million ($116 million increased by 2.3 percent); for purposes of this example, the application of the 12 percent limit has no effect. Furthermore, for FFY 2009 and thereafter, the State's DSH allotment would be calculated by increasing the State's previous fiscal year's DSH allotment by the percentage change in the CPI–U for the previous fiscal year, subject to the 12 percent limit.

However, as amended by section 1001(b)(4) of the MMA, section 1923(f)(5)(B) of the Act also contains new criteria for determining whether a State is a Low-DSH State, beginning with FFY 2004. This provision is described in section I.D.

Finally, the provisions of section 6054 of the Deficit Reduction Act (DRA) of 2005 Public Law 109–171, enacted February 8, 2006) affected the determination of the DSH allotment for the District of Columbia. Under section 6054 of the DRA, for purposes of determining only the FFY 2006 and subsequent fiscal year DSH allotments for the District of Columbia, the table in section 1923(f)(2) of the Act is amended by increasing the FFY DSH allotment amounts indicated in that table for the District of Columbia for FFYs 2000, 2001, and 2002 to $49 million for each of those fiscal years. Before the DRA amendment, the amount in the chart in section 1923(f)(2) of the Act for the District of Columbia for each of those fiscal years was $32 million. This DRA provision increases the fiscal year DSH allotment for the District of Columbia effective with the FFY 2006 DSH

allotment. This change is because the DSH allotments for FFY 2003 were based on the amounts of States' DSH allotments for FFY 2002 as contained in the chart in section 1923(f)(2) of the Act. Since (for purposes of ultimately determining the FFY 2006 allotment) the DRA provision increased the FFY 2002 allotment for the District of Columbia, as indicated above, the FFY 2003 allotment was increased. Furthermore, for this purpose, the FFY 2004 allotment for the District of Columbia would then have been determined by increasing the FFY 2003 allotment (as so determined) by 16 percent. For fiscal years subsequent to FFY 2006, the DSH allotments are determined as described above. The final FFY 2006 DSH allotment and the preliminary FFY 2008 DSH allotment for the District of Columbia contained in this notice reflect the provision of section 6054 of the DRA.

As described below, in accordance with section 6054 of the DRA, the final FFY 2006 DSH allotment for the District of Columbia is $57,692,600. As amended by section 6054 of the DRA, the FFY 2002 DSH allotment amount for the District of Columbia contained in the chart in section 1923(f)(2) of the Act was increased to $49,000,000. In accordance with section 1923(f)(3)(A) of the Act, the FFY 2003 DSH allotment is determined by increasing the $49,000,000 DSH Allotment for FFY 2002 (as referenced in section 1923(f)(2) of the Act) by the percentage change in the CPI–U for 2002 (in this case, 1.5 percent) to $49,735,000. In accordance with section 1923(f)(3)(C)(i) of the Act, the FFY 2004 DSH allotment is determined by increasing the $49,735,000 FFY 2003 DSH allotment amount by 16 percent to $57,692,600. In accordance with the provisions of section 1923(f)(3)(C) of the Act, the District of Columbia's DSH allotments for FFYs 2005, 2006, and 2007 are also $57,692,600. Finally, in accordance with section 6054 of the DRA, the District of Columbia's DSH allotment is increased as described above, effective beginning with FFY 2006.

D. DSH Allotments for Low–DSH States for FFY 2004 and Fiscal Years Thereafter

Section 1001(b)(1) of the MMA amended section 1923(f)(5) of the Act regarding the calculation of the fiscal year DSH allotments for "Low–DSH" States for FFY 2004 and subsequent fiscal years. Specifically, under section 1923(f)(5)(B) of the Act, as amended by section 1001(b)(4) of the MMA, a State is considered a Low–DSH State for FFY 2004 if its total DSH payments under its State plan for FFY 2000 (including Federal and State shares) as reported to CMS as of August 31, 2003, are greater than 0 percent and less than 3 percent of the State's total FFY 2000 expenditures under its State plan for medical assistance. For States that meet the new Low–DSH criteria, their FFY 2004 DSH allotments are calculated by increasing their FFY 2003 DSH allotments by 16 percent. Therefore, for FFY 2004, Low–DSH States' fiscal year DSH allotments are calculated in the same way as the DSH allotments for regular States, which under section 1923(f)(3) of the Act, get the special temporary increase for FFY 2004.

Furthermore, for States meeting the MMA's Low-DSH definition, the DSH allotments for FFYs 2005 through 2008 will continue to be determined by increasing the previous fiscal year's DSH allotment by 16 percent. The Low-DSH States' DSH allotments for FFYs 2004 through 2008 are not subject to the 12 percent limit. The Low-DSH States' DSH allotments for FFYs 2009 and subsequent fiscal years are calculated by increasing those States' DSH allotments for the prior fiscal year by the percentage change in the CPI–U for that prior fiscal year. For FFYs 2009 and thereafter, the DSH allotments so determined would be subject to the 12 percent limit.

E. Institutions for Mental Diseases DSH Limits for FFYs 1998 and Thereafter

Under section 1923(h) to the Act, Federal financial participation (FFP) is not available for DSH payments to institutions for mental diseases (IMDs) and other mental health facilities that are in excess of State-specific aggregate limits. Under this provision, this aggregate limit for DSH payments to IMDs and other mental health facilities is the lesser of a State's FFY 1995 total computable (State and Federal share) IMD and other mental health facility DSH expenditures applicable to the State's FFY 1995 DSH allotment (as reported on the Form CMS–64 as of January 1, 1997), or the amount equal to the product of the State's current year total computable DSH allotment and the applicable percentage.

Each State's IMD limit on DSH payments to IMDs and other mental health facilities was calculated by first determining the State's total computable DSH expenditures attributable to the FFY 1995 DSH allotment for mental health facilities and inpatient hospitals. This calculation was based on the total computable DSH expenditures reported by the State on the Form CMS–64 as mental health DSH and inpatient hospital as of January 1, 1997. We then calculate an "applicable percentage." The applicable percentage for FFY 1998 through FFY 2000 (1995 IMD DSH percentage) is calculated by dividing the total computable amount of IMD and mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment by the total computable amount of all DSH expenditures (mental health facility plus inpatient hospital) applicable to the FFY 1995 DSH allotment. For FFY 2001 and thereafter, the applicable percentage is defined as the lesser of the applicable percentage as calculated above (for FFYs 1998 through 2001) or 50 percent for FFY 2001; 40 percent for FFY 2002; and 33 percent for each subsequent FFY.

The applicable percentage is then applied to each State's total computable FFY DSH allotment for the current FFY. The State's total computable FFY DSH allotment is calculated by dividing the State's Federal share DSH allotment for the FFY by the State's Federal medical assistance percentage (FMAP) for that FFY.

In the final step of the calculation of the IMD DSH Limit, the State's total computable IMD DSH limit for the FFY is set at the lesser of the product of a State's current fiscal year total computable DSH allotment and the applicable percentage for that fiscal year, or the State's FFY 1995 total computable IMD and other mental health facility DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS–64.

The MMA legislation did not amend the Medicaid statute with respect to the calculation of the IMD DSH limit.

*F. DSH Allotments and IMD DSH Limits Published in the **Federal Register** on October 3, 2006*

On October 3, 2006, we published a notice (71 FR 58398) in the **Federal Register** that announced the final Federal share DSH allotments for Federal fiscal year (FFY) 2005, and the preliminary Federal share DSH allotments for FFY 2006 and FFY 2007. It also announced the final FFY 2005, and the preliminary FFY 2006 and FFY 2007, limitations on aggregate DSH payments that States may make to institutions for mental disease (IMDs) and other mental health facilities.

*G. Publication in the **Federal Register** of Preliminary and Final Notice for DSH Allotments and IMD DSH Limits*

In general, we initially determine States' DSH allotments and IMD DSH limits for a fiscal year using estimates of medical assistance expenditures, including DSH expenditures in their

Medicaid programs. These estimates are provided by States each year on the August quarterly Medicaid budget reports (Form CMS–37) before the Federal fiscal year for which the DSH allotments and IMD DSH limits are being determined. The DSH allotments and IMD DSH limits determined using these estimates are referred to as *"preliminary."* Only after we receive States" reports of the actual related medical assistance expenditures through the quarterly expenditure report (Form CMS–64), which occurs after the end of the fiscal year, are the "final" DSH Allotments and IMD DSH limits determined.

As indicated in section I.F. of this notice, the notice published in the **Federal Register** on October 3, 2006 announced the final FFY 2005 DSH allotments and the final FFY 2005 IMD DSH limits (since they were based on the actual expenditures related to those years), the preliminary FFYs 2006 and 2007 DSH allotments (based on estimates), and the preliminary FFYs 2006 and 2007 IMD DSH limits (since they were based on the preliminary DSH allotments for FFYs 2006 and 2007).

This notice announces the final FFY 2006 DSH allotments and the final FFY 2006 IMD DSH limits (since these are now based on the actual expenditures for those fiscal years), the preliminary FFY 2008 DSH allotments (based on estimates), and the preliminary IMD DSH limits for FFY 2008 (since they are based on the preliminary DSH allotments for FFY 2008). This notice does not include the final FFY 2007 DSH allotments or the final FFY 2007 IMD DSH limits, since the associated actual expenditures for FFY 2007 are not available at this time.

II. Provisions of the Notice

A. Calculation of the Final FFY 2006 Federal Share State DSH Allotments the Preliminary FFY 2008 Federal Share State DSH Allotments

Chart 1 of the Addendum to this notice provides the States' "final" FFY 2006 DSH allotments. The final FFY 2006 DSH allotments for each State were computed in accordance with the provisions of the Medicaid statute as amended by the MMA. As required by the provisions of the MMA, the final FFY 2004 DSH allotments for the "Low-DSH" States and all the other States were calculated by increasing the FFY 2003 DSH allotments by 16 percent. In the notice published on March 26, 2004 in the **Federal Register**, we explained the definition and determination of the "Low-DSH" States under the MMA provisions. However, for following fiscal years, the DSH allotments are determined under a process which incorporates a parallel process described in section I.C. of this notice. Under that parallel process, States final FFY 2006 DSH allotments were determined using the States' expenditure reports (Form CMS–64) for FFY 2006.

Chart 2 of the Addendum to this notice provides the States' "preliminary" FFY 2008 DSH allotments. These preliminary allotments were determined using the States' August 2007 expenditure estimates submitted by the States on the Form CMS–37. We will publish the final FFY 2008 DSH allotments for each State following receipt of the States' four quarterly Medicaid expenditure reports (Form CMS–64) for FFY 2008.

B. Calculation of the FFYs 2006 and FFY 2008 IMD DSH Limits

Section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a State can make to IMDs and other mental health facilities. FFP is not available for IMD or DSH payments that exceed the lesser of the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported to us on the Form CMS–64 as of January 1, 1997; or the amount equal to the product of the State's current FFY total computable DSH allotment and the applicable percentage. We are publishing the final FFY 2006 IMD DSH limit, and the preliminary FFY 2008 IMD DSH limit, along with an explanation of the calculation of these limits.

For FFY 2003 and following fiscal years, the applicable percentage is the lesser of 33 percent or the 1995 DSH IMD percentage of the amount computed for FFY 2000. This percentage was applied to the State's fiscal year total computable DSH allotment. This result was then compared to the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS–64 as of January 1, 1997. The lesser of these two amounts was the State's limitation on total computable IMD/DSH expenditures for FFY 2003 and following fiscal years.

Charts 3 and 4 of the Addendum to this notice detail each State's final IMD/DSH limitation for FFY 2006 and the preliminary IMD/DSH limitation for FFY 2008, respectively, in accordance with section 1923(h) of the Act.

III. 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 (44 U.S.C. 35).

IV. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this notice will not have significant economic impact on a substantial number of small entities. Specifically the effects of the various controlling statutes on providers are not impacted by a result of any independent regulatory impact and not this notice. The purpose of the notice is to announce the latest distributions as required by the statute.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the

RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area for Medicaid payment regulations and has fewer than 100 beds. We are not preparing analysis for section 1102(b) of the Act because we have determined and the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

In addition, the MMA set statutorily defined limits on the amount of Federal share DSH expenditures available for FFY 2004 and subsequent fiscal years. Specifically, section 1001 of the MMA increased the DSH allotment for States beginning with fiscal year 2004. While overall the statute mandated some increases in DSH payments, we do not believe that this notice will have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $140 million. This notice will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this notice does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Addendum

This addendum contains the charts 1 through 4 (preceeded by associated keys) that are referred to in the preamble of this notice.

Key to Chart 1.—Final DSH Allotments for FY 2006

[Key to the Chart of the Final FFY 2005 DSH Allotments. The final FFY 2006 DSH Allotments for the regular States Are Presented in the Top Section of this chart and the final FFY 2005 DSH Allotments for the Low-DSH States Are presented in the Bottom Section of the chart.]

Column	Description
For Non-Low-DSH States:	
Column A	State.
Column B	Final FY 2004 DSH Allotment Federal Share—This column contains the final FFY 2004 DSH Allotments.
Column C	FY 2006 DSH Allotment Federal Share—This column contains the final FFY 2006 DSH Allotments.
Column D	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.
For Low-DSH States:	
Column A	State.
Column B	Prior FY DSH Allotment—This column contains the final FFY 2005 DSH Allotments.
Column C	FY 2006 DSH Allotments Federal Share—This column contains the final FFY 2006 DSH Allotments = Column B multiplied by 1.16.
Column D	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.

Key to Chart 2.—Preliminary DSH Allotments for FY 2008

[Key to the Chart of the Preliminary FFY 2008 DSH Allotments. The preliminary FFY 2008 DSH Allotments for the regular States are presented in the top section of this chart and the preliminary FFY 2008 DSH Allotments for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
For Non-Low-DSH States:	
Column A	State.
Column B	Final FY 2004 DSH Allotment Federal Share—This column contains the final FFY 2004 DSH Allotments.
Column C	FY 2008 DSH Allotment Federal Share—This column contains the preliminary FFY 2008 DSH Allotments.
Column D	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.
For Low-DSH States:	
Column A	State.
Column B	Prior FY DSH Allotment—This column contains the preliminary FFY 2007 DSH Allotments.
Column C	FY 2008 DSH Allotments Federal Share—This column contains the preliminary FFY 2008 DSH Allotments = Column B multiplied by 1.16.
Column D	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.

Key to Chart 3.—Final FFY 2006 IMD DSH Limits

[Key to the Chart of the FFY 2006 IMD Limitations.—The final FFY 2006 IMD DSH Limits for the regular States are presented in the top section of this chart and the Final FFY IMD DSH Limits for the Low-DSH States are presented in the Bottom Section of the chart.]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.

KEY TO CHART 3.—FINAL FFY 2006 IMD DSH LIMITS—Continued

[Key to the Chart of the FFY 2006 IMD Limitations.—The final FFY 2006 IMD DSH Limits for the regular States are presented in the top section of this chart and the Final FFY IMD DSH Limits for the Low-DSH States are presented in the Bottom Section of the chart.]

Column	Description
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col C/D. This column contains the "applicable percentage" representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2006 Federal Share DSH Allotment. This column contains the States' final FFY 2005 DSH allotments.
Column G	FFY 2006 FMAP.
Column H	FY 2006 DSH Allotments in TC. Col. F/G. This column contains FFY 2006 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FFY 2006 total computable DSH allotment (calculated as Column E × Column H).
Column J	FY 2006 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2006 IMD DSH Limit Federal Share, Col. G × J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G × Col. J).
Column L	LOW DSH Status. This column contains Low DSH status for each State.

KEY TO CHART 4.—PRELIMINARY FFY 2008 IMD DSH LIMITS

[Key to the Chart of the FFY 2008 IMD Limitations.—The preliminary FFY 2008 IMD DSH Limits for the regular States are presented in the top section of this chart and the preliminary FFY 2008 IMD DSH Limits for the Low-DSH States are presented in the Bottom Section of the Chart

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col. C/D. This column contains the "applicable percentage" representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2008 Federal Share DSH Allotment. This column contains the States' preliminary FFY 2008 DSH allotments.
Column G	FFY 2008 FMAP.
Column H	FY 2008 DSH Allotment Total Computable Col. F/G. This column contains FFY 2008 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FFY 2008 total computable DSH allotment (calculated as Column E × Column H)
Column J	FY 2008 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2008 IMD DSH Limit Federal Share, Col. G × J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G × Col. J).
Column L	Low DSH Status. This column contains Low DSH status for each State.

Chart 1

	FINAL DSH ALLOTMENTS FOR FY:	2006	
A	B	C	D
STATE	FINAL FY 2004 DSH ALLOTMENTS	FY 2006 DSH ALLOTMENTS	MMA LOW DSH STATUS
ALABAMA	$289,640,400	$289,640,400	N/A
ARIZONA	$95,369,400	$95,369,400	N/A
CALIFORNIA	$1,032,579,800	$1,032,579,800	N/A
COLORADO	$87,127,600	$87,127,600	N/A
CONNECTICUT	$188,384,000	$188,384,000	N/A
DISTRICT OF COLUMBIA*	$37,676,800	$57,692,600	N/A
FLORIDA	$188,384,000	$188,384,000	N/A
GEORGIA	$253,141,000	$253,141,000	N/A
HAWAII	$0	$0	N/A
ILLINOIS	$202,512,800	$202,512,800	N/A
INDIANA	$201,335,400	$201,335,400	N/A
KANSAS	$38,854,200	$38,854,200	N/A
KENTUCKY	$136,578,400	$136,578,400	N/A
LOUISIANA	$731,960,000	$731,960,000	N/A
MAINE	$98,901,600	$98,901,600	N/A
MARYLAND	$71,821,400	$71,821,400	N/A
MASSACHUSETTS	$287,285,600	$287,285,600	N/A
MICHIGAN	$249,608,800	$249,608,800	N/A
MISSISSIPPI	$143,642,800	$143,642,800	N/A
MISSOURI	$446,234,600	$446,234,600	N/A
NEVADA	$43,563,800	$43,563,800	N/A
NEW HAMPSHIRE	$150,800,000	$150,800,000	N/A
NEW JERSEY	$606,361,000	$606,361,000	N/A
NEW YORK	$1,512,959,000	$1,512,959,000	N/A
NORTH CAROLINA	$277,866,400	$277,866,400	N/A
OHIO	$382,655,000	$382,655,000	N/A
PENNSYLVANIA	$528,652,600	$528,652,600	N/A
RHODE ISLAND	$61,224,800	$61,224,800	N/A
SOUTH CAROLINA	$308,478,800	$308,478,800	N/A
TENNESSEE	$0	$0	N/A
TEXAS	$900,711,000	$900,711,000	N/A
VERMONT	$21,193,200	$21,193,200	N/A
VIRGINIA	$82,519,327	$82,519,327	N/A
WASHINGTON	$174,255,200	$174,255,200	N/A
WEST VIRGINIA	$63,579,600	$63,579,600	N/A
SUBTOTAL	$9,895,858,327	$9,915,874,127	
LOW DSH STATES			
STATE	PRIOR FY ALLOTMENT (FY 2005)	PRIOR FY ALLOTMENT X FACTOR: 1.16	
ALASKA	$12,292,056	$14,258,785	LOW DSH
ARKANSAS	$26,031,420	$30,196,447	LOW DSH
DELAWARE	$5,463,136	$6,337,238	LOW DSH
IDAHO	$9,919,182	$11,506,251	LOW DSH
IOWA	$23,764,480	$27,566,797	LOW DSH
MINNESOTA	$45,070,872	$52,282,212	LOW DSH
MONTANA	$6,849,606	$7,945,543	LOW DSH
NEBRASKA	$17,076,513	$19,808,755	LOW DSH
NEW MEXICO	$12,292,056	$14,258,785	LOW DSH
NORTH DAKOTA	$5,764,127	$6,686,387	LOW DSH
OKLAHOMA	$21,862,544	$25,348,951	LOW DSH
OREGON	$27,315,680	$31,686,189	LOW DSH
SOUTH DAKOTA	$6,664,873	$7,731,253	LOW DSH
UTAH	$11,838,439	$13,732,589	LOW DSH
WISCONSIN	$57,045,668	$66,172,975	LOW DSH
WYOMING	$136,578	$158,430	LOW DSH
TOTAL LOW DSH STATES	$289,377,230	$335,677,587	
NATIONAL TOTAL	$10,185,235,557	$10,251,551,714	

Footnotes

*DC FY 2006 allotment determined under section 6054 of the Deficit Reduction Act of 2005

Chart 2

PRELIMINARY DSH ALLOTMENTS FOR FY:		2008	
A	B	C	D
STATE	FINAL FY 2004 DSH ALLOTMENTS	FY 2008 DSH ALLOTMENTS	MMA LOW DSH STATUS
ALABAMA	$289,640,400	$289,640,400	N/A
ARIZONA	$95,369,400	$95,369,400	N/A
CALIFORNIA	$1,032,579,800	$1,032,579,800	N/A
COLORADO	$87,127,600	$87,127,600	N/A
CONNECTICUT	$188,384,000	$188,384,000	N/A
DISTRICT OF COLUMBIA	$57,676,800	$57,692,600	N/A
FLORIDA	$188,384,000	$188,384,000	N/A
GEORGIA	$253,141,000	$253,141,000	N/A
HAWAII	$0	$0	N/A
ILLINOIS	$202,512,800	$202,512,800	N/A
INDIANA	$201,335,400	$201,335,400	N/A
KANSAS	$38,854,200	$38,854,200	N/A
KENTUCKY	$136,578,400	$136,578,400	N/A
LOUISIANA	$731,960,000	$731,960,000	N/A
MAINE	$98,901,600	$98,901,600	N/A
MARYLAND	$71,821,400	$71,821,400	N/A
MASSACHUSETTS	$287,285,600	$287,285,600	N/A
MICHIGAN	$249,608,800	$249,608,800	N/A
MISSISSIPPI	$143,642,800	$143,642,800	N/A
MISSOURI	$446,234,600	$446,234,600	N/A
NEVADA	$43,563,800	$43,563,800	N/A
NEW HAMPSHIRE	$150,800,000	$150,800,000	N/A
NEW JERSEY	$606,361,000	$606,361,000	N/A
NEW YORK	$1,512,959,000	$1,512,959,000	N/A
NORTH CAROLINA	$277,866,400	$277,866,400	N/A
OHIO	$382,655,000	$382,655,000	N/A
PENNSYLVANIA	$528,652,600	$528,652,600	N/A
RHODE ISLAND	$61,224,800	$61,224,800	N/A
SOUTH CAROLINA	$308,478,800	$308,478,800	N/A
TENNESSEE	$0	$0	N/A
TEXAS	$900,711,000	$900,711,000	N/A
VERMONT	$21,193,200	$21,193,200	N/A
VIRGINIA	$82,519,327	$82,519,327	N/A
WASHINGTON	$174,255,200	$174,255,200	N/A
WEST VIRGINIA	$63,579,600	$63,579,600	N/A
SUBTOTAL	$9,895,858,327	$9,915,874,127	
LOW DSH STATES			
STATE	PRIOR FY ALLOTMENT (FY 2007)	PRIOR FY ALLOTMENT X FACTOR: 1.16	
ALASKA	$16,540,191	$19,186,622	LOW DSH
ARKANSAS	$35,027,879	$40,632,340	LOW DSH
DELAWARE	$7,351,196	$8,527,387	LOW DSH
IDAHO	$13,347,251	$15,482,811	LOW DSH
IOWA	$31,977,485	$37,093,883	LOW DSH
MINNESOTA	$60,647,366	$70,350,945	LOW DSH
MONTANA	$9,216,830	$10,691,523	LOW DSH
NEBRASKA	$22,978,156	$26,654,661	LOW DSH
NEW MEXICO	$16,540,191	$19,186,622	LOW DSH
NORTH DAKOTA	$7,756,209	$8,997,202	LOW DSH
OKLAHOMA	$29,404,783	$34,109,548	LOW DSH
OREGON	$36,755,979	$42,636,936	LOW DSH
SOUTH DAKOTA	$8,968,253	$10,403,173	LOW DSH
UTAH	$15,929,803	$18,478,571	LOW DSH
WISCONSIN	$76,760,651	$89,042,355	LOW DSH
WYOMING	$183,779	$213,184	LOW DSH
TOTAL LOW DSH STATES	$389,386,002	$451,687,763	
NATIONAL TOTAL	$10,285,244,329	$10,367,561,890	

Chart 3

								FINAL IMD DSH LIMIT FOR FY:	2006		
A	B	C	D	E	F	G	H	I	J	K	L
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2006 ALLOTMENT IN FS	FY 2006 FMAP	FY 2006 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2006 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2006 IMD LIMIT IN FS Col G x J	MMA LOW DSH STATUS
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1 07%	$269,640,400	69 51%	$416,688,822	$4,443,567	$4,443,567	$3,088,724	N/A
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23 27%	$95,369,400	66 98%	$142,384,891	$33,126,582	$28,474,900	$18,072,488	N/A
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0 071%	$1,032,579,800	50 00%	$2,065,159,600	$1,466,263	$1,466,263	$733,132	N/A
COLORADO	$173,900,441	$594,776	$174,495,217	0 34%	$87,127,600	50 00%	$174,255,200	$593,958	$593,958	$296,979	N/A
CONNECTICUT	$303,359,275	$108,573,725	$408,933,000	25 82%	$188,384,000	50 00%	$378,768,000	$97,269,727	$97,269,727	$48,634,863	N/A
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14 20%	$57,892,600	70 00%	$82,418,000	$11,707,201	$6,545,136	$4,581,595	N/A
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33 00%	$188,384,000	58 89%	$319,891,323	$105,564,137	$105,564,137	$62,186,720	N/A
GEORGIA	$407,343,557	$0	$407,343,557	0 00%	$253,141,000	60 60%	$417,724,422	$0	$0	$0	N/A
HAWAII	$0	$0	$0	0 00%	$0	58 81%	$0	$0	$0	$0	N/A
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22 06%	$202,512,800	50 00%	$405,025,600	$89,352,862	$89,352,862	$44,676,431	N/A
INDIANA	$79,960,783	$153,566,302	$233,527,085	33 00%	$201,338,400	62 98%	$319,681,486	$105,494,890	$105,494,890	$66,440,882	N/A
KANSAS	$11,587,208	$76,663,508	$88,250,716	33 00%	$38,854,200	60 41%	$64,317,497	$21,224,774	$21,224,774	$12,821,888	N/A
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19 08%	$136,578,400	69 26%	$197,196,850	$37,824,074	$37,443,073	$25,933,072	N/A
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10 97%	$731,960,000	69 79%	$1,048,803,554	$115,073,958	$115,073,958	$80,310,122	N/A
MAINE	$99,957,958	$60,958,342	$160,916,300	33 00%	$98,901,600	62 90%	$157,236,248	$51,887,962	$51,887,962	$32,637,529	N/A
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33 00%	$71,821,400	50 00%	$143,642,800	$47,402,124	$47,402,124	$23,701,062	N/A
MASSACHUSETTS	$469,853,946	$105,635,054	$575,289,000	18 36%	$287,285,600	50 00%	$574,571,200	$105,503,251	$105,503,251	$52,751,625	N/A
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33 00%	$249,608,800	56 59%	$441,082,877	$145,557,349	$145,557,349	$82,370,904	N/A
MISSISSIPPI	$182,608,033	$0	$182,608,033	0 00%	$143,642,800	75 00%	$189,003,684	$0	$0	$0	N/A
MISSOURI	$521,946,524	$207,234,818	$729,181,142	28 42%	$446,234,600	61 93%	$720,546,746	$204,780,707	$204,780,707	$126,820,692	N/A
NEVADA	$73,560,000	$0	$73,560,000	0 00%	$43,563,800	54 76%	$79,554,054	$0	$0	$0	N/A
NEW HAMPSHIRE	$92,676,916	$94,753,948	$187,429,864	33 00%	$150,800,000	50 00%	$301,600,000	$99,528,000	$94,753,948	$47,376,974	N/A
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32 66%	$606,351,000	50 00%	$1,212,722,000	$396,111,755	$357,370,461	$178,685,231	N/A
NEW YORK	$2,418,889,358	$605,000,000	$3,023,889,358	20 01%	$1,512,959,000	50 00%	$3,025,918,000	$605,409,880	$605,000,000	$302,500,000	N/A
NORTH CAROLINA	$193,201,995	$236,072,627	$429,274,593	33 00%	$277,868,400	63 49%	$437,653,804	$144,425,755	$144,425,755	$91,696,912	N/A
OHIO	$536,731,956	$93,432,758	$629,164,714	14 85%	$382,655,000	59 88%	$639,036,406	$94,898,732	$93,432,758	$55,947,535	N/A
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33 00%	$528,652,600	55 05%	$960,313,533	$316,903,466	$316,903,466	$174,456,358	N/A
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2 16%	$61,224,800	54 45%	$112,442,241	$2,431,157	$2,397,833	$1,306,620	N/A
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	18 43%	$306,478,800	69 32%	$445,006,924	$73,102,923	$72,076,341	$49,963,320	N/A
TENNESSEE	$0	$0	$0	0 00%	$0	63 99%	$0	$0	$0	$0	N/A
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19 33%	$900,711,000	60 66%	$1,484,851,632	$287,066,068	$287,066,068	$174,134,277	N/A
VERMONT	$19,979,252	$9,071,297	$29,050,549	31 23%	$21,193,200	58 49%	$36,233,895	$11,214,358	$9,071,297	$5,306,802	N/A
VIRGINIA	$129,313,480	$7,770,258	$137,083,748	5 67%	$82,519,327	50 00%	$165,038,654	$9,354,826	$7,770,258	$3,885,134	N/A
WASHINGTON	$171,725,815	$163,836,436	$335,562,259	33 00%	$174,255,200	50 00%	$348,510,400	$115,008,432	$115,008,432	$57,504,216	N/A
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22 00%	$63,579,600	72 99%	$87,107,275	$19,163,724	$18,887,045	$13,786,564	N/A
TOTAL	$13,402,480,846	$4,118,758,904	$17,521,218,750		$9,915,874,127		$17,692,387,410	$3,362,792,474	$3,292,242,321	$1,843,583,536	
LOW DSH STATES											
ALASKA	$2,506,827	$17,611,765	$20,118,592	33 00%	$14,258,785	50 16%	$28,426,605	$9,380,780	$9,380,780	$4,706,399	LOW DSH
ARKANSAS	$2,422,649	$819,351	$3,242,000	25 27%	$30,195,447	73 77%	$40,933,234	$10,345,061	$819,351	$604,436	LOW DSH
DELAWARE	$0	$7,069,000	$7,069,000	33 00%	$6,337,238	50 09%	$12,651,703	$4,175,062	$4,175,062	$2,091,299	LOW DSH
IDAHO	$2,081,429	$0	$2,081,429	0 00%	$11,505,251	69 91%	$16,458,663	$0	$0	$0	LOW DSH
IOWA	$12,011,250	$0	$12,011,250	0 00%	$27,566,797	63 61%	$43,337,206	$0	$0	$0	LOW DSH
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17 82%	$52,282,213	50 00%	$104,564,424	$18,836,253	$5,257,214	$2,628,607	LOW DSH
MONTANA	$237,048	$0	$237,048	0 00%	$7,945,543	70 54%	$11,263,883	$0	$0	$0	LOW DSH
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21 93%	$19,808,755	59 68%	$33,191,614	$7,278,209	$1,811,337	$1,081,008	LOW DSH
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3 78%	$14,258,785	71 15%	$20,040,457	$757,032	$254,786	$181,280	LOW DSH
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33 00%	$6,686,387	65 85%	$10,153,967	$3,350,809	$988,478	$650,913	LOW DSH
OKLAHOMA	$20,019,959	$3,273,248	$23,293,217	14 05%	$25,348,951	67 91%	$37,327,273	$5,245,365	$3,273,248	$2,222,963	LOW DSH
OREGON	$11,437,508	$19,975,092	$31,413,000	33 00%	$31,686,189	61 57%	$51,463,682	$18,983,015	$16,983,015	$10,456,442	LOW DSH
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33 00%	$7,731,253	65 07%	$11,881,440	$3,920,875	$751,299	$488,870	LOW DSH
UTAH	$3,621,116	$934,586	$4,555,702	20 51%	$13,732,589	70 76%	$19,407,277	$3,981,334	$934,586	$661,313	LOW DSH
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33 00%	$66,172,975	57 65%	$114,783,998	$37,878,719	$4,492,011	$2,589,644	LOW DSH
WYOMING	$0	$0	$0	0 00%	$158,430	54 23%	$292,145	$0	$0	$0	LOW DSH
TOTAL LOW DSH STATES	$99,642,480	$63,238,167	$181,990,647		$335,677,587		$556,177,569	$121,932,613	$49,121,167	$28,362,061	
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$10,251,551,714		$18,148,564,979	$3,474,724,986	$3,341,363,488	$1,871,945,599	

Chart 4

PRELIMINARY IMD DSH LIMIT FOR FY: 2008

A	B	C	D	E	F	G	H	I	J	K	L
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2008 ALLOTMENT IN FS	FY 2008 FMAP	FY 2008 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2008 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2008 IMD LIMIT IN FS Col G x J	MMA LOW DSH STATUS
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$289,640,400	67.62%	$428,335,404	$4,567,767	$4,451,770	$3,010,287	N/A
ARIZONA	$93,918,100	$28,474,900	$122,391,000	23.27%	$85,359,400	66.20%	$144,052,538	$33,518,895	$28,474,900	$18,850,364	N/A
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,032,579,600	50.00%	$2,065,159,600	$1,466,263	$1,466,263	$733,132	N/A
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$87,127,600	50.00%	$174,255,200	$593,958	$593,958	$296,979	N/A
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$188,384,000	50.00%	$378,768,000	$97,269,727	$97,269,727	$48,634,863	N/A
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$57,892,600	70.00%	$82,418,000	$11,707,201	$6,545,136	$4,581,595	N/A
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$188,384,000	58.83%	$331,486,891	$109,390,674	$109,390,674	$82,186,720	N/A
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$253,141,000	63.10%	$401,174,326	$0	$0	$0	N/A
HAWAII	$0	$0	$0	0.00%	$0	56.50%	$0	$0	$0	$0	N/A
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$202,512,800	50.00%	$405,025,600	$89,352,862	$89,352,862	$44,676,431	N/A
INDIANA	$79,950,783	$153,566,302	$233,527,085	33.00%	$201,335,400	62.59%	$321,160,313	$105,982,903	$105,982,903	$66,440,982	N/A
KANSAS	$11,587,208	$78,663,508	$86,250,716	33.00%	$38,854,200	59.43%	$65,378,092	$21,574,770	$21,574,770	$12,921,886	N/A
KENTUCKY	$156,804,906	$37,443,073	$196,247,981	19.08%	$136,578,400	89.78%	$195,727,142	$37,343,700	$37,343,700	$26,058,434	N/A
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$731,960,000	72.47%	$1,010,017,938	$110,818,438	$110,818,438	$80,310,122	N/A
MAINE	$99,957,958	$50,958,342	$150,916,300	33.00%	$98,901,600	63.31%	$156,217,975	$51,551,932	$51,551,932	$32,637,826	N/A
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$71,821,400	50.00%	$143,642,800	$47,402,124	$47,402,124	$23,701,062	N/A
MASSACHUSETTS	$469,653,946	$105,636,054	$575,289,000	18.36%	$267,285,600	50.00%	$574,571,200	$105,503,251	$105,503,251	$52,751,625	N/A
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$249,608,800	58.10%	$429,819,277	$141,774,361	$141,774,361	$82,370,804	N/A
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$143,642,800	76.29%	$188,285,227	$0	$0	$0	N/A
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$446,234,600	62.42%	$714,890,420	$203,173,189	$203,173,189	$126,820,992	N/A
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$43,563,800	50.00%	$87,127,600	$0	$0	$0	N/A
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$150,800,000	50.00%	$301,600,000	$99,528,000	$94,753,948	$47,376,974	N/A
NEW JERSEY	$736,742,538	$357,370,461	$1,094,113,000	32.66%	$606,361,000	71.04%	$853,548,705	$278,794,872	$278,794,872	$198,056,877	N/A
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,512,959,000	64.05%	$2,362,153,005	$472,607,244	$472,607,244	$302,704,940	N/A
NORTH CAROLINA	$193,201,986	$236,072,527	$429,274,513	33.00%	$277,866,400	63.75%	$435,868,853	$143,836,725	$143,836,725	$91,695,912	N/A
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$382,855,000	60.79%	$629,470,308	$93,478,140	$93,432,758	$56,797,774	N/A
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$528,852,600	54.08%	$977,538,092	$322,587,570	$322,587,570	$174,466,358	N/A
RHODE ISLAND	$108,503,187	$2,397,833	$110,901,000	2.16%	$61,224,800	52.51%	$118,598,458	$2,520,977	$2,397,833	$1,259,102	N/A
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$308,478,800	69.79%	$442,010,030	$72,610,612	$72,076,341	$50,302,078	N/A
TENNESSEE	$0	$0	$0	0.00%	$0	63.71%	$0	$0	$0	$0	N/A
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$900,711,000	60.56%	$1,487,303,501	$287,540,068	$287,540,068	$174,134,277	N/A
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$21,193,200	59.03%	$35,902,422	$11,210,857	$9,071,297	$5,354,787	N/A
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$82,519,327	50.00%	$165,038,654	$9,354,826	$7,770,268	$3,885,134	N/A
WASHINGTON	$171,725,815	$183,836,435	$355,562,250	33.00%	$174,256,200	51.52%	$338,228,261	$111,615,326	$111,615,326	$57,504,216	N/A
WEST VIRGINIA	$56,962,605	$18,887,045	$85,849,651	22.00%	$63,579,600	74.25%	$85,629,091	$18,838,521	$18,838,521	$13,987,802	N/A
TOTAL	$13,402,480,846	$4,116,758,904	$17,521,216,750		$9,915,874,127		$18,526,216,933	$3,097,513,762	$3,077,992,730	$1,864,377,357	
LOW DSH STATES											
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$19,186,622	52.48%	$36,559,874	$12,064,758	$12,064,758	$6,331,853	LOW DSH
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$40,632,340	72.94%	$55,706,526	$14,078,716	$819,351	$597,636	LOW DSH
DELAWARE	$0	$7,059,000	$7,059,000	33.00%	$8,527,387	50.00%	$17,054,774	$5,628,075	$5,628,075	$2,814,038	LOW DSH
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$15,482,811	99.87%	$22,159,455	$0	$0	$0	LOW DSH
IOWA	$12,011,250	$0	$12,011,250	0.00%	$37,093,883	61.73%	$60,090,528	$0	$0	$0	LOW DSH
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$70,360,945	50.00%	$140,701,890	$25,076,943	$5,257,214	$2,628,607	LOW DSH
MONTANA	$237,048	$0	$237,048	0.00%	$10,691,523	68.53%	$15,601,230	$0	$0	$0	LOW DSH
NEBRASKA	$6,448,102	$1,811,337	$8,260,439	21.93%	$26,654,661	52.64%	$50,635,754	$11,103,334	$1,811,337	$953,488	LOW DSH
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$19,186,822	50.00%	$38,373,244	$1,449,556	$254,786	$127,393	LOW DSH
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$8,997,202	50.00%	$17,994,404	$5,938,153	$988,478	$494,239	LOW DSH
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$34,109,548	67.10%	$50,833,902	$7,143,366	$3,273,248	$2,196,349	LOW DSH
OREGON	$11,437,906	$19,975,092	$31,413,000	33.00%	$42,636,936	60.66%	$70,057,404	$23,118,943	$19,975,092	$12,156,841	LOW DSH
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$10,403,173	60.03%	$17,329,957	$5,718,886	$751,299	$451,008	LOW DSH
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$15,478,571	71.63%	$25,797,251	$5,292,214	$934,586	$669,444	LOW DSH
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$89,042,355	57.62%	$154,533,764	$50,995,142	$4,492,011	$2,588,297	LOW DSH
WYOMING	$0	$0	$0	0.00%	$213,184	50.00%	$426,368	$0	$0	$0	LOW DSH
TOTAL LOW DSH STATES	$98,662,480	$63,238,157	$161,900,847		$461,687,763		$773,866,325	$167,609,087	$56,250,236	$32,068,921	
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$10,367,561,890		$17,300,067,258	$3,265,122,839	$3,134,242,966	$1,896,386,278	

Authority: Section 1923(a)(2), (f), and (h) of the Social Security Act (*42 U.S.C. 1396r-4*(a)(2), (f), and (h), and Pub. L. 105–33)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 23, 3007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: November 8, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. E7–24486 Filed 12–27–07; 8:45 am]

BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1556–N]

Medicare Program; Notice of Supplemental Election Period for Participation in the Calendar Year (CY) 2008 Competitive Acquisition Program for Part B Drugs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces an additional physician election period for physicians who are not currently participating in the competitive acquisition program (CAP) for Medicare Part B drugs for calendar year (CY) 2008. The additional physician election period begins on January 15, 2008 and ends on February 15, 2008. Physicians who elect to join the CAP during this additional election period will enter into a physician election agreement effective April 1, 2008 through December 31, 2008.

DATES: The additional CAP physician election period will begin on January 15, 2008 and end on February 15, 2008. Physicians electing to join the CAP during this period will participate in the CAP effective April 1, 2008 through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Edmund Kasaitis (410) 786–0477.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) (MMA) requires the implementation of a competitive acquisition program (CAP) for certain Medicare Part B drugs not paid on a cost or prospective payment system basis. Physicians who elect to participate in the CAP obtain certain Part B covered drugs from vendors selected through a competitive bidding process. Physicians who do not elect to participate in the CAP purchase these drugs themselves and are paid under the average sales price (ASP) system. (For more information on the CAP, see the March 4, 2005 proposed rule (70 FR 10746), interim final rule with comment period (70 FR 39022), November 21, 2005 final rule (70 FR 70116), and the November 27, 2007 final rule with comment period (72 FR 66222)). In accordance with section 1874B(a) of the Social Security Act (the Act), statute and our regulations, the annual CAP physician election period for CY 2009 will occur in the fall of 2008.

II. Provisions of the Notice

Under the authority described in section 1847B(a)(5)(A)(i) of the Act and § 414.908(a)(2) of our regulations, which allows for physician election at times other than the regular, annual election period in such exigent circumstances as defined by CMS, we are designating an additional election period for physicians who wish to join the CAP for 2008. We are providing for this additional election period in recognition of the statutory changes we recently made to § 414.908(a)(2)(v) of our regulations. These changes were described and published in the November 27, 2007 final rule with comment period (72 FR 66265) with comment period. The changes will become effective on January 1, 2008.

In the November 27, 2007 **Federal Register** (72 FR 66256), we published a final rule, that defined a new exigent circumstance that would allow a participating CAP physician to opt out of the CAP due to the burden that the CAP places on the physician's practice. We established a two-tiered process, under which a physician may opt out of the CAP up to and including the first 60 days after the effective date of his or her CAP election agreement if continuing participation will impose a burden on the physician's practice. A participating CAP physician may also opt out of CAP participation more than 60 days after the effective date of his or her CAP election agreement based on a change of circumstances which creates a new burden to the practice.

The two-tiered process was developed in response to public comments to the CY 2008 Physician Fee Schedule proposed rule. However, the CY 2008 Physician Fee Schedule final rule was not issued until the end of the CY 2008 CAP physician election period, and therefore, we were not able to disseminate sufficient information to make the large number of Medicare physicians aware of this new and desirable program change before the election period closed. Thus, we believe this is an "exigent circumstance" for which we should allow physicians an additional opportunity to join the CAP for CY 2008. The additional election period—

- Takes place from January 15, 2008 until February 15, 2008.
- Is open to physicians as defined in section 1861(r) of the Act (The term "physician" includes persons who are authorized to provide services under the Act and who can, within their State's scope of practice, prescribe and order drugs covered under Medicare Part B.
- Does not affect the terms of CAP participation for physicians who have already elected to participate in the CAP for 2008.
- Uses the same procedures, forms, etc. as the regular, annual 2008 election period.

Physicians who elect to participate in the CAP during the additional CY 2008 election period will have their CAP election agreement effective from April 1, 2008 through December 31, 2008. We note that participation in the CAP for CY 2009 requires renewal of CAP election during the regular fall election period, which will run from October 1, 2008 to November 15, 2008.

Completed and signed forms must be returned by mail to the physician's local carrier (the carrier that processes the physician's Part B claims). Forms must be postmarked no later than February 15, 2008. Additional details about CAP physician election will be available on the CMS Web site at *http://www.cms.hhs.gov/CompetitiveAcquisforBios/02_infophys.asp#TopOfPage.*

Authority: Section 1847B(a)(5)(A)(i) of the Social Security Act (42 U.S.C 1395w–3b(a)(5)(A)(i).)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: December 18, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7–25037 Filed 12–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3187–N]

RIN 0938–Z

Medicare Program; Quality Improvement Organization (QIO) Contracts: Solicitation of Proposals From In-State QIOs—Alaska, Idaho, Maine, South Carolina, Vermont, and Wyoming

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice in accordance with section 1153(i) of the Social Security Act (the Act), gives at least 6 months advance notice of the expiration dates of contracts with out-of-State Quality Improvement Organizations (QIOs). It also specifies the period of time in which in-State QIOs may submit a proposal for those contracts.

DATES: Interested offerors may submit a proposal to perform the QIO work in any of the States listed in this announcement. The Request for Proposal (RFP) will be made available to all interested offerors through the Federal Business Opportunities (*http://www.fedbizopps.gov*) Web site. CMS anticipates that the RFP for the first group of QIO contracts will be released sometime during the month of February 2008. Interested offerors should monitor the Federal Business Opportunities Web site for all information relating to the RFP.

ADDRESSES: Proposals for the contracts must be submitted to the Centers for Medicare & Medicaid Services, Acquisitions and Grants Groups, OAGM, Attn.: Naomi Ceresa-Haney, 7500 Security Boulevard, Mail Stop C2–21–15, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Alfreda Staton, (410) 786–4194.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended Part B of title XI of the Social Security Act (the Act) by establishing the Utilization and Quality Control Peer Review Organization program.

Utilization and Quality Control Peer Review Organizations, now known as Quality Improvement Organizations (QIOs), currently review certain health care services furnished under Title XVIII of the Social Security Act (Medicare), to determine whether those services are reasonable, medically necessary, provided in the appropriate setting, and are of a quality that meets professionally recognized standards. QIO activities are a part of the Health Care Quality Improvement Program (HCQIP), a program that supports our mission to ensure health care quality for our beneficiaries. The HCQIP rests on the belief that a plan's, provider's, or practitioner's own internal quality management system is key to good performance. The HCQIP is carried out locally by the QIO in each State. Under the HCQIP, QIOs provide critical tools (for example, quality indicators and information) for plans, providers, and practitioners to improve the quality of care provided to Medicare beneficiaries. The Congress created the QIO program in part to redirect, simplify, and enhance the cost-effectiveness and efficiency of the peer review process.

In June 1984, we began awarding contracts to QIOs. We currently maintain 53 QIO contracts with organizations that provide medical review activities for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The organizations that are eligible to contract as QIOs have satisfactorily demonstrated that they are either physician-sponsored or physician-access organizations in accordance with section 1152 of the Act and our regulations at 42 CFR 475.102 and 475.103. A physician-sponsored organization is one that is both composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the respective review area and who are representative of the physicians practicing in the review area. A physician-access organization is one that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties. In addition, a QIO cannot be a health care facility, health care facility association, a health care facility affiliate, or in most cases a payor organization. (Statutes and regulations provide that, in the event CMS determines no otherwise qualified non-payor organization is available to undertake a given QIO contract, CMS may select a payor organization which otherwise meets certain requirements to be eligible to conduct Utilization and Quality Control Peer Review as specified in Part B of Title XI of the Act and its implementing regulations.) Section 1152(2) of the Act requires QIOs to perform review functions in an efficient and effective manner, and perform reviews of quality of care in an area of medical practice where actual performance is measured against objective criteria, which defines acceptable and adequate practice. The selected organization must have a consumer representative on its governing board.

Section 1153(i) of the Act prohibits us from renewing the contract of any QIO that is not an in-State QIO without first publishing in the **Federal Register** a notice announcing when the contract will expire. This notice must be published no later than 6 months before the date the contract expires and must specify the period of time during which an in-State organization may submit a proposal for the QIO contract for that State. If one or more qualified in-State organizations submit a proposal for the QIO contract within the specified period of time, we cannot automatically renew the current contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract under section 1153(b) of the Act. An in-State QIO is defined at section 1153(i)(3) of the Act as a QIO that has its primary place of business in the State in which review will be conducted (or, that is owned by a parent corporation, the headquarters of which is located in that State).

There are currently 6 QIO contracts with entities that do not meet the statutory definition of an in-State QIO. The areas affected for purposes of this notice along with the respective contract expiration dates are as follows:

Vermont July 31, 2008
Wyoming July 31, 2008
Maine July 31, 2008
Alaska October 31, 2008
Idaho October 31, 2008
South Carolina January 31, 2009

II. Provisions of the Notice

The notice announces the scheduled expiration dates of the current contracts between CMS and out-of-State QIOs responsible for review in the areas mentioned above.

Interested offerors may submit a proposal to perform the QIO work in any of the States listed in this announcement. The Request for Proposal (RFP) will be made available to all interested offerors through the Federal Business Opportunities Web site. CMS anticipates that the RFP for the first group of QIOs will be released

sometime during the month of February 2008. Interested offerors should monitor the Federal Business Opportunities Web site for all information relating to the RFP.

Section 1153(i)(3) of the Act requires that an in-State QIO have its primary place of business in the State in which review will be conducted (or, if a QIO is owned by a parent corporation, the headquarters of which is located in that State).

In the proposal, each QIO must furnish, among other things, materials that demonstrate that it meets the following requirements under sections 1152(1)(A), (B), (2), and (3) of the Act and the regulations at § 475.102 and § 475.103:

A. Be Either a Physician-Sponsored or a Physician-Access Organization

1. Physician-Sponsored Organization

To be eligible as a physician-sponsored organization, the organization must meet the following requirements:

a. The organization must be composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, who are representative of the physicians practicing in the review area.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, payor organization, or affiliated with any of these entities. However, statutes and regulations provide that, in the event that we determine no otherwise qualified non-payor organization is available to undertake a given QIO contract, we may select a payor organization which otherwise meets requirements to be eligible to conduct Utilization and Quality Control Peer Review as specified in Part B of Title XI of the Act and its implementing regulations.

c. In order to meet the "substantial number of doctors of medicine and osteopathy" requirement of paragraph A.1.a of this section, an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to meet the representation requirement of paragraph A.1.a of this section, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. Alternatively, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, the organization must demonstrate in its statement of interest through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician-Access Organization

To be eligible as a physician-access organization, the organization must meet the following requirements:

a. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties.

b. The organization must not be a health facility, health care facility association, health care facility affiliate, payor organization, or be affiliated with any of these mentioned entities.

c. An organization meets the requirements of paragraph A.2.a. of this section if it demonstrates that it has available to it at least one physician in every generally recognized specialty and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have at Least One Individual Who Is a Representative of Consumers on Its Governing Board

If one or more organizations meet the above requirements in a QIO area and submit proposals for the contracts in accordance with this notice, we will consider those organizations to be potential sources for the 6 contracts upon their expiration. These organizations will be entitled to participate in a full and open competition for the QIO contract to perform the QIO statement of work.

III. Information Collection 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 (44 U.S.C. 35).

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: December 6, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7–24477 Filed 12–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1323–N]

Medicare Program; Semi-Annual Winter Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—March 5, 6, and 7, 2008

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the first semi-annual winter meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2008. The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. We will consider the Panel's advice as we prepare the proposed rule that updates the hospital Outpatient Prospective Payment System (OPPS) for CY 2009.

DATES: *Meeting Dates:* We are scheduling the first semi-annual winter meeting in 2008 for the following dates and times:

- Wednesday, March 5, 2008, 1 p.m. to 5 p.m. (e.s.t.) [1]
- Thursday, March 6, 2008, 8 a.m. to 5 p.m. (e.s.t.) [1]
- Friday, March 7, 2008, 8 a.m. to 12 noon (e.s.t.) [2]

Deadlines:

Deadline for Hardcopy Comments/ Suggested Agenda Topics—5 p.m. (e.s.t.), Thursday, February 7, 2008.

[1] The times listed in this notice are approximate times; consequently, the meetings may last longer than listed in this notice—but will not begin before the posted times.

[2] If the business of the Panel concludes on Thursday, March 6, there will be no Friday meeting.

Deadline for Hardcopy Presentations—5 p.m. (e.s.t.), Thursday, February 7, 2008.

Deadline for Attendance Registration—5 p.m. (e.s.t.), Wednesday, February 27, 2008.

Deadline for Special Accommodations—5 p.m. (e.s.t.), Wednesday, February 27, 2008.

Submission of Materials to the Designated Federal Officer (DFO): Because of staffing and resource limitations, we cannot accept written comments and presentations by FAX, and we cannot print written comments and presentations received electronically for dissemination at the meeting.

Only hardcopy comments and presentations can be reproduced for public dissemination. All hardcopy presentations must be accompanied by Form CMS–20017 (revised 01/07). The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf.*

Presenters must use the most recent copy of CMS–20017 (updated 01/07) at the above URL. Additionally, presenters must clearly explain the action(s) that they are requesting CMS to take in the appropriate section on the form. They must also clarify their relationship to the organization that they represent in the presentation.

Note: Issues that are vague, or that are outside the scope of the APC Panel's purpose, will not be considered for presentations and comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.

We are also requiring electronic versions of the written comments and presentations, in addition to the hardcopies, to send electronically to the Panel members for their review prior to the meeting.

In summary, presenters and/or commenters must do the following:

- Send both electronic and hardcopy versions of their presentations and written comments by the prescribed deadlines.
- Send electronic transmissions to the e-mail address below.
- Do not send pictures of patients in any of the documents unless their faces have been blocked out.
- Do not send documents electronically that have been archived.
- Mail (or send by courier) to the DFO all hardcopies, accompanied by Form CMS–20017 (revised 01/07), if they are presenting, as specified in the **FURTHER INFORMATION CONTACT** section of this notice.
- Commenters are not required to send Form CMS–20017 with their written comments.

ADDRESSES: The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FURTHER INFORMATION CONTACT: For further information, contact: Shirl Ackerman-Ross, DFO, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850. Phone: (410) 786–4474.

Note: Please advise couriers of the following: When delivering hardcopies of presentations to CMS, if no one answers at the above phone number, please call (410) 786–4532 or (410) 786–9316.)

E-mail address for comments, presentations, and registration requests is *CMS APCPanel@cms.hhs.gov.* **Note:** There is no underscore in this e-mail address; there is a space between CMS and APC Panel.

News media representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The phone numbers for the CMS Federal Advisory Committee Hotline are 1–877–449–5659 (toll free) and (410) 786–9379 (local).

Web Sites: Please search the CMS Web site at *http://www.cms.&hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage* in order to obtain the following information:

Note: There is an underscore after FACA/05 (like this_); there is no space.

- Additional information on the APC meeting agenda topics,
- Updates to the Panel's activities,
- Copies of the current Charter, and
- Membership requirements.

You may also search information about the APC Panel and its membership in the FACA database at the following URL: *https://www.fido.gov/facadatabase/public.asp.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act), as amended by section 201(h) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), and redesignated by section 202(a)(2) of the BBRA] to establish and consult with an expert outside advisory panel regarding the clinical integrity of the APC groups and weights that are components of the hospital OPPS.

The APC Panel meets up to three times annually. The Charter requires that the Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel consists of up to 15 members who are representatives of providers and a chairperson.

Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. All Panel members must have technical expertise that enables them to participate fully in the work of the Panel. The expertise encompasses hospital payment systems, hospital medical-care delivery systems, provider billing systems, outpatient payment requirements, APC groups, Current Procedural Terminology codes, and the use and payment of drugs and medical devices in the outpatient setting, as well as other forms of relevant expertise. Details regarding membership requirements for the APC Panel are found on the CMS and FACA Web sites as listed above.

The Panel presently consists of the following members:

- E.L. Hambrick, M.D., J.D., Chair
- Gloryanne Bryant, B.S., R.H.I.A., R.H.I.T., C.C.S.
- Patrick Grusenmeyer, Ph.D.
- Hazel Kimmel, R.N., C.C.S., C.P.C.
- Michael Mills, Ph.D.
- Thomas Munger, M.D.
- Agatha Nolan, D.Ph., M.S.
- Beverly Khnie Philip, M.D.
- Louis Potters, M.D., F.A.C.R.
- Russ Ranallo, M.S.
- James V. Rawson, M.D.
- Michael Ross, M.D.
- Judie S. Snipes, R.N., M.B.A., F.A.C.H.E.
- Patricia Spencer-Cisek, M.S., APRN–BC, AOCN®.
- Kim Allan Williams, M.D., F.A.C.C., F.A.B.C.
- Robert M. Zwolak, M.D., Ph.D. F.A.C.S.

II. Agenda

The agenda for the March 2008 meeting will provide the opportunity for discussion and comment on the following topics as designated in the Panel's Charter:

- Reconfiguring APCs (for example, splitting of APCs, moving Healthcare Common Procedure Coding System (HCPCS) codes from one APC to another and moving HCPCS codes from new technology APCs to clinical APCs).
- Evaluating APC weights.
- Packaging device and drug costs into APCs methodology, effect on APCs, and the need for reconfiguring APCs based upon device and drug packaging.
- Removing procedures for payment from the inpatient list under the OPPS.

- Using single and multiple procedure claims data.
- Addressing other APC structure technical issues.

Note: The subject matter before the Panel will be limited to these and related topics. Issues related to calculation of the OPPS conversion factor, charge compression, pass-through payments, and wage adjustments are not within the scope of the Panel's purpose. Therefore, these issues will not be considered for presentations and/or comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.

The Panel may use data collected or developed by entities and organizations, other than DHHS and CMS, in conducting its review. We urge organizations to submit data for the Panel's and CMS staff's review.

III. Written Comments and Suggested Agenda Topics

Send hardcopy and electronic written comments and suggested agenda topics to the DFO at the address indicated above. The DFO must receive these items by 5 p.m. (e.s.t.), Thursday, February 7, 2008. There will be no exceptions. We appreciate your cooperation on this matter.

The written comments and suggested agenda topics submitted for the March 2008 APC Panel meeting must fall within the subject categories outlined in the Panel's Charter and as listed in the Agenda section of this notice.

IV. Oral Presentations

Individuals or organizations wishing to make 5-minute oral presentations must submit hardcopy and electronic versions of their presentations to the DFO by 5 p.m. (e.s.t.), Thursday, February 7, 2008, for consideration.

The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes in length for an individual or an organization.

The Chairperson may further limit the time allowed for presentations due to the number of oral presentations, if necessary.

V. Presenter and Presentation Information

All presenters must submit Form CMS–20017 (revised 01/07). Hardcopies are required for oral presentations; however, electronic submissions of Form CMS–20017 are optional. The DFO must receive the following information from those wishing to make oral presentations:

- Form CMS–20017 completed with all pertinent information identified on the first page of the presentation.
- One hardcopy of presentation.
- Electronic copy of presentation.
- Personal registration information as described in the Meeting Attendance section below.
- Those persons wishing to submit comments only must send hardcopy and electronic versions of their comments, but they are not required to submit Form CMS–20017.

VI. Oral Comments

In addition to formal oral presentations, there will be opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

VII. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis.

Persons wishing to attend this meeting, which is located on Federal property, must e-mail the Panel DFO to register in advance no later than 5 p.m. (e.s.t.), Wednesday, February 27, 2008. A confirmation will be sent to the requester(s) via return e-mail.

The following personal information must be e-mailed to the DFO by the date and time above:

- Name(s) of attendee(s),
- Title(s),
- Organization,
- E-mail address(es), and
- Telephone number(s).

VIII. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting—including presenters—must be registered and on the attendance list by the prescribed date.
- Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.
- Attendees must present photographic identification to the Federal Protective Service or Guard Service personnel before entering the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- In addition, all persons entering the building must pass through a metal detector.
- All items brought into CMS—including personal items such as desktops, cell phones, palm pilots—are subject to physical inspection.
- The public may enter the building 30–45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

IX. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (e.s.t.), Wednesday, February 27, 2008.

Authority: Section 1833(t)(9) of the Act (42 U.S.C. 1395l(t)). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program).

Dated: November 20, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7–24265 Filed 12–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1490–N]

Medicare Program; Town Hall Meeting on the Fiscal Year 2009 Applications for New Medical Services and Technologies Add-on Payments Under the Hospital Inpatient Prospective Payment System, February 21, 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting in accordance with section 503 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) to discuss fiscal year (FY) 2009 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this meeting to present their comments, recommendations, and data regarding whether the FY 2009 new medical services and technologies applications meet the substantial clinical improvement criterion.

DATES: *Meeting Date:* The Town Hall meeting announced in this notice will be held on Thursday, February 21, 2008 at 1:30 p.m., e.s.t. and check-in will begin at 1 p.m. e.s.t.

Deadline for Registration of Presenters of the Town Hall Meeting: All presenters for the Town Hall Meeting, whether attending in person or by phone, must register and submit their agenda item(s) by February 7, 2008.

Deadline for Submission of Comments on the Town Hall Meeting: Written comments for discussion at the Town Hall Meeting must be received by February 7, 2008. All other written comments on whether the service or technology represents a substantial clinical improvement must be received by March 10, 2008 for consideration before publication of the FY 2009 IPPS proposed rule.

Deadline for Registration of All Other Participants and Submitting Requests for Special Accommodations: All other participants must register by February 14, 2008. Requests for special accommodations must be received no later than 5 p.m., e.s.t. on February 14, 2008.

ADDRESSES: *Meeting Location:* The Town Hall meeting will be held in the main Auditorium in the central building of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Individuals wishing to participate in the meeting must register by following the on-line registration instructions located in section III of this notice or by contacting staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Registration information and special accommodation requests may also be mailed to the address listed in the **ADDRESSES** section of this notice.

Submission of Agenda Item(s) or Written Comments: Each presenter must submit an agenda item(s) regarding whether a FY 2009 application meets the substantial clinical improvement criterion. Agenda items or written comments, questions, or other statements must not exceed three single-spaced typed pages and must be sent to: Division of Acute Care, New Technology Team, Mailstop C4–07–08, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Attention: Tiffany Swygert or Michael Treitel.

Agenda items or written comments may also be sent via e-mail to *newtech@cms.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Tiffany Swygert, (410) 786–4642, *tiffany.swygert@cms.hhs.gov*, or Michael Treitel, (410) 786–4552, *michael.treitel@cms.hhs.gov* or you may forward regular mail to the address listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) require the Secretary to establish a process of identifying and ensuring adequate payments to acute inpatient hospitals for new medical services and technologies under Medicare. Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) required the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the inpatient hospital prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered "new" if it meets criteria established by the Secretary (after notice and opportunity for public comment). (See the FY 2002 proposed rule (66 FR 22693, May 4, 2001) and the final rule (66 FR 46912, September 7, 2001) for a more detailed discussion.)

In the September 7, 2001 final rule (66 FR 46914), we noted that we evaluate a request for special payment for a new medical service or technology against the following criteria in order to determine if the new technology meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.
- The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.
- Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

++ Reduced mortality rate with use of the device.

++ Reduced rate of device-related complications.

++ Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).

++ Decreased number of future hospitalizations or physician visits.

++ More rapid beneficial resolution of the disease process treatment because of the use of the device.

++ Decreased pain, bleeding, or other quantifiable symptoms.

++ Reduced recovery time.

In addition, we indicated that the requester is required to submit evidence that the technology meets one or more of these criteria.

Section 503 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) revised the process for evaluating new medical services and technology applications by requiring the Secretary to do the following:

- Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.
- Make public and periodically update a list of all the services and technologies for which an application is pending.
- Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.
- Provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and alternatives provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2009. In addition, they will help us to evaluate our policy on the IPPS new technology add-on payment process before the publication of the FY 2009 IPPS proposed rule.

II. Meeting Format

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial improvement. This meeting will allow

for a discussion of the substantial clinical improvement criteria on each of the FY 2009 new medical services and technology add-on payment applications. Information regarding the applications can be found on our Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.*

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Presenters will be scheduled to speak in the order in which they register and grouped by new technology applicant. Therefore, individuals who would like to present must register and submit their agenda item(s) to the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. Comments from participants will be heard after scheduled statements if time permits. Once the agenda is completed, it will be posted on the CMS IPPS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.*

For presenters or participants unable to attend the CMS for the meeting, an open toll-free phone line, (888) 970–4128, is available. Persons who call in will be asked for the conference code by the conference operator. The conference code is "New Tech."

In addition, written comments will also be accepted and presented at the meeting if they are received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting. If the comments are to be considered before the publication of the proposed rule, the comments must be received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice.

III. Registration Instructions

The Division of Acute Care in CMS is coordinating the meeting registration for the Town Hall Meeting. While there is no registration fee, individuals must register to attend the Town Hall Meeting.

Registration may be completed on-line at the following Web address: *http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.* Select the link at the bottom of the page "New Technology Town Hall Meeting" to complete the on-line registration. After completing the registration, on-line registrants should print the confirmation page and bring it with them to the meeting.

If you are unable to register on-line, you may register by sending an email to the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Please include your name, address, telephone number, email address and fax number. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

IV. Security, Building, and Parking Guidelines

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by close of business by the date listed in the **DATES** section of this notice. Please allow sufficient time to go through the security checkpoints. It is suggested that you arrive at 7500 Security Boulevard no later than 1 p.m., e.s.t. so that you will be able to arrive promptly at the meeting by 1:30 p.m., e.s.t.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building. Seating capacity is limited to the first 250 registrants.

Authority: Section 503 of Public Law 108–173.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 6, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. E7–24267 Filed 12–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 72, No. 123, pp. 35246–35247, dated Wednesday, June 27, 2007) is amended to reflect the abolishment of the 10 Regional Offices and the establishment of the Consortium for Medicare Health Plans Operations, the Consortium for Financial Management and Fee for Service Operations, the Consortium for Medicaid and Children's Health Operations, and the Consortium for Quality Improvement and Survey and Certification Operations.

Part F is described below:

- Section F.10. (Organization) reads as follows:

1. Office of External Affairs (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Research, Development, and Information (FAK)
7. Office of Clinical Standards and Quality (FAM)
8. Office of the Actuary (FAN)
9. Center for Medicaid and State Operations (FAS)
10. Consortium for Medicare Health Plans Operations (FAU)
11. Consortium for Financial Management and Fee for Service Operations (FAV)
12. Consortium for Medicaid and Children's Health Operations (FAW)
13. Consortium for Quality Improvement and Survey and Certification Operations (FAX)
14. Office of Operations Management (FAY)

15. Office of Information Services (FBB)
16. Office of Financial Management (FBC)
17. Office of Strategic Operations and Regulatory Affairs (FGA)
18. Office of E-Health Standards and Services (FHA)
19. Office of Acquisition and Grants Management (FKA)
20. Office of Policy (FLA)
21. Office of Beneficiary Information Services (FMA)

• Section F. 20. (Functions) reads as follows:

10. Consortium for Medicare Health Plans Operations (FAU)

• Serves as the Field focal point for all interactions with managed health care organizations, Medicare Advantage (MA) plans, Medicare prescription drug plans (PDPs) and Medicare Advantage Prescription Drug (Part D) plans for issues relating to Agency programs, policy and operations.

• Serves as the Field's focal point for all Agency interactions with employers, employees, retirees and others operating on their behalf pertaining to issues related to Agency policies and operations concerning employer-sponsored prescription drug coverage for their retirees.

• Serves as the Field focal point for all interactions with beneficiaries, their families, care givers, health care providers, and others operating on their behalf concerning improving beneficiaries' ability to make informed decisions about their health and about program benefits administered by the Agency. These activities include strategic and implementation planning, execution, assessment and communications.

• Implements national policy for Medicare Parts C and D beneficiary eligibility, enrollment, entitlement, premium billing and collection, coordination of benefits, rights and protections, and dispute resolution process, as well as policy for managed care enrollment and disenrollment to assure the effective administration of the Medicare program.

• Participates in the development of national policies and procedures related to the development, qualification, and compliance of health maintenance organizations, competitive medical plans and other health care delivery systems and purchasing arrangements (such as prospective pay, case management, differential payment, selective contracting, etc.) necessary to assure the effective administration of the Agency's programs, including the development of statutory proposals.

• In conjunction with the Center for Beneficiary Choices (CBC), handles all phases of contracts with managed health care organizations eligible to provide care to Medicare beneficiaries.

• Responds to inquiries regarding Parts C and D coverage and payment policies.

• Implements national policies and procedures to support and assure appropriate State implementation of the rules and processes governing group and individual health insurance markets and the sale of health insurance policies that supplement Medicare coverage.

• In conjunction with CBC, implements regulations, guidelines, and instructions required for the dissemination of appeals policies to Medicare beneficiaries, MA plans, PDPs, CMS Consortia, beneficiary advocacy groups and other interested parties.

• Assures, in coordination with other Consortium Administrators and Central Office Centers and Offices, that the activities of Medicare managed care plans, agents, and State Agencies meet the Agency's requirements on matters concerning beneficiaries and other consumers.

• In partnership with appropriate Central Office components, administers the contracts and grants related to beneficiary and customer service, including the State Health Insurance Assistance Program grants.

• Participates in the formulation of strategies to advance overall beneficiary communications goals and coordinates the Field implementation of all beneficiary-centered information, education, and service initiatives.

• Builds a range of partnerships with other national organizations for effective consumer outreach, awareness, and education efforts in support of Agency programs.

• Serves as the Consortium focal point for emergency preparedness for the Field.

• Provides oversight in the areas of human resource procurement and logistics.

• Ensures the effective management of the Agency's information technology and information systems and resources in the Field.

• Implements the privacy and confidentiality policies pertaining to the collection, use, and release of individually identifiable data.

• Proactively establishes, manages, and fosters partnerships within the Consortium with State and Local governments, providers and provider associations, beneficiaries and their representatives, and the media that are focused on CMS' goals and objectives.

• Serves as the primary point of contact to appropriate members of Congress, Federal, State, and Local officials and Tribal governments on matters concerning the Medicare program.

• Oversees the coordination and integration of CMS' activities with other Federal, State, Local, and private health care agencies and organizations.

• Counsels, advises, and collaborates with top Agency officials on policy matters and major considerations in developing, implementing, and coordinating CMS' programs as they interrelate in addressing national and regional strategies.

• Advises the Office of the Administrator (OA) on special programs as they relate to national initiatives and as they impact major constituents or their key representatives.

• Promotes accountability, communication, coordination and facilitation of cooperative corporate decision-making among CMS' top senior staff on management, operational and programmatic issues cross-cutting organizational components with diverse functions and activities.

11. Consortium for Financial Management & Fee for Service Operations (FAV)

• Serves as the Field focal point for all interactions with the Office of Financial Management and assists in its overall responsibility for the fiscal integrity of all Agency programs.

• Implements all benefit integrity policies and operations in coordination with other Agency components in the Field. Assists in the management of the Medicare program integrity contractors.

• Performs the Field's activities regarding Medicare Secondary Payer.

• Implements all civil money penalty policies in all CMS' programs.

• Oversees and coordinates the Field's preparation of certification statements for the Federal Managers Financial Integrity Act and Government Performance and Results Act.

• Serves as the Field focal point for all Agency interactions between health care providers and fee-for-service (FFS) contractors for issues relating to Part A and Part B FFS policies and operations.

• Coordinates provider and physician-centered Part A and Part B FFS information, education, and service initiatives in the Field.

• Responds to inquiries regarding Part A and Part B coverage and payment policies.

• Provides the Center for Medicare Managementwith comments on FFS current/proposed legislation in order to determine impact on providers.

• Performs activities related to the Medicare Part A and Part B processes (42 CFR part 405, subparts G and H), Part C (42 CFR part 422, subpart M), Part D (42 CFR part 423, subpart M) and the Program for All-Inclusive Care for the Elderly (PACE) for claims-related hearings, appeals, grievances and other dispute resolution processes that are beneficiary-centered.

• Implements national policy for Medicare Parts A and B beneficiary eligibility, enrollment, entitlement; premium billing and collection; coordination of benefits; rights and protections; dispute resolution process to assure the effective administration of the Medicare program.

• Serves as the Consortium focal point for emergency preparedness for the Field.

• Provides oversight in the areas of human resource procurement and logistics.

• Ensures the effective management of the Agency's information technology and information systems and resources in the Field.

• Implements the privacy and confidentiality policies pertaining to the collection, use, and release of individually identifiable data.

• Proactively establishes, manages, and fosters partnerships within the Consortium with State and Local governments, providers and provider associations, beneficiaries and their representatives, and the media that are focused on CMS' goals and objectives.

• Serves as the primary point of contact to appropriate members of Congress, Federal, State, and Local officials and Tribal governments on matters concerning the Medicare program.

• Oversees the coordination and integration of CMS' activities with other Federal, State, Local, and private health care agencies and organizations.

• Counsels, advises, and collaborates with top Agency officials on policy matters and major considerations in developing, implementing, and coordinating CMS' programs as they interrelate in addressing national and regional strategies.

• Advises OA on special problems as they relate to national initiatives and programs and as they impact major constituents or their key representatives.

• Promotes accountability, communication, coordination and facilitation of cooperative corporate decision-making among CMS top senior staff on management, operational and programmatic issues cross-cutting organizational components with diverse functions and activities.

12. Consortium for Medicaid & Children's Health Operations (FAW)

• Serves as the Field focal point for all CMS activities relating to Medicaid and the State Children's Health Insurance Program (SCHIP) with States and Local governments (including the Territories).

• Implements national Medicaid program and fiscal policies and procedures which support and assure effective State program administration and beneficiary protection. In partnership with States, evaluates the success of State Agencies in carrying out their responsibilities and, as necessary, assists States in correcting problems and improving the quality of their operations.

• Implements, interprets, and applies specific laws, regulations, and policies that directly govern the financial operation and management of the Medicaid program and the related interactions with States.

• Reviews, approves and conducts oversight of Medicaid managed care waiver programs. Provides assistance to States and external customers on all Medicaid managed care issues.

• Implements national policies and procedures on Medicaid automated claims/encounter processing and information retrieval systems such as the Medicaid Management Information System and integrated eligibility determination systems.

• Through administration of the home and community-based services program and policy collaboration with other Agency components and the States, promotes the appropriate choice and continuity of quality services available to frail elderly, disabled and chronically ill beneficiaries.

• Coordinates with and provides input into the Medicaid Integrity Program (MIP). Develops strategies to prevent and detect improper payments, including fraud and abuse by providers and others, from Medicaid and SCHIP. Offers support and assistance to the States to combat provider fraud, waste, and abuse. Provides guidance and direction to State Medicaid programs based on the insights gained through MIP's efforts.

• Serves as the Consortium focal point for emergency preparedness for the Field.

• Provides oversight in the areas of human resource procurement and logistics.

• Ensures the effective management of the Agency's information technology and information systems and resources in the Field.

• Implements the privacy and confidentiality policies pertaining to the collection, use, and release of individually identifiable data.

• Proactively establishes, manages, and fosters partnerships within the Consortium with State and Local governments, providers and provider associations, beneficiaries and their representatives, and the media that are focused on CMS' goals and objectives.

• Serves as the primary point of contact to appropriate members of Congress, State Governors, Federal, State, and Local officials and Tribal governments on matters concerning the Medicaid program.

• Oversees the coordination and integration of CMS' activities with other Federal, State, Local, and private health care agencies and organizations.

• Counsels, advises, and collaborates with top Agency officials on policy matters and major considerations in developing, implementing, and coordinating CMS' programs as they interrelate in addressing national and regional strategies.

• Advises OA on special problems as they relate to national initiatives and programs and as they impact major constituents or their key representatives.

• Promotes accountability, communication, coordination and facilitation of cooperative corporate decision-making among CMS' top senior staff on management, operational and programmatic issues cross-cutting organizational components with diverse functions and activities.

13. Consortium for Quality Improvement & Survey & Certification Operations (FAX)

• Serves as the Field focal point for all quality, clinical and medical science issues and policies for the Agency's programs. Provides leadership and coordination for the development and implementation of a cohesive, Agency-wide approach to measuring and promoting quality and leads the Agency's priority-setting process for clinical quality improvement. Coordinates quality-related activities with outside organizations. Monitors quality of Medicare, Medicaid, and the Clinical Laboratory Improvement Amendments (CLIA). Evaluates the success of interventions.

• Identifies and develops best practices and techniques in quality improvement; implementation of these techniques will be overseen by appropriate components. Develops and collaborates on demonstration projects to test and promote quality measurement and improvement.

• Develops tests and evaluates, adopts and supports performance measurement systems (quality

indicators) to evaluate care provided to CMS' beneficiaries except for demonstration projects residing in other components.

• Assures that the Agency's quality-related activities (survey and certification, technical assistance, beneficiary information, payment policies and provider/plan incentives) are fully and effectively integrated in the Field. Carries out the Health Care Quality Improvement Program for the Medicare, Medicaid, and CLIA programs.

• Assists in the specification and operational refinement of an integrated CMS quality information system, which includes tools for measuring the coordination of care between health care settings; analyzes data supplied by that system to identify opportunities to improve care and assess success of improvement interventions.

• Enforces the requirements of participation for providers and plans in the Medicare, Medicaid, and CLIA programs. Recommends revisions of the requirements based on statutory change and input from other components.

• Operates the Medicare Quality Improvement Organization and End Stage Renal Disease Network program, providing policies and procedures, contract design, program coordination, and leadership in selected projects.

• Identifies, prioritizes and develops content for clinical and health related aspects of CMS' Consumer Information Strategy; and collaborates with other components to develop comparative provider and plan performance information for consumer choices.

• Assists in the preparation of the scientific, clinical and procedural basis for, and recommends to the Administrator decisions regarding, coverage of new and established technologies and services. Maintains liaison with other Departmental components regarding the safety and effectiveness of technologies and services; prepares the scientific and clinical basis for, and recommends approaches to, quality-related medical review activities of contractors and payment policies.

• Serves as the focal point for all CMS Field activities relating to CLIA and the survey and certification of health facilities with States and Local governments (including the Territories).

• Implements, evaluates and refines standardized provider performance measures used within provider certification programs. Supports States in their use of standardized measures for provider feedback and quality improvement activities. Implements and supports the data collection and analysis systems needed by States to administer the certification program.

• Serves as the Consortium focal point for emergency preparedness for the Field.

• Provides oversight in the areas of human resource procurement and logistics.

• Ensures the effective management of the Agency's information technology and information systems and resources in the Field.

• Implements the privacy and confidentiality policies pertaining to the collection, use, and release of individually identifiable data.

• Proactively establishes, manages, and fosters partnerships within the Consortium with State and Local governments, providers and provider associations, beneficiaries and their representatives, and the media that are focused on CMS' goals and objectives.

• Serves as the primary point of contact to appropriate members of Congress, State Governors, Federal, State, and Local officials and Tribal governments on matters concerning the Medicare and Medicaid programs.

• Oversees the coordination and integration of CMS' activities with other Federal, State, Local, and private health care agencies and organizations.

• Counsels, advises, and collaborates with top Agency officials on policy matters and major considerations in developing, implementing, and coordinating CMS' programs as they interrelate in addressing national and regional strategies.

• Advises OA on special problems as they relate to national initiatives and programs and as they impact major constituents or their key representatives.

• Promotes accountability, communication, coordination and facilitation of cooperative corporate decision-making among CMS top senior staff on management, operational and programmatic issues cross-cutting organizational components with diverse functions and activities.

Dated: November 23, 2007.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. E7–25305 Filed 12–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cellular, Tissue and Gene Therapies 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held by teleconference on February 5, 2008, from 12 noon to approximately 3:15 p.m. Eastern Time.

Location: National Institutes of Health, Building 29B, Conference Room C, 9000 Rockville Pike, Bethesda, MD. This meeting will be held by teleconference. The public is welcome to attend the meeting at the specified location. A speakerphone will be provided at the specified location for public participation in the meeting, on site. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm*. Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Dr. entrance of the campus which is located on Wisconsin Ave. (the Medical Center Metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Because of the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Gail Dapolito or Danielle Cubbage, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD, 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot

line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On February 5, 2008, the committee will meet in open session to hear updates of research programs in the Division of Therapeutic Proteins and the Division of Monoclonal Antibodies, Office of Biotechnology Products, Center for Drug Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material will be available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: On February 5, 2008, from 12 noon to approximately 2:30 p.m., the meeting is open to the public. 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 on or before January 29, 2008. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those desiring to make formal oral presentations should notify the contact person 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 on or before January 21, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested person regarding their request to speak by January 22, 2008.

Closed Committee Deliberations: On February 5, 2008, from approximately 2:30 p.m. to 3:15p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and issues related to personnel progress and promotion.

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 contact Gail Dapolito at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 18, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–25124 Filed 12–27–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0481]

Draft Prescription Drug User Fee Act IV Information Technology Plan; Availability for Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of the draft information technology (IT) plan entitled "Prescription Drug User Fee Act (PDUFA) IV Information Technology Plan." This plan is intended to provide regulated industry and other stakeholders with information on FDA's vision and plan for improving the automation of business processes and maintaining information systems that support the process for the review of human drug applications to achieve the objectives defined in the PDUFA Performance Goals.

DATES: Submit written or electronic comments on the draft IT plan by February 22, 2008.

ADDRESSES: Submit written requests for single copies of the draft plan to the Office of the Chief Information Officer (HFA–080), 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 IT plan to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

FOR FURTHER INFORMATION CONTACT: Suzanne Mitri, Office of the Chief Information Officer, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–255–6700.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing for public comment the availability of the draft IT plan entitled "Prescription Drug User Fee Act (PDUFA) IV Information Technology Plan." This plan is intended to provide regulated industry and other stakeholders with information on FDA's vision and plan for improving the automation of business processes and maintaining information systems that support the process for the review of human drug applications to achieve the objectives defined in section XIV, Information Technology Goals, of the PDUFA Performance Goals (*http://www.fda.gov/oc/pdufa4/pdufa4goals.html*).

On September 27, 2007, President Bush signed into law the Food and Drug Administration Amendments Act of 2007, which includes the reauthorization and expansion of PDUFA. The reauthorization of PDUFA will significantly broaden and upgrade the agency's drug safety program, increase resources for review of television drug advertising, and facilitate more efficient development of safe and effective new medications for the American public. The reauthorization also includes Information Technology Goals that are divided into four subsections: Objectives, Communications and Technical Interactions, Standards and IT Plan, and Metrics and Measures. In addition, there are information technology goals associated with the upgrade of the agency's drug safety program in section VIII, Enhancement and Modernization of the FDA Drug Safety System.

The objectives of the PDUFA IV IT Goals are to move FDA towards the long-term goal of an automated standards-based information technology environment for the exchange, review,

and management of information supporting the process for the review of human drug applications throughout the product life cycle. As part of this process, FDA will develop and periodically update a 5-year IT plan and will solicit and consider comments from the public on the draft IT plan. At the end of the comment period, FDA will review the comments, update the IT plan, and publish the final version no later than May 30, 2008.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: December 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–25310 Filed 12–27–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to discuss personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIH Advisory Board for Clinical Research

Date: January 28, 2008.

Open: 10 a.m. to 1:15 p.m.

Agenda: To review the 2008 Clinical Center Operating Plan and provide updates on selected organizational initiatives.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Closed: 1:15 p.m. to 2 p.m.

Agenda: To review and evaluate personnel matters.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6–2551, Bethesda, MD 20892, 301–496–2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6208 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: January 28, 2008.

Open: January 28, 2008, 7:30 a.m.–3:30 p.m.

Agenda: Strategies for Maximizing the Nation's Investment in Cancer.

Place: Chateau Sonesta Hotel, 800 Iberville St., New Orleans, LA 70112.

Closed: January 28, 2008, 4 p.m.–6 p.m.

Agenda: Strategies for Maximizing the Nation's Investment in Cancer and discuss potential topics for the 2008/2009 series.

Place: Chateau Sonesta Hotel, 800 Iberville St., New Orleans, LA 70112.

Contact Person: Abby Sandler, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, 301–451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6186 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cooperative Human Tissue Network.

Date: January 16, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: C. Michael Kerwin, PhD, MPH., Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 8057, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Discovery and Development.

Date: February 6–8, 2008.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Wirth, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Advances in Protein Expression of Post-Translationally Modified Cancer Related Proteins.

Date: February 28, 2008.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Conference Room F, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marvin L. Salin, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for Molecular Analysis of Cancer.

Date: March 5–6, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Rockville, 3 Research Court, Rockville, MD 20850.

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6215 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel K01–SEP.

Date: January 15, 2008.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Glowa, PhD, Scientific Review Officer, National Center For Research Resources, Or National Institutes Of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, glowaj@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: December 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6214 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Deafness And Other Communication Disorders

Notice of Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: January 25, 2008.

Closed: 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Open: 10:45 a.m. to 2:30 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD., Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8693, *jordanc@nidcd.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, adddress, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/ndcdac/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6184 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; RFP Advanced Microelectrode Array.

Date: January 28, 2008.

Time: 8 am to 2 pm

Agenda: To review and evaluate contract proposals.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Christine A. Livingston, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov*.

Name of Committee: National Institute of Deafness and Other Communication Disorders Special Emphasis Panel.

Date: January 29, 2008.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, PHD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Research Core Center Review.

Date: January 30, 2008.

Time: 8 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington DC., 2401 M Street, NW., Washington, DC 20037.

Contact Person: Christine A. Livingston, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Outcomes in Children with Mild to Sever Hearing Loss Grant Review.

Date: February 7, 2008.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christopher Moore, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd., Rm 400C, Bethesda, MD 20892–7180, 301–402–3587, *moorechristopher@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Voice, Speech and Language Small Grant Review.

Date: February 28, 2008.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6185 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, CEBRA Review.

Date: January 25, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Mark Swieter, PhD, Chief, Training and special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6203 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Development of Webs-based Skills Training for Primary Care Physicians on Screening, Brief Intervention, Referral and Treatment.

Date: January 11, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 402–2105, *rogersn2@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Development of Website Training on Addiction Medicine for Pain Management Providers.

Date: January 11, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 402–2105, *rogersn2@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Develop a Real-Time fMRI Feedback System that Allows Drug Abusers to Control their Cravings and Urges and/or Increase Their Self-Control of Their Drug Taking.

Date: January 17, 2008.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kristen V. Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, HHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1433, *huntleyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6204 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: January 29, 2008.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Madeline K. Turkeltaub, PhD, Deputy Director, Extramural Program, NIH/NIAMS, One Democracy Plaza, 6701 Democracy Boulevard, Suite 800, MSC 4872, Bethesda, MD 20892–4872, (301) 451–5888, *turkeltm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6209 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel Program Project Review.

Date: February 11 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Suite 200, Conference Room 223, Bethesda, MD 20892.

Contact Person: Ruixia Zhou, PhD, Scientific Review Administrator, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel Training Grant Review.

Date: March 12, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications. Marriott Baltimore/Washington Int'l Airport, 1743 West Nursery Road, Baltimore, MD 21240.

Contact Person: Ruth Grossman, DDS, Scientific Review Administrator, National Institutes of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, (301) 496–8775, *grossmanrs@mail.nih.gov.*

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6210 Filed 12–27–07; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name or Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel, R13 Conference Applications.

Date: January 10, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D. G. Patel, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, pateldg@niddk.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name or Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel, Hematology Program Projects.

Date: March 4, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, edwardsm@extra.niddk.nih.gov.

Name or Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel, Admixture Mapping Ancillary Studies.

Date: March 6, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, edwardsm@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848. Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: December 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6211 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Bio-Sample and Genetics Repository Contract Review.

Date: January 24, 2008.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6212 Filed 12–27–07; 8:45am]

BILLING CODE 4140–01–M.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel Review R03s, R21.

Date: February 5, 2008.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Officer, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., Rm 4AN38F, Bethesda, MD 20892–6402, (301) 594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6213 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine;

Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, G13 SEP.

Date: February 1, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968, (301) 594–4937, *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, R01–G08–R21 SEP.

Date: February 6, 2008.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817.

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, Rockledge 1 Building, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (301) 594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medicine Library Assistance, National Institutes of Health, HHS)

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6183 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: February 11, 2008.

Closed: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.

Date: February 12, 2008.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: February 12–13, 2008.

Open: February 12, 2008, 9 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 12, 2008, 4:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Open: February 13, 2008, 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding

the statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6207 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Enabling Bioanalytical and Biophysical Technologies Study Section, January 31, 2008, 8:30 a.m. to February 1, 2008, 6 p.m., Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036 which was published in the **Federal Register** on December 13, 2007, 72 FR 70875–70877.

The meeting will be held one day only: January 31, 2008, from 8:30 a.m. to 6:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6205 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Digestive Sciences Integrated Review Group, Clinical and Integrative Gastrointestinal Pathobiology Study Section.

Date: January 28–29, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Emphasis Panel: Member Conflicts: Learning and Memory Neuroscience.

Date: January 28, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Cell Death in Neurodegeneration Study Section.

Date: January 31–February 1, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel San Francisco-Union Square, 480 Sutter Street, San Francisco, CA 94108.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell Death in Neurodegeneration.

Date: January 31–February 1, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel San Francisco-Union Square, 480 Sutter Street, San Francisco, CA 94108.

Contact Person: Jerry L. Taylor, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Cellular Signaling and Regulatory Systems Study Section.

Date: January 31–February 1, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Elena Smirnova, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: January 31, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn Brookshire Suites, 120 East Lombard, Baltimore, MD 21202.

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6206 Filed 12–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Administration for Children and Families; Notice of Cancellation of Funding

AGENCY: Office of Refugee Resettlement, ACF, DHHS.

ACTION: Notice of cancellation of the Fiscal Year (FY) 2004 Standing Announcement for Services to Recently Arrived Refugees (HHS–2004–ACF–ORR–RE–0004).

CFDA#: 93.576.

Legislative Authority: This program is authorized by section 412 (c)(1)(A) of the Immigration and Nationality Act (INA) 8 U.S.C. 1522 (c)(1)(A), as amended.

SUMMARY: This notice cancels the FY 2004 Standing Announcement for Services to Recently Arrived Refugees (HHS–2004–ACF–ORR–RE–0004) that was published in the **Federal Register** on April 23, 2004 (Volume 69, pages 22275–22298).

The three priority areas of the FY 2004 Standing Announcement for Services to Recently Arrived Refugees will be published in FY 2008 as three separate Standing Announcements at the Administration for Children and Families' Grant Opportunities Web page at *http://www.acf.hhs.gov/grants/index.html* and at *www.grants.gov*. The titles of three Standing Announcements will be the Standing Announcement for the Preferred Communities Program; the Standing Announcement for Supplemental Services for Recently Arrived Refugees; and the Standing Announcement for Ethnic Community Self-Help. The new Standing Announcements and application packages will also be available at *www.grants.gov*. Interested parties should register with *www.grants.gov* to receive e-mail alerts announcing publication, application due dates, and application requirements.

FOR FURTHER INFORMATION CONTACT: Susan S. Benjamin, Program Manager, Standing Announcement, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20047. Telephone: (202) 401–4851. E-mail: *Susan.Benjamin@acf.hhs.gov*.

Dated: December 19, 2007.

Brent R. Orrell,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E7–25084 Filed 12–27–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2007–0088]

Science and Technology Directorate; Submission for Review; Information Collection Request for the DHS S&T Protected Repository for the Defense of Infrastructure Against Cyber Threats (PREDICT)

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on new data collection forms for the Protected Repository for the Defense of Infrastructure Against Cyber Threats (PREDICT) initiative. The PREDICT initiative facilitates the accessibility of computer and network operational data for use in cyber defense research and development through the establishment of distributed repositories of security-relevant network operations data, and the application procedures, protection policies, and review processes necessary to make this data available to the cyber defense research community. The forms will allow the PREDICT initiative to provide a central repository, accessible through a Web-based portal *(https://www.predict.org/)* that catalogs current computer network operational data, provide secure access to multiple sources of data collected as a result of use and traffic on the Internet, and facilitate data flow among PREDICT participants for the purpose of developing new models, technologies and products that support effective threat assessment and increase cyber security capabilities. The Department is committed to improving its PREDICT initiative and invites interested persons to comment on the following forms and instructions (hereinafter "Forms Package") for the PREDICT initiative: (1) Account Request Form (DHS Form 10029); (2) Add a New Dataset Form (DHS Form 10030); (3) Annotate Dataset Form (DHS Form 10031); (4) Request a Dataset Form (DHS Form 10032); (5) Update Host Data Form (DHS Form 10033); (6) Update Provider Data Form (DHS Form 10034); (7) Memorandum of Agreement—PREDICT (PCC) Coordinating Center and Researcher/User (DHS Form 10035); (8) Memorandum of Agreement—PCC and Data Provider (DP) (DHS Form 10036); (9) Memorandum of Agreement—PCC and Data Host (DH) (DHS Form 10037); (10) Authorization Letter for Data Host (DHS Form 10038); (11) Authorization Letter for Data Provider (DHS Form 10039); (12) Sponsorship Letter (DHS Form 10040); (13) Notice of Dataset Access/Application Expiration (DHS Form 10041); (14) Certificate of Data Destruction (DHS Form 10042).

This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until February 26, 2008.

ADDRESSES: You may submit comments, identified by docket number [DHS–2007–0088], by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: ken.rogers@dhs.gov*. Include docket number [DHS–2007–0088] in the subject line of the message.
- *Mail:* Science and Technology Directorate, ATTN: OCIO/Kenneth D. Rogers, 245 Murray Drive, Bldg. 410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Rogers (202) 254–6185 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Interested parties can obtain copies of the Forms Package by calling or writing the point of contact listed above. The content of PREDICT is proprietary datasets that will be used by the Research community in its efforts to build products and technologies that will better protect America's computing infrastructure.

Using a secure Web portal, accessible through *https://www.predict.org/*, the PREDICT Coordinating Center manages a centralized repository that identifies the datasets and their sources and location, and acts as gatekeeper for access and release of the data. All data input to the system is either keyed in by users (Data Providers) or migrated (via upload of XML files).

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the data collection on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* DHS S&T PREDICT Initiative.

Agency Form Number, if any, and the applicable component of the Department of Homeland Security

sponsoring the collection: DHS S&T Protected Repository for the Defense of Infrastructure Against Cyber Threats (PREDICT) (1) Account Request Form (DHS Form 10029); (2) Add a New Dataset Form (DHS Form 10030); (3) Annotate Dataset Form (DHS Form 10031); (4) Request a Dataset Form (DHS Form 10032); (5) Update Host Data Form (DHS Form 10033); (6) Update Provider Data Form (DHS Form 10034); (7) Memorandum of Agreement—PREDICT (PCC) Coordinating Center and Researcher/User (DHS Form 10035); (8) Memorandum of Agreement—PCC and Data Provider (DP)(DHS Form 10036); (9) Memorandum of Agreement—PCC and Data Host (DH)(DHS Form 10037); (10) Authorization Letter for Data Host (DHS Form 10038); (11) Authorization Letter for Data Provider (DHS Form 10039); (12) Sponsorship Letter (DHS Form 10040); (13) Notice of Dataset Access/Application Expiration (DHS Form 10041); (14) Certificate of Data Destruction (DHS Form 10042).

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal government, and State, local, or tribal government; the data gathered will allow the PREDICT initiative to provide a central repository, accessible through a Web-based portal *(https://www.predict.org/)* that catalogs current computer network operational data, provides secure access to multiple sources of data collected as a result of use and traffic on the Internet, and facilitates data flow among PREDICT participants for the purpose of developing new models, technologies and products that support effective threat assessment and increase cyber security capabilities.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 275.

b. *An estimate of the time for an average respondent to respond:* .54 burden hours.

Dated: December 13, 2007.

Kenneth D. Rogers,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. E7–25333 Filed 12–27–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2007–0089]

Homeland Security Advisory Council/ Secure Borders Open Doors Advisory Committee

AGENCY: Policy Directorate, DHS.

ACTION: Notice of Federal Advisory Committee Teleconference Meeting and Subcommittee Meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet via teleconference for purposes of reviewing recommendations from the Secure Borders Open Doors Advisory Committee (SBODAC), an HSAC subcommittee. Later in the day, the SBODAC will meet to provide an overview of their recommendations, receive a progress report on various programs/initiatives within the Rice-Chertoff Initiative and to hold member deliberations. In the public interest and in an attempt to maximize openness, we are opening part of this SBODAC meeting to the public even though FACA subcommittee meetings are not required to be open. These meetings will be coordinated closely with the Department of State.

DATE: Wednesday, January 16, 2008. HSAC conference call from 10 a.m. to 11a.m. EST. Details for the public portion of the SBODAC's additional meetings are not yet finalized—individuals interested in participating in any open subcommittee sessions should follow instructions as outlined below (see "Public Attendance").

ADDRESSES: The HSAC meeting will be held via teleconference. The SBODAC meeting will be held at a yet to be determined location in the Washington, DC area. Members of the public interested in participating in this teleconference and/or subcommittee meeting may do so by following the process outlined below (see "Public Attendance").

If you desire to submit written comments, they must be submitted by January 9, 2008. Comments must be identified by DHS–2007–0089 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: HSAC@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 282–9207.
- *Mail:* Ms. Jennifer Myers, Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0850, 245 Murray Lane, SW., Washington, DC 20528.

Instructions: All submissions received must include the words "Department of Homeland Security" and DHS–2007–0089, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Myers, Homeland Security Advisory Council, Washington, DC 20528, (202) 447–3135, *HSAC@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The HSAC exists to provide independent advice to the Secretary of the Department of Homeland Security aiding in the creation of expeditious implementation of critical and actionable policy and operational capacities across the spectrum of homeland security operations. The HSAC shall periodically report, as appropriate, to the Secretary on matters within the scope of that function. The HSAC serves as an advisory body with the goal of providing advice upon the request of the Secretary.

The HSAC will meet to review recommendations from the SBODAC, a committee formed as part of the Rice-Chertoff Initiative. The SBODAC has examined four areas: (1) Public Diplomacy and International Outreach, (2) Visa Policy and Processing, (3) Ports of Entry, and (4) Metrics and Critical Success Factors.

Public Attendance: Members of the public may register to participate in this HSAC teleconference via the procedures that follow. Each individual must provide his or her full legal name and email address or phone number no later than 5 p.m. EST., January 9, 2008, to Jennifer Myers or a staff member of the HSAC via e-mail at *HSAC@dhs.gov* or via phone at (202) 447–3135. Individuals interested in participating in any open sessions of the SBODAC meeting that will follow the HSAC conference call should also follow above outlined procedures. HSAC conference call details and SBODAC meeting details will be provided to interested members of the public.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to

request special assistance at the meeting, contact Jennifer Myers as soon as possible.

Dated: December 19, 2007.

Doug Hoelscher,

Executive Director, Homeland Security Advisory Committees.

[FR Doc. E7–25138 Filed 12–27–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of currently approved collection, OMB 1660–0039, Form numbers: FF 95–58 and FF 95–59.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: National Fire Academy Long-term Evaluation Form for Supervisors and National Fire Academy Long-term Evaluation Form for Students.

OMB Number: 1660–0039.

Abstract: The National Fire Academy Long-term Evaluation Form will be used to evaluate all National Fire Academy (NFA) on-campus resident training courses. Course graduates and their supervisors will be asked to evaluate the impact of the training on both individual job performance and the fire and emergency response department/community where the student works. The data provided by students and supervisors is used to update existing NFA course materials and to develop new courses that reflect the emerging issues/needs of the Nation's fire service.

Affected Public: Individuals and Households.

Number of Respondents: 10,000.

Estimated Time per Respondent: Burden for this collection is .33 hours for FEMA Form 95–59 and .17 hours for FEMA Form 95–58 Estimated Total Annual Burden Hours: 2,500.

Frequency of Response: Once.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before January 28, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: December 19, 2007.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–25292 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3282–EM]

Kansas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Kansas (FEMA–3282-EM), dated December 12, 2007, and related determinations.

EFFECTIVE DATE: December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 12, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Kansas resulting from severe winter storms beginning on December 6, 2007, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Kansas.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Kansas have been designated as adversely affected by this declared emergency:

All 105 counties in the State of Kansas for debris removal and emergency protective measures (Categories A and B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–25294 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3281–EM]

Missouri; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Missouri (FEMA–3281–EM), dated December 12, 2007, and related determinations.

EFFECTIVE DATE: December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 12, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Missouri resulting from severe winter storms beginning on December 8, 2007, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Missouri.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Missouri have been designated as adversely affected by this declared emergency:

All 114 Missouri Counties and the Independent City of St. Louis for debris removal and emergency protective measures (Categories A and B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–25258 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1735–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1735–DR), dated December 18, 2007, and related determinations.

EFFECTIVE DATE: December 18, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 18, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe winter storms beginning on December 8, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. § 777.

If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this declared major disaster:

Cleveland, Lincoln, Mayes, Oklahoma, Pottawatomie, Tulsa, and Wagoner Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–25264 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1733–DR]

Oregon; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–1733–DR), dated December 8, 2007, and related determinations.

EFFECTIVE DATE: December 15, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2007.

Clatsop, Columbia, and Tillamook Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program.)

Yamhill County for Individual Assistance and Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program.)

Lincoln County for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program.)

Washington Counties for Public Assistance.

Polk County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036; Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–25300 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1734–DR]

Washington; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–1734–DR), dated December 8, 2007, and related determinations.

EFFECTIVE DATE: December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2007.

Clallam County for Individual Assistance and Public Assistance.

Kitsap County for Individual Assistance and Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program.)

Grays Harbor, Lewis, Mason, Pacific, and Thurston Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program.)

Jefferson, King, Skagit, Snohomish, and Wahkiakum Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–25266 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1734–DR]

Washington; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–1734–DR), dated December 8, 2007, and related determinations.

EFFECTIVE DATE: December 15, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2007.

Mason, Pacific, and Thurston Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–25269 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1734–DR]

Washington; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1734–DR), dated December 8, 2007, and related determinations.

EFFECTIVE DATE: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 17, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–25295 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2007–0014]

National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Teleconference Federal Advisory Committee Meeting.

SUMMARY: The National Fire Academy Board of Visitors will meet by teleconference on January 29, 2008.

DATES: The teleconference will take place Tuesday, January 29, 2008, from 1:30 p.m. to 3:30 p.m., e.s.t.

ADDRESSES: Members of the public who wish to obtain the call-in number, access code, and other information for the public teleconference may contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by January 25, 2008, as the number of teleconference lines is limited and available on a first-come, first served basis. Members of the public may also participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Members of the general public who plan to participate in the meeting should contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT**, on or before January 25, 2008. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by January 25, 2008. Send written material to Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Comments must be identified by FEMA–2007–0014 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FEMA-RULES@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* (866) 466–5370.
- *Mail:* Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and e-mail *teressa.kaas@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Fire Academy Board of Visitors will be holding a teleconference for purposes of reviewing National Fire Academy Program activities, including an update on the Management Science Curriculum Report, the new Executive Development Program Report, the National Fire and Emergency Services Higher Education Committee Report, the Academy update, and Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the teleconference may end early if all business is completed.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teressa Kaas as soon as possible.

Dated: December 18, 2007.

Gregory B. Cade,

Assistant Administrator, U.S. Fire Administration, Federal Emergency Management Agency.

[FR Doc. E7–25298 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2003–14610]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved information collection requirement, under OMB control number 1652–0027, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The collection involves applicant submission of biometric and biographic information for TSA's security threat assessment in order to obtain the hazardous materials endodrsement (HME) on a commercial drivers license (CDL) issued by the U.S. States and the District of Columbia.

DATES: Send your comments by February 26, 2008.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651 or facsimile (703) 603–0822.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The information collection request (ICR) documentation is available at *www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is inviting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

TSA is requesting renewal of the currently approved ICR with minor changes. This collection supports the implementation of section 1012 of the USA PATRIOT Act (Pub. L. 107–56, 115 Stat. 272, 396, Oct. 26, 2001), which mandates that no State or the District of Columbia may issue a hazardous materials endorsement (HME) on a commercial driver's license (CDL) unless TSA has first determined the driver is not a threat to transportation security. On November 24, 2004, TSA published the final rule in the **Federal Register** (69 FR 68720), codified at 49 CFR part 1572, that describes the procedures, standards, and eligibility criteria for security threat assessments on individuals seeking to obtain, renew, or transfer HME on a CDL. TSA subsequently amended the rule on January 25, 2007 (72 FR 3492). In order to conduct the security threat assessment, States (or a TSA designated agent in States that elect to have TSA perform the collection of information) must collect information in addition to that already collected for the purpose of HME applications, which will occur once approximately every five years. The driver is required to submit an application that includes personal biographic information (for instance, height, weight, eye and hair color, date of birth); information concerning legal status, mental health defects history, military status, and criminal history; as well as fingerprints. TSA is amending the application to collect minor additional information, such as whether the driver is a new applicant or renewing or transferring the HME, to better understand and forecast driver retention, transfer rate, and drop-rate to help improve customer service, reduce program costs, and provide comparability with other Federal background checks, including Transportation Workers Identification Credential (TWIC). In addition, the rule (49 CFR 1572) requires States to maintain a copy of the driver application for a period of one year.

From 2008 through 2010, TSA estimates respondent drivers will spend approximately 3.4 million hours on the application and background check process. TSA estimates an annualized 348,000 respondents will apply for an HME, and that the application and background check process will involve 1.1 million annualized hours. TSA estimates the total costs to respondent drivers will be $92.8 million over the three-year period ($31 million annualized).

Issued in Arlington, Virginia, on December 20, 2007.

Fran Lozito,

Director, Business Management Office, Operational Process and Technology.

[FR Doc. 07–6231 Filed 12–27–07; 8:45 am]

BILLING CODE 9110–05–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2008, the interest rates for overpayments will be 6 percent for corporations and 7 percent for non-corporations, and the interest rate for underpayments will be 7 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was

amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2007–68, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2008, and ending March 31, 2008. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (4%) plus three percentage points (3%) for a total of seven percent (7%). For corporate overpayments, the rate is the Federal short-term rate (4%) plus two percentage points (2%) for a total of six percent (6%). For overpayments made by non-corporations, the rate is the Federal short-term rate (4%) plus three percentage points (3%) for a total of seven percent (7%). These interest rates are subject to change for the calendar quarter beginning April 1, 2008, and ending June 30, 2008.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Over payments (percent)	Corporate over payments (Eff.1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6

Dated: December 21, 2007.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E7–25315 Filed 12–27–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5124–N–15]

Notice of Submission of Proposed Information Collection to OMB; Requirement for Contractors to Provide Certificates of Insurance for Capital Program Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting renewed approval to require Public Housing Agencies to obtain certificates of insurance from contractors and subcontractors before beginning work under either the development of a new low-income public housing project or the modernization of an existing project.

DATES: *Comments Due Date:* February 26, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0046) and should be sent to: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

FOR FURTHER INFORMATION CONTACT: Mary Schulhof, Reports Liaison Officer, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Mary_T_Schulhof@HUD.gov*; or telephone (202) 402–4112. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Requirement for Contractors to Provide Certificates of Insurance for Capital Program Projects.

OMB Approval Number: 2577–0046.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies must obtain certificates of insurance from contractors and subcontractors before beginning work under either the development of a new low-income public housing project or the modernization of an existing project. The certificates of insurance provide evidence that worker's compensation and general liability, automobile liability insurance are in force before any construction work is started.

Frequency of Submission: On occasion, Other When applicant is offered a unit.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,000	4		0.5		6,000

Total Estimated Burden Hours: 6,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 19, 2007.

Bessy Kong,

Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives.

[FR Doc. E7–25139 Filed 12–27–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–108]

Owner Certification with HUD Tenant Eligibility and Rent Procedures

AGENCY: Office of the Chief Information Officer, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Collection of tenant data to ensure owners comply with Federal statues and regulation that (1) establish policies on who may be admitted to subsidized housing; (2) prohibit discrimination in conjunction with selection of tenants and units; (3) specify how tenants' incomes and rents must be compiled.

DATES: *Comments Due Date:* January 28, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0204) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or

telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Owner Certification with HUD Tenant Eligibility and Rent Procedures.

OMB Approval Number: 2502–0204.

Form Numbers: HUD–50059, HUD–27061–H, HUD–9887/9887–A, HUD 90100, HUD 90101, HUD 90102, HUD 90103, HUD 90104, HUD 90105–a, HUD 90105–b, HUD 90105–c, HUD 90105–d, HUD 90106.

Description of the Need for the Information and Its Proposed Use: Collection of tenant data to ensure owners comply with Federal statues and regulation that (1) establish policies on who may be admitted to subsidized housing; (2) prohibit discrimination in conjunction with selection of tenants and units; (3) specify how tenants' incomes and rents must be compiled.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	6,936,897	0.71		0.39		1,920,431

Total Estimated Burden Hours: 1,920,431.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 19, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–25146 Filed 12–27–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–110]

Notice of Proposed Information Collection: Comment Request; Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Office of Officer of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* February 26, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2535–0119) and should be sent to: Lillian L. Deitzer, Reports Management Officer, QDAM, Department or Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Lillian L. Deitzer, QDAM, Office of Policy and E–Government, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–2374 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities.

OMB Control Number, if applicable: 2535–0119.

Description of the need for the information and proposed use: The requested information will detail the issues and reasons why a review of the Counsel's decision denying a request for documents or testimony is appropriate.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Members of Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit Institutions, State, Local or Tribal government.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	5	2		5		50

Total Estimated Burden Hours: 50.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 19, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–25147 Filed 12–27–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117-N–109]

Notice of Proposed Information Collection: Comment Request; Third-Party Documentation Facsimile Transmittal Form

AGENCY: Office of Officer of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* February 26, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2535–0118) and should be sent to: Lillian L. Deitzer, Reports Management Officer, QDAM, Department or Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone: 202–402–8048, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Lillian L. Deitzer, QDAM, Office of Policy and E-Government, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–2374 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Third-Party Documentation Facsimile Transmittal Form.

OMB Control Number, if applicable: 2535–0118.

Description of the need for the information and proposed use: Facsimile transmittal information is necessary for submission of third-party documentation as part of an application for funding competitions.

Agency form numbers, if applicable: Form HUD–96011.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Members of Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal government.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	33,000	1		10		3,300

Total Estimated Burden Hours: 3,300.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 19, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–25148 Filed 12–27–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–25]

Notice of Funding Awards; Public Housing Family Self-Sufficiency for Fiscal Year 2006

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the FY 2006 Notice of Funding Availability (NOFA) for the Public Housing (PH) Family Self-Sufficiency Program funding for Fiscal Year 2006. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on demonstrated performance.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY 2006 PH Family Self-Sufficiency awards, contact the Office of Public and Indian Housing's Grant Management Center, Director, Iredia Hutchinson, Department

of Housing and Urban Development, Washington, DC, telephone (202) 358–0221. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the $10,000,000 in four-year budget authority for ROSS PIH FSS program coordinators is found in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, FY2006 (Pub. L. 109–115). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213 (d) of the Housing and Community Development Act of 1974, as amended. Additionally, unobligated funds were added to the $10,000,000.

This program is intended to promote the development of local strategies to coordinate the use of assistance with public and private resources to enable participating families to achieve economic independence and self-sufficiency. A Public and Indian Housing FSS Program Coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

The Fiscal Year 2006 awards announced in this Notice were selected for funding in a competition announced in **Federal Register** NOFA published on March 8, 2006 (71 FR. 3382). Applications were scored based on the selection criteria in that Notice and funding selections made based on demonstrated performance.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 173 awards made under the Public Housing Family Self-Sufficiency competition.

Dated: December 10, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE PH FAMILY SELF SUFFICIENCY PROGRAM

Jefferson County Housing Authority	3700 Industrial Parkway	Birmingham	AL	35217	$50,943
Mobile Housing Board	151 South Claiborne Street	Mobile	AL	36602	51,119
The City of Montgomery Housing Authority	1020 Bell Street	Montgomery	AL	36104	39,830
The Housing Authority of The City of Huntsville.	200 Washington Street	Huntsville	AL	35804–0486	65,000
Tuscaloosa Housing Authority	P.O. Box 2281	Tuscaloosa	AL	35403–2281	37,560
Housing Authority of the City of West Memphis.	2820 Harrison Street	West Memphis	AR	72301–6099	39,500
City of Phoenix Housing Department	251 West Washington, 4th Floor	Phoenix	AZ	85003	65,000
City of Tucson	P.O. Box 27210 310 North Commerce Park Loop.	Tucson	AZ	85726–7210	26,007
Housing Authority of the City of Yuma	420 South Madison Avenue	Yuma	AZ	85364	55,493
Housing Authority of the City of Madera	205 North G Street	Madera	CA	93637	48,307
Housing Authority of the City of San Buenaventura.	995 Riverside Street	Ventura	CA	93001–1636	65,000
Housing Authority of the City of San Luis Obispo.	487 Leff Street	San Luis Obispo	CA	93401	48,531
Housing Authority of the City of Santa Barbara.	808 Laguna Street	Santa Barbara	CA	93101	65,000
Housing Authority of the County of Kern	601–24th Street	Bakersfield	CA	93301	59,135
Housing Authority of the County of Marin	4020 Civic Center Drive	San Rafael	CA	94903	65,000
Housing Authority of the County of San Bernardino.	715 East Brier Drive	San Bernardino	CA	92408–2841	65,000
Housing Authority of the County of San Joaquin.	P.O. Box 447	Stockton	CA	95201	160,518
Housing Authority of the County of Stanislaus	1701 Robertson Road	Modesto	CA	95358–0033	65,000
San Diego Housing Commission	1650 Newton Avenue	San Diego	CA	92113	130,000
Adams County Housing Authority	7190 Colorado Boulevard	Commerce City	CO	80022	65,000
Boulder Housing Partners aba Housing Authority Boulder City.	4800 Broadway	Boulder	CO	80304	61,700
Fort Collins Housing Authority	1715 West Mountain Avenue	Fort Collins	CO	80521	62,636
Housing Authority of the City & County of Denver.	777 Grant Street	Denver	CO	80203	216,120
Housing Authority of the City of New Haven	P.O. Box 1912 360 Orange Street	New Haven	CT	06509–1912	55,516
Housing Authority of the City of Norwalk	P.O. Box 508 24½ Monroe Street	Norwalk	CT	06856–0508	65,000
Meriden Housing Authority	22 Church Street	Meriden	CT	06451	52,015
The Housing Authority City of Stamford	22 Clinton Avenue	Stamford	CT	06904	65,000
Dover Housing Authority	76 Stevenson Drive	Dover	DE	19901	36,515
Fort Pierce Housing Authority	707 North 7th Street	Fort Pierce	FL	34950	44,000
Hialeah Housing Authority	75 East 6th Street	Hialeah	FL	33010	36,875
Housing Authority of Brevard County	615 Kurek Court	Merritt Island	FL	32953	51,582
Housing Authority of Lakeland	430 Hartsell Avenue	Lakeland	FL	33815	46,276
Housing Authority of the City of Fort Myers	4224 Michigan Avenue	Fort Myers	FL	33916	53,391
Housing Authority of the City of Tampa	1514 Union Street	Tampa	FL	33607	60,058
Jacksonville Housing Authority	1300 Broad Street	Jacksonville	FL	32202	42,385
Tallahassee Housing Authority	2940 Grady Road	Tallahassee	FL	32312–2198	28,253
The Housing Authority of the City of Bradenton, Florida.	1307 6th Street West	Bradenton	FL	34205	45,450
The Housing Authority of The City of Daytona Beach.	211 North Ridgewood Avenue Suite 200	Daytona Beach	FL	32114	40,000
West Palm Beach Housing Authority	1715 Division Avenue	West Palm Beach	FL	33407	35,723
Housing Authority of the City of Albany, GA	P.O. Box 485 521 Pine Avenue	Albany	GA	31702	27,398
Macon Housing Authority	2015 Felton Avenue	Macon	GA	31201–4928	57,990
Northwest Georgia Housing Authority	800 North Fifth Avenue	Rome	GA	30162	36,207
Housing and Community Development Corporation of Hawaii.	677 Queen Street, Suite 300	Honolulu	HI	96813	45,011
City of Des Moines, Municipal Housing Agency.	100 East Euclid, Suite 101	Des Moines	IA	50313–4534	29,382

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE PH FAMILY SELF SUFFICIENCY PROGRAM—Continued

Eastern Iowa Regional Housing Authority	3999 Pennsylvania Avenue, Suite 200	Dubuque	IA	52002	61,083
Nampa Housing Authority	211 19th Avenue North	Nampa	ID	83687	39,007
Housing Authority of Champaign County	205 West Park Avenue	Champaign	IL	61820	33,487
Macoupin County Housing Authority	760 Anderson Street	Carlinville	IL	62626	40,170
Peoria Housing Authority	100 South Richard Pryor Place	Peoria	IL	61605	46,673
Quincy Housing Authority	540 Harrison	Quincy	IL	62301	45,000
Rockford Housing Authority	223 South Winnebago Street	Rockford	IL	61102	61,274
Housing Authority of Delaware County, Indiana.	2401 South Haddix Avenue	Muncie	IN	47302–7547	48,315
Housing Authority of the City of Terre Haute	P.O. Box 3086 One Dreiser Square	Terre Haute	IN	47803–0086	58,160
Indianapolis Housing Agency	1919 North Meridian	Indianapolis	IN	46202–1303	58,500
New Albany Housing Authority	P.O. Box 11	New Albany	IN	47151–0011	114,800
Lawrence-Douglas County Housing Authority	1600 Haskell Avenue	Lawrence	KS	66044	57,008
Manhattan Housing Authority	P.O. Box 1024 300 North 5th Street	Manhattan	KS	66505–1024	58,580
Housing Authority of Bowling Green	247 Double Springs Road	Bowling Green	KY	42101	45,000
Louisville Metro Housing Authority	420 South Eighth Street	Louisville	KY	40203	62,862
Housing Authority of Jefferson Parish	1718 Betty Street	Marrero	LA	70072	42,000
Holyoke Housing Authority	475 Maple Street, Suite One	Holyoke	MA	01040	43,693
Lynn Housing Authority	10 Church Street	Lynn	MA	01902	47,156
Quincy Housing Authority	80 Clay Street	Quincy	MA	02170	60,000
Housing Authority of Baltimore City	417 East Fayette Street	Baltimore	MD	21202	64,890
Housing Authority of St. Mary's County	P.O. Box 653 41650 Tudor Hall Road	Leonardtown	MD	20650	51,932
Housing Authority Washington County	P.O. Box 2944 44 North Potomac Street	Hagerstown	MD	21740–2944	4,268
Housing Commission of Anne Arundel County.	7477 Baltimore-Annapolis Boulevard	Glen Burnie	MD	21146	63,000
Housing Opportunities Commission	10400 Detrick Avenue	Kensington	MD	20895	125,406
Rockville Housing Enterprises	621A South Lawn Lane	Rockville	MD	20850	60,852
The Housing Authority of the City of Hagerstown.	35 West Baltimore Street	Hagerstown	MD	21740	94,929
Lewiston Housing Authority	1 College Street	Lewiston	ME	04240	15,859
Portland Housing Authority	14 Baxter Boulevard	Portland	ME	04101	17,020
The Housing Authority of the City of Brewer	15 Colonial Circle, Suite 1	Brewer	ME	04412–1475	46,941
Grand Rapids Housing Commission	1420 Fuller Avenue Southeast	Grand Rapids	MI	49507	64,236
Muskegon Housing Commission	1080 Terrace	Muskegon	MI	49442	42,460
Saginaw Housing Commission	P.O. Box 3225 1803 Norman Street	Saginaw	MI	48605–3225	46,790
Housing and Redevelopment Authority of Virginia.	Post Office Box 1148 Pine Mill Court	Virginia	MN	55792	51,359
Washington County Housing and Redevelopment Authority.	321 Broadway Avenue	Saint Paul Park	MN	55071	25,986
Housing Authority of Kansas City, Missouri	301 East Armour Boulevard, Suite 200	Kansas City	MO	64111	46,865
St. Louis Housing Authority	4100 Lindell Boulevard	St. Louis	MO	63108	64,890
Natchez Housing Authority	2 Auburn Avenue	Natchez	MS	39120	44,460
The Housing Authority of the City of Biloxi	P.O. Box 447 330 Benachi Avenue	Biloxi	MS	39533–0447	41,000
The Housing Authority of the City of Meridian	2425 E Street	Meridian	MS	39301	47,396
Burlington Housing Authority	P.O. Box 2380 133 North Ireland Street	Burlington	NC	27216–2380	53,523
City of Concord Housing Department	P.O. Box 308 283 Harold Goodman Circle	Concord	NC	28026–0308	43,152
Gastonia Housing Authority	P.O. Box 3398 340 West Long Avenue	Gastonia	NC	28053–2398	48,120
Greensboro Housing Authority	450 North Church Street	Greensboro	NC	27401	58,320
Housing Authority of the City of Asheville, NC	165 South French Board Avenue	Asheville	NC	28801	55,000
Housing Authority of the City of Durham	330 East Main Street	Durham	NC	27701	65,000
Housing Authority of the City of Greenville	1103 Broad Street	Greenville	NC	27834	53,640
Housing Authority of the City of High Point	500 East Russell Avenue	High Point	NC	27261	95,837
Housing Authority of the City of Kinston, North Carolina.	608 North Queen Street	Kinston	NC	28501	41,721
Housing Authority of the City of Winston-Salem.	500 West 4th Street, Suite 300	Winston-Salem	NC	27101	53,030
Lexington Housing Authority	P.O. Box 1085 1 Jamaica Drive	Lexington	NC	27293	51,591
Statesville Housing Authority	110 West Allison Street	Statesville	NC	28677	92,110
Housing Authority of the City of Lincoln, Nebraska.	5700 R Street	Lincoln	NE	68505	62,740
Housing Authority of the City of Omaha	540 South 27th Street	Omaha	NE	68105	39,749
Kearney Housing Agency	2715 Avenue I OFC	Kearney	NE	68847	46,349
Keene Housing Authority	831 Court Street	Keene	NH	03431	45,535
Atlantic City Housing Authority	P.O. Box 1258 227 North Vermont Avenue, 17th Floor.	Atlantic City	NJ	08401	51,591
Millville Housing Authority	P.O. Box 803 309 Buck Street	Millville	NJ	08332	22,372
City of Albuquerque Housing Services	1840 University Boulevard Southeast	Albuquerque	NM	87106	65,000
Clovis Housing & Redevelopment Agency, Inc.	P.O. Box 1240 2101 West Grand Avenue	Clovis	NM	88101	40,000
Santa Fe Civic Housing Authority	664 Alta Vista Street	Santa Fe	NM	87505	51,164
Santa Fe County Housing Authority	52 Camino de Jacobo	Santa Fe	NM	87507–3546	50,277
Taos County Housing Authority	Box 4239 NDCBU 505 Ranchitos Road	Taos	NM	87571	46,000
Truth or Consequences Housing Authority	108 Cedar Avenue	Truth or Consequences	NM	87901	9,571
Housing Authority of the City of Las Vegas	340 North 11th Street	Las Vegas	NV	89101	125,886
Housing Authority of the City of Reno	1525 East 9th Street	Reno	NV	89512–3012	25,820
Housing Authority of the County of Clark, Nevada.	5390 East Flamingo Road	Las Vegas	NV	89122	49,000
Buffalo Municipal Housing Authority	300 Perry Street	Buffalo	NY	14204	63,048
Cohoes Housing Authority	100 Manor Sites	Cohoes	NY	12047	13,861
Geneva Housing Authority	P.O. Box 153 41 Lewis Street	Geneva	NY	14456	59,479
Monticello Housing Authority	76 Evergreen Drive	Monticello	NY	12701	34,677
Municipal Housing Authority of the City of Schenectady.	375 Broadway	Schenectady	NY	12305	50,822
New Rochelle Municipal Housing Authority	50 Sickles Avenue	New Rochelle	NY	10801	64,890

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE PH FAMILY SELF SUFFICIENCY PROGRAM—Continued

Akron Metropolitan Housing Authority	100 West Cedar Street	Akron	OH	44307	116,891
Butler Metropolitan Housing Authority	4110 Hamilton-Middletown Road	Hamilton	OH	45011	65,000
Chillicothe Metropolitan Housing Authority	178 West Fourth Street	Chillicothe	OH	45601	22,032
Lorain Metropolitan Housing Authority	1600 Kansas Avenue	Lorain	OH	44052	42,000
Trumbull Metropolitan Housing Authority	4076 Youngstown Road Southeast, Suite 101.	Warren	OH	44484	44,496
Youngstown Metropolitan Housing Authority	131 West Boardman Street	Youngstown	OH	44503	56,067
Zanesville Metropolitan Housing Authority	407 Pershing Road	Zanesville	OH	43701	48,532
Housing Authority of the City of Lawton, Oklahoma.	609 Southwest F Avenue	Lawton	OK	73501	31,521
Housing Authority of the City of Muskogee	220 North 40th Street	Muskogee	OK	74401	40,000
Housing Authority of the City of Shawnee, OK.	P.O. Box 3427 601 West 7th Street	Shawnee	OK	74802–3427	91,908
Housing Authority of the City of Tulsa	415 East Independence Street	Tulsa	OK	74106	31,513
Housing and Community Services Agency of Lane County.	177 Day Island Road	Eugene	OR	97401	65,000
Housing Authority & Urban Renewal Agency of Polk County.	P.O. Box 467	Dallas	OR	97338	14,390
Housing Authority of Jackson County	2251 Table Rock Road	Medford	OR	97501	34,404
Housing Authority of Portland (Oregon)	135 Southwest Ash Street	Portland	OR	97204	193,189
Housing Authority of the City of Salem	360 Church Street Southeast	Salem	OR	97301	64,180
Umatilla Reservation Housing Authority	51 Umatilla Loop	Pendleton	OR	97801	65,000
Allegheny County Housing Authority	625 Stanwix Street, 12th Floor	Pittsburgh	PA	15222	64,302
Housing Authority of Northumberland County	50 Mahoning Street	Milton	PA	17847	49,160
Housing Authority of the City of York	P.O. Box 1963 31 South Broad Street	York	PA	17403	41,436
Philadelphia Housing Authority	12 South 23rd Street, 6th Floor	Philadelphia	PA	19103	65,000
Westmoreland County Housing Authority	154 South Greengate Road	Greensburg	PA	15601–9308	38,746
Housing Authority of the City of Providence	100 Broad Street	Providence	RI	02903	65,000
North Charleston Housing Authority	2170 Ashley Phosphate Road, Suite 700	North Charleston	SC	29406	48,000
The Housing Authority City of Charleston	550 Meeting Street	Charleston	SC	29403	47,157
The Housing Authority of the City of Greenville, SC.	511 Augusta Street	Greenville	SC	29605	32,057
The Housing Authority of the City of Spartanburg.	201 Caulder Avenue	Spartanburg	SC	29306	47,250
Crossville Housing Authority	P.O. Box 425	Crossville	TN	38557	51,500
Jackson Housing Authority	125 Preston Street	Jackson	TN	38301	86,208
Kingsport Housing & Redevelopment Authority.	P.O. Box 44	Kingsport	TN	37662	53,821
Metropolitan Development & Housing Agency	701 South 6th Street	Nashville	TN	37206	122,236
City of San Marcos Housing Authority	1201 Thorpe Lane	San Marcos	TX	78666	37,380
Housing Authority of the City of Austin	P.O. Box 6159	Austin	TX	78762–6159	97,190
Housing Authority of the City of Beaumont	1890 Laurel	Beaumont	TX	77701	27,766
Housing Authority of the City of Fort Worth	1201 East 13th Street	Fort Worth	TX	76102	65,000
Housing Authority of the City of Waco	P.O. Box 978 4400 Cobbs Drive	Waco	TX	76703–0978	48,281
Housing Authority of the County of Hidalgo	1800 North Texas Boulevard	Weslaco	TX	78596	37,080
The Housing Authority of the City of Dallas, Texas (DHA).	3939 North Hampton Road	Dallas	TX	75212	45,981
The Housing Authority of the City of San Antonio.	818 South Flores Street	San Antonio	TX	78204	292,262
Housing Authority of Salt Lake City	1776 South West Temple	Salt Lake City	UT	84115	53,000
Housing Authority of the County of Salt Lake	3595 South Main Street	Salt Lake City	UT	84115	57,880
Chesapeake Redevelopment & Hsg. Authority.	1468 South Military Highway	Chesapeake	VA	23320	46,978
Danville Redevelopment and Housing Authority.	651 Cardinal Place	Danville	VA	24541	43,260
Fairfax County Redevelopment and Housing Authority.	3700 Pender Drive, Suite 300	Fairfax	VA	22030	64,890
Harrisonburg Redevelopment and Housing Authority.	286 Kelley Street	Harrisonburg	VA	22802	17,660
Newport News Redevelopment and Housing Authority.	P.O. Box 797 227 27th Street	Newport News	VA	23607	46,000
Norfolk Redevelopment & Housing Authority	201 Granby Street	Norfolk	VA	23510	130,000
Portsmouth Redevelopment & Housing Authority.	801 Water Street 2nd Floor	Portsmouth	VA	23704	49,170
Richmond Redevelopment Housing Authority	P.O. Box 26887 901 Chamberlayne Parkway	Richmond	VA	23261–6887	65,000
Roanoke Redevelopment and Housing Authority.	2624 Salem Turnpike, Northwest	Roanoke	VA	24017	101,731
Waynesboro Redevelopment and Housing Authority.	P.O. Box 1138 1700 New Hope Road	Waynesboro	VA	22980	39,404
Housing Authority of the City of Bremerton	110 Russell Road	Bremerton	WA	98312	43,252
Housing Authority of the City of Tacoma	902 South L Street	Tacoma	WA	98405	53,629
Seattle Housing Authority	P.O. Box 19028 120 6th Avenue North	Seattle	WA	98109–1028	55,563
Charleston Housing Authority	911 Michael Avenue	Charleston	WV	25312	41,996
Parkersburg Housing Authority	1901 Cameron Avenue	Parkersburg	WV	26101	38,411
Wheeling Housing Authority	P.O. Box 2089 11 Community Street	Wheeling	WV	26003	43,010
Housing Authority of the City of Cheyenne	3304 Sheridan Street	Cheyenne	WY	82009	32,398

[FR Doc. E7–25149 Filed 12–27–07; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–52]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 20, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E7–25137 Filed 12–27–07; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–33]

Notice of Funding Awards; Public Housing Neighborhood Networks for Fiscal Year 2006

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the FY 2006 Notice of Funding Availability (NOFA) for the Public Housing Neighborhood Networks Program funding for Fiscal Year 2006. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY 2006 Public Housing Neighborhood Networks awards, contact the Office of Public and Indian Housing's Grants Management Center, Director, Iredia Hutchinson, Department of Housing and Urban Development, Washington, DC, telephone (202) 358–0221. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the $7,500,000 in four-year budget authority for Public Housing Neighborhood Networks technology centers is found in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, FY2006 (Pub. L. 109–115). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213 (d) of the Housing and Community Development Act of 1974, as amended. Additionally, unobligated funds were added to the $7,500,000.

This program is intended to promote the development of local strategies to coordinate the use of assistance under the Public Housing Neighborhood Networks program with public and private resources to enable participating families to achieve economic independence and self-sufficiency.

The Fiscal Year 2006 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** NOFA published on March 8, 2006 (71 FR. 3382). Applications were scored based on the selection criteria in that Notice and funding selections made based on the rating and ranking of applications within each State.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 53 awards made under the Public Housing Neighborhood Networks competition.

Dated: December 10, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE PIH NEIGHBORHOOD NETWORKS PROGRAM

Recipient	Address	City	State	Zip code	Amount
Alaska Housing Finance Corporation	P.O. Box 101020, 4300 Boniface Parkway.	Anchorage	AK ...	99510–1020	$199,905
Tuscaloosa Housing Authority	2808 10th Avenue	Tuscaloosa	AL ...	35403	200,000
City of Phoenix Housing Department	251 West Washington Street, 4th Floor	Phoenix	AZ ...	85003	350,000
Housing Authority of the City of Oxnard	435 South D Street	Oxnard	CA ...	93030	150,000
Housing Authority of the County of San Bernardino.	715 East Brier Drive	San Bernardino ..	CA ...	92408–2841	399,000
San Diego Housing Commission	1650 Newton Street	San Diego	CA ...	92113	200,000
Housing Authority of the City & County of Denver.	777 Grant Street	Denver	CO ..	80203	500,000
Meriden Housing Authority	22 Church Street	Meriden	CT ...	06451	150,000
The Housing Authority of the City of Norwalk.	24½ Monroe Street	Norwalk	CT ...	06856–0508	400,000

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE PIH NEIGHBORHOOD NETWORKS PROGRAM—Continued

Recipient	Address	City	State	Zip code	Amount
Housing Authority of the City of Fort Myers.	4224 Michigan Avenue	Fort Myers	FL	33916	300,000
Housing Authority of Lakeland	430 Hartsell Avenue	Lakeland	FL	33815	100,000
Housing Authority of the City of Daytona Beach.	211 North Ridgewood Avenue, Suite 200.	Daytona Beach	FL	32114	100,000
Jacksonville Housing Authority	1300 Broad Street	Jacksonville	FL	32202	150,000
Carrollton Housing Authority	1 Roop Street	Carrollton	GA	30117	150,000
Northwest Georgia Housing Authority	800 North Fifth Avenue	Rome	GA	30162	400,000
The Housing Authority of the City of Augusta, Georgia.	P.O. Box 3246, 1435 Walton Way	Augusta	GA	30914–3246	200,000
The Housing Authority of the City of Bloomington.	104 East Wood Street	Bloomington	IL	61701	100,000
Winnebago County Housing Authority	2901 Searles Avenue	Rockford	IL	61101–2781	165,252
Housing Authority of Bowling Green	247 Double Springs Road	Bowling Green	KY	42101	150,000
Housing Authority of Murray	716 Nash Drive	Murray	KY	42071	150,000
Cambridge Housing Authority	675 Massachusetts Avenue	Cambridge	MA	02139	200,000
Springfield Housing Authority	25 Saab Court	Springfield	MA	01104	400,000
Housing Authority of Baltimore City	417 East Fayette Street	Baltimore	MD	21202	546,700
Portland Housing Authority	14 Baxter Boulevard	Portland	ME	04101–1822	200,000
Housing Authority of Kansas City, Missouri.	301 East Armour	Kansas City	MO	64111	199,889
Natchez Housing Authority	2 Auburn Avenue	Natchez	MS	39120	150,000
City of Concord Housing Department	P.O. Box 308, 283 Harold Goodman Circle.	Concord	NC	28026–0308	300,000
Gastonia Housing Authority	P.O. Box 2398, 340 West Long Avenue	Gastonia	NC	28053	150,000
Greensboro Housing Authority	P.O. Box 21287, 450 North Church Street.	Greensboro	NC	27420–1287	200,000
Housing Authority of the City of Greenville.	1103 Broad Street	Greenville	NC	27834	163,950
Housing Authority of the City of Camden.	1300 Admiral Wilson Boulevard	Camden	NJ	08102	199,985
Albany Housing Authority	200 South Pearl Street	Albany	NY	12202–1839	200,000
Municipal Housing Authority of the City of Schenectady.	375 Broadway	Schenectady	NY	12305	200,000
New York City Housing Authority	250 Broadway	New York	NY	10007	600,000
Syracuse Housing Authority	516 Burt Street	Syracuse	NY	13202	399,930
Troy Housing Authority	One Eddy's Lane	Troy	NY	12180	400,000
Cuyahoga Metropolitan Housing Authority.	1441 West 25th Street	Cleveland	OH	44113	250,000
Dayton Metropolitan Housing Authority	P.O. Box 8750, 400 Wayne Avenue	Dayton	OH	45401–8750	497,211
Housing Authority of the City of Tulsa	P.O. Box 6369, 415 East Independence Street.	Tulsa	OK	74148–0369	213,734
Allentown Housing Authority	1339 Allen Street	Allentown	PA	18192–2191	400,000
Housing Authority of the City of York	P.O. Box 1963, 31 South Broad Street	York	PA	17403	200,000
Philadelphia Housing Authority	12 South 23rd Street	Philadelphia	PA	19103	300,000
Housing Authority of the City of Newport.	One York Street	Newport	RI	02840	128,834
Housing Authority of the City of El Paso	5300 Paisano Drive	El Paso	TX	79905	250,000
Housing Authority of the City of Fort Worth.	1201 East 13th Street	Fort Worth	TX	76102	200,000
The Housing Authority of the City of Galveston, Texas.	4700 Broadway	Galveston	TX	77551	250,000
Danville Redevelopment and Housing Authority.	651 Cardinal Place	Danville	VA	24541	300,000
Fairfax County Redevelopment and Housing Authority.	3700 Pender Drive, Suite 300	Fairfax	VA	22030	200,000
Roanoke Redevelopment and Housing Authority.	2624 Salem Turnpike, Northwest	Roanoke	VA	24017–0359	400,000
Housing Authority of the City of Tacoma	902 South L Street	Tacoma	WA	98405	200,000
King County Housing Authority	600 Andover Park West	Tukwila	WA	98188	350,000
Seattle Housing Authority	P.O. Box 19028, 120 6th Avenue North	Seattle	WA	98109–1028	247,825
The Huntington WV Housing Authority	P.O. Box 2183, 300 West Seventh Avenue.	Huntington	WV	25722	325,255

[FR Doc. E7–25150 Filed 12–27–07; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Human Capital, Performance and Partnerships; National Invasive Species Council

AGENCY: Office of the Secretary; Interior.

ACTION: Notice of Availability—Draft of the 2008–2012 National Invasive Species Management Plan.

SUMMARY: Pursuant to Executive Order 13112, the National Invasive Species Council (NISC) is announcing the availability of the draft of the *2008–2012 National Invasive Species Management Plan* for a 45-day public comment period. The Order established NISC as an inter-agency council to prevent and control invasive species in order to minimize their economic, ecological and human health impacts. The Council, which is co-chaired by the Secretaries of Agriculture, Commerce and the Interior also includes the Departments of State, Defense, Transportation, Homeland Security, Treasury, Health and Human Services, as well as the Environmental Protection Agency, the U.S. Trade Representative, the U.S. Agency for International Development and the National Aeronautics and Atmospheric Administration. The Plan is intended to address invasive species in the areas of prevention, early detection and rapid response, control, restoration and organizational collaboration. Text of the *2008–2012 National Invasive Species Management Plan* is available in PDF format at *www.invasivespeciesinfo.gov.*

DATES: All comments must be received by close of business on February 11, 2008.

ADDRESSES: National Invasive Species Council, Office of the Secretary, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Senior Program Analyst: E-mail: *Kelsey_Brantley@ios.doi.gov*; Phone: 202–513–7243; Fax: (202) 371–1751.

SUPPLEMENTARY INFORMATION: Executive Order 13112 on Invasive Species (EO 13112) was issued in 1999 and established the National Invasive Species Council (NISC) which is co-chaired by the Secretaries of the Interior, Agriculture and Commerce. EO 13112 directed the Secretary of the Interior to establish an Invasive Species Advisory Committee (ISAC) composed of diverse nonfederal stakeholders to advise NISC. The broad mission of NISC is to provide planning, coordination and national leadership to prevent and control the harmful impacts of invasive species to the economy, the environment as well as animal and human health.

Section 5 of EO 13112 directed NISC to issue the National Invasive Species Management Plan, as well as to revise and update the Plan on a regular basis. The first version of the National Invasive Species Management Plan, "*Meeting the Challenge*", was issued in January of 2001 (2001 Plan). The purpose of the Plan was to provide a general blueprint for federal action in coordination with State, local, Tribal, and private programs and international cooperation to prevent the introduction of invasive species, provide for their control and minimize the economic, environmental and human health impacts.

This document is the first revision of the 2001 Plan, as mandated by EO 13112. The *2008–2012 National Invasive Species Management Plan (2008 Plan)* will provide direction for Federal efforts (including overall strategy and objectives) to prevent, control and minimize invasive species and their impacts within the next five (5) fiscal years (2008 through 2012). If necessary, it may be updated more frequently to reflect changes in circumstances, agency plans and priorities. NISC member agencies, ISAC members, NISC staff, stakeholders and other experts have provided input in drafting this revision, which is intended to replace the 2001 Plan.

Federal, State, local and Tribal governments, as well as the private sector, have taken significant steps to meet the challenges posed by invasive species. These steps set the stage for the 2008 Plan and provide direction and focus. An estimated 67% of the 2001 Plan's 57 action items have been completed or are in progress. However significant challenges remain and much remains to be done to prevent and control invasive species in a coordinated and cost efficient manner. Long-range strategic planning, consistent with other government agencies' strategic plans is necessary to address complex invasive species issues. The 2008 Plan establishes five, long-term Strategic Goals that focus Federal efforts in the areas of invasive species work related to:

(1) Prevention;

(2) Early Detection and Rapid Response;

(3) Control and Management;

(4) Restoration; and

(5) Organizational Collaboration.

The Strategic Goals are ongoing and serve as guideposts for managing invasive species. Each Strategic Goal has an associated Strategic Action Plan with long-term Objectives and shorter-term Implementation Tasks and Performance Elements. Where practicable, Implementation Tasks define specific Performance Elements that can be used to gauge progress. Work in Research, Information and Data Management and International Cooperation (which were addressed in separate sections in the 2001 Plan) are elements critical to achieving each of the five Strategic Goals and are included in the pertinent sections of the 2008 Plan.

The 2008 Plan is not a comprehensive list of all Federal invasive species actions. It is a targeted set of priority Strategic Action Plans and Objectives that are intended to be completed in the next five years. The accomplishment of specific Implementation Tasks and Performance Elements will be dependent upon agency budgets, and in some cases, legal or regulatory changes.

Invasive species issues cannot be addressed by Federal programs and actions alone. As reflected in EO 13112, State, local, Tribal and private programs and policies are critical to success. Therefore, receiving public comment on this proposed 2008 Plan is an important component of any strategy to address and reduce the harmful impacts of invasive species.

Submitting Comments: Text of the *2008–2012 National Invasive Species Management Plan* is available in PDF format at *www.invasivespeciesinfo.gov.* Printed copies of the Plan may be obtained by mail or e-mail request to the address below.

Written comments should be addressed to Lori Williams, NISC Executive Director, U.S. Department of the Interior, Office of the Secretary, National Invasive Species Council (OS/NISC), 1849 C Street, NW., Washington, DC 20240. Comments can also be e-mailed to *invasivespecies@ios.doi.gov.* In order to be considered, comments must be received by close of business on February 11, 2008.

Dated: December 20, 2007.

Lori C. Williams,

Executive Director.

[FR Doc. E7–25262 Filed 12–27–07; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Reaffirmation of Statement of Findings: Southern Arizona Water Rights Settlement Amendments Act of 2004

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Statement of Findings in accordance with Title III of Public Law 108–451, and enactment of H.R. 3739 (Public Law Number forthcoming).

SUMMARY: The Secretary of the Interior (Secretary) is publishing this notice in accordance with section 302(b) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (Settlement Amendments Act), Public Law 108–451, 118 Stat. 3536, 3571–72, and H.R. 3739 (Public Law Number forthcoming). Congress enacted the Settlement Amendments Act as Title III of the Arizona Water Settlements Act (AWSA), Public Law 108–451, 118 Stat. 3478 et seq. The publication of this notice causes the amendments to the Southern Arizona Water Rights Settlement Act of 1982 (1982 Act), Public Law 97–293, 96 Stat. 1274 (as amended), made by the Settlement Amendments Act to take effect.

DATES: In accordance with section 302(b) of the Settlement Amendments Act, Title III of Public Law 108–451 and the amendments made by Title III are effective on December 14, 2007.

FOR FURTHER INFORMATION CONTACT: Address all comments and requests for additional information to Deborah Saint, Chair, Arizona Water Settlements Implementation Team, Department of the Interior, Bureau of Reclamation, Lower Colorado Region, Native American Affairs Office, 400 N 5th Street, Suite 1470, Phoenix, AZ 85004. (602) 379–3199.

SUPPLEMENTARY INFORMATION: The 1982 Act was enacted to resolve the water right claims of the San Xavier and Shuk Toak Districts of the Tohono O'odham Nation (Nation). Disagreement about the allocation of settlement benefits precluded implementation of the 1982 Act. On December 10, 2004, the Settlement Amendments Act was enacted as Title III of AWSA in order to resolve issues which precluded implementation of the 1982 Act.

The purposes of the Settlement Amendments Act are:

(1) To authorize, ratify, and confirm the Tohono O'odham settlement agreement, the Tucson agreement, the Asarco agreement and related leases, and the FICO agreement;

(2) To authorize and direct the Secretary to execute and perform all obligations of the Secretary under those agreements; and

(3) To authorize the actions and appropriations necessary for the United States to meet its obligations under those agreements and the Settlement Amendments Act. In order for the Settlement Amendments Act and its amendments to be effective and enforceable, the Secretary is required to make a statement of findings that certain conditions have been met. The Secretary signed such a Statement of Findings on December 10, 2007, and such findings were published in the **Federal Register** on December 14, 2007 (72 FR 71145, Dec. 14, 2007). Subsequent to the Secretary's signing of the Statement of Findings, Congress passed H.R. 3739 (Public Law Number forthcoming), which was signed into law by the President on December 21, 2007. This **Federal Register** Notice reaffirms the Statement of Findings in light of the enactment of H.R. 3739 and includes a technical correction in light of an inadvertent typographical error.

Statement of Findings

In accordance with section 302(b) of the Settlement Amendments Act, I find as follows:

1. The Tohono O'odham settlement agreement has been revised to eliminate any conflicts with the Settlement Amendments Act and, as so revised, has been executed by the parties and the Secretary.

2. The Secretary and other parties to the Tucson agreement, the Asarco agreement and the FICO agreement described in section 309(h)(2) Settlement Amendments Act (as contained in the amendment made by section 301) have executed those agreements.

3. The Secretary has approved the interim allottee water rights code described in section 308(b)(3)(A) of the Settlement Amendments Act (as contained in the amendment made by section 301).

4. Final dismissal with prejudice has been entered in the Alvarez case and the Tucson case on the sole condition that this Statement of Findings be published.

5. The State court having jurisdiction over the Gila River Adjudication proceedings has approved the judgment and decree attached to the Tohono O'odham settlement agreement as exhibit 17.1.[1]

6. Implementation costs totaling $24,068,400, as specified in section 302(b)(6) of the Settlement Amendments Act, have been identified and retained in the Lower Colorado River Basin Development Fund.

7. The State of Arizona has enacted legislation that qualifies the Nation to earn long-term storage credits under the Asarco agreement; implements the San Xavier groundwater protection program in accordance with paragraph 8.8 of the Tohono O'odham settlement agreement; enables the State to assist the Secretary in firming Central Arizona Project water pursuant to section 306(b); and confirms the jurisdiction of the State court having jurisdiction over Gila River Adjudication proceedings and decrees to carry out the provisions of sections 312(d) and 312(h) of the Settlement Amendments Act (as contained in the amendment made by section 301).

8. The Secretary and the State of Arizona have agreed to an acceptable schedule as referred to in section 105(b)(2)(C) of AWSA.[2]

9. Final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB (EHC), No. CIV 95–1720–PHX–EHC) (Consolidated Action) in accordance with the repayment stipulation in that case.

Dated: December 21, 2007.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E7–25290 Filed 12–27–07; 8:45 am]

BILLING CODE 4310–MN–P

[1] Substantive modification to correspond to the provisions of H.R. 3739, signed into law by the President on December 21, 2007 (Public Law No. forthcoming, ___Stat.___(2007)).

[2] Technical correction in light of an inadvertent typographical error. The reference to "15,000 acre-feet" incorrectly referenced the firming obligation for the benefit of the Gila River Indian Community found at section 105(b)(2)(A) of AWSA.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0009

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an Information Collection Request (ICR) to OMB for review and approval. The ICR is scheduled to expire on December 31, 2007. The BLM 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. However, under OMB regulations, the BLM may continue to conduct or sponsor this information collection while it is pending at OMB. On June 21, 2006, the BLM published a notice in the **Federal Register** (71 FR 35698) requesting comment on this information collection. The comment period ended on August 21, 2006. The BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed in the **ADDRESSES** section below.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by January 28, 2008 to receive maximum consideration.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Alexandra Ritchie, Information Collection Clearance Officer, Bureau of Land Management, at U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Washington, DC 20240. Additionally, you may contact Alexandra Ritchie regarding this ICR at (202) 452–0388 (phone); (202) 653–5287 (fax); or *Alexandra_Ritchie@blm.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: For program-related questions, contact Alzata L. Ransom, Realty Use Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, 7 days a week, to contact Ms. Ransom. For questions regarding this ICR or the information collection process, contact Alexandra Ritchie by phone, mail, fax, or e-mail (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 1004–0009.

Title: Land Use Application and Permit, 43 CFR 2920.

Bureau Form Number: 2920–1.

Type of Request: Extension of currently approved collection.

Affected Public: Private Citizens, Businesses, and State and Local Governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Annual Number of Responses: 519.

Estimated Time per Response: 1 hour per response for land use authorizations that will cause little or no damage to the public lands and resources; 120 hours for authorizations that may cause considerable damage or disturbance to the public lands and resources.

Estimated Total Annual Burden Hours: 1,709.

Abstract: The BLM uses the information to allow State and local governments, businesses, and private citizens to use, occupy, or develop the public lands under certain conditions. Land uses that may be authorized are: agricultural development, residential (under certain conditions), recreation concessions (under certain conditions), and business, industrial, and commercial. The types of land uses include commercial filming, advertising displays, commercial or noncommercial croplands, apiaries, livestock, holding or feeding areas not related to grazing permits and leases, harvesting of native or introduced species, temporary or permanent facilities for commercial purposes (does not include mining claims), ski resorts, construction equipment storage sites, assembly yards, oil rig stacking sites, mining claim occupancy if the residential structures are not incidental to the mining operation, and water pipelines and well pumps related to irrigation and non-irrigation facilities.

We estimate that it will take a respondent 1 hour to complete an application for a land use authorization that will cause little or no damage or disturbance to the public lands and resources. Ninety-eight percent of land use authorization respondents are in this category. It will take a respondent 120 hours to complete an application for complex land use authorization proposals that will cause considerable damage or disturbance to the public lands and resources. Two percent of land use authorization respondents are in this category. The majority of the complex land use authorizations are from the major motion picture film industry. The BLM did not receive any responses in this last category during the current collection period. The average annual application processing fee for this entire collection (complex and less complex authorization proposals) is $148,933.28.

We again specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information we collect; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 21, 2007.

Alexandra Ritchie,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. E7–25217 Filed 12–27–07; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Availability of a Revised Draft Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project, Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) of 1969, the Bureau of Land Management (BLM) announces the availability of a Revised Draft Supplemental Environmental Impact Statement for long-term development of natural gas resources in the Pinedale Anticline Project Area (PAPA).

The BLM released a Draft Supplemental Impact Statement (DSEIS) on December 15, 2006. The comment period for the DSEIS closed on April 6, 2007. Based upon public comments, BLM is reissuing a Revised Draft Supplemental Environmental Impact Statement (RDSEIS) to include the analysis of two additional alternatives.

The RDSEIS includes the three alternatives that were analyzed in the original draft: the no action, proposed action, and the BLM preferred alternative. It also includes two additional alternatives: One based upon the comments BLM received from oil and gas proponents and the State of Wyoming Game and Fish; and an additional alternative which analyzes full field development with current wildlife timing stipulations in place.

The first added alternative analyzes the effects of continued development activities during winter under relaxed wildlife timing stipulations within a core area of the PAPA. In addition, leases on the East and West flanks of the PAPA are proposed to be placed in suspense to offset affected winter habitat in the core development areas. A wildlife matrix and mitigation fund has been incorporated into this alternative to address on and off-site mitigation.

The second added alternative analyzes the effects of full field development with wildlife timing stipulations carried forward from the 2000 PAPA ROD and subsequent PAPA decision documents. This alternative would allow for the development of 4399 wells, the level of development currently considered necessary to effectively recover the oil and gas resources.

In addition to the two new alternatives, the RDSEIS will analyze pace of development. This analysis will show levels of impact associated with the number of rigs operating at any one time in the PAPA.

DATES: This notice initiates the public comment process. The BLM can best use public input if comments and resources information are submitted within 45 days of the publication of this notice.

ADDRESSES: Please send written comments or resource information to the Bureau of Land Management, Pinedale Field Office, Caleb Hiner, Project Manager, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941. Electronic mail may be sent to: *WYMail_PAPA_YRA@blm.gov*. The RDSEIS will be posted at *http://www.blm.gov/wy/st/en/info/NEPA/pfodocs/anticline/seis.html* when available. Your response is important and will be considered in the environmental analysis process. If you do respond, we will keep you informed of decisions resulting from this analysis. Please note that public comments and information submitted regarding this project including names, e-mail addresses and street addresses of the respondents will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Caleb Hiner, Project Manager, 1625 West Pine, P.O. Box 768, Pinedale, Wyoming 82941. Mr. Hiner may also be reached by telephone at (307) 367–5352, or by sending an electronic message to: *caleb_hiner@blm.gov*.

SUPPLEMENTARY INFORMATION: The BLM released a Draft SEIS on December 15, 2006, based on a proposal received for long-term development of natural gas resources in the PAPA from Questar Exploration and Production (Questar), Shell Exploration and Production Company (Shell), and Ultra Resources Inc. (Ultra). The Operators proposed to conduct year round drilling and completions in Concentrated Development Areas within a Core Development Area (coinciding with the Anticline Crest) in the PAPA. In 2000, the PAPA Record of Decision (ROD) for development on the PAPA established seasonal restrictions on natural gas development to minimize adverse effects on wintering big game and sage grouse during breeding and nesting. The Operators proposed an additional 4,399 wells on approximately 10-acre bottom hole spacing from an additional 250 well pads to effectively recover the mineral resource. The proposed development included construction of new well pads and substantial expansion of existing well pads to allow for multiple wells drilled from a pad.

The PAPA ROD established restrictions on when oil and gas development activities may occur. The NEPA document did not include analysis of the potential impacts of oil and gas development activities (specifically drilling and completions) to big game on crucial winter ranges during the period of November 15 through April 30.

The air quality impact analysis considered a total of 900 wells drilled with 700 producing well pads. The PAPA ROD stated that if the level of development exceeds that analyzed in the Draft EIS, BLM would conduct additional environmental analysis. There are currently approximately 460 producing wells in the PAPA. In addition, the BLM has determined that there is a need for new pipeline corridors between the PAPA and processing plants in southwestern Wyoming. Therefore, the RDSEIS will also include analysis of new corridors. In addition, specific analysis is included in the RDSEIS for two additional gas sales pipelines from the PAPA, one to the Granger and Blacks Fork gas plants and one from the PAPA to the Opal and Pioneer gas plants.

The BLM has identified the following resources that may be adversely impacted by the proposal: Surface and ground water resources; air quality; wildlife and their habitats; reclamation; visual resources; transportation; noxious weed control; grazing, cultural and paleontological resources; wetland and riparian resources; threatened and endangered animal and plant species; and socioeconomic resources.

The BLM conducted NEPA analysis and issued a ROD for the Pinedale Anticline Oil and Gas Exploration and Development Project in July 2000. The BLM conducted this analysis in response to increasing numbers of operators requesting approval to drill and develop gas wells on the Pinedale Anticline. The NEPA document analyzed three alternatives with different levels of required mitigation and for each alternative there were three exploration and development scenarios based on the density and distribution of well pad development. The PAPA ROD established protection of big game crucial winter ranges from oil and gas developments (well drilling and completion) during the winter months.

The PAPA ROD provided that the BLM could grant limited exceptions to this winter closure period based on current conditions such as presence of wintering animals or depth of snow cover. However, each exception was to be made on a case-by-case basis (annually) and usually with the requirement that should winter conditions prevail, those activities would cease.

Starting in the winter 2002–2003, the BLM authorized Questar Exploration and Development Company (Questar) to continue gas development operations at one well pad within big game crucial winter range with the requirement that Questar work closely with the Wyoming Game and Fish Department in its study of impacts to the Sublette Mule Deer. In November 2004, the BLM issued a Decision Record allowing Questar to expand their development activities in crucial mule deer winter range during

winter while continuing to support the Sublette Mule Deer Study (Questar Year-Round Drilling Proposal Environmental Assessment, November 2004).

Since then other operators within the Pinedale Anticline have expressed interest in conducting gas development activities including year-round drilling within big game crucial winter range. In the summer of 2005, Anschutz, Shell, and Ultra submitted a proposal to the BLM for year-round drilling demonstration project on three well pads within their leaseholds during one year. In September 2005, BLM issued a Decision Record to allow them to proceed (ASU Year-Round Drilling Demonstration Project, September 2005). The Decision Record allowed each of the three operators to drill year-round on one well pad each on crucial winter range during the winter of 2005–2006. The result of that project led the Operators to the current proposal and to BLM's determination that a Supplemental EIS is necessary. The PAPA encompasses approximately 198,034 acres of primarily Federal lands (nearly 80 percent), and state and private land. Approximately 83 percent of the mineral estate underlying the PAPA is federally-owned.

James K. Murkin,

Acting Associate State Director.

[FR Doc. E7–24955 Filed 12–27–07; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–613]

In the Matter of Certain 3G Mobile Handsets and Components; Notice of Commission Decision not to Review an Initial Determination Granting Complainants' Motion to Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 9) of the presiding administrative law judge ("ALJ") granting complainants" motion to amend the complaint and notice of investigation in the above-captioned investigation. The above-captioned investigation has been consolidated with Inv. No. 337–TA–601, *Certain 3G Wideband Code Division Multiple Access (WCDMA) Handsets and Components Thereof.*

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3107. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The subject initial determination concerns investigations which have now been consolidated: Inv. No. 337–TA–601 and Inv. No. 337–TA–613. The Commission instituted Inv. No. 337–TA–601 on April 27, 2007, based on a complaint by InterDigital Communications Corp. of King of Prussia, Pennsylvania and InterDigital Technology Corp. of Wilmington, Delaware (collectively, "InterDigital") filed on March 23, 2007. 72 FR 21049. The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain 3G wideband code division multiple access (WCDMA) handsets and components thereof by reason of infringement of claim 7 of U.S. Patent No. 6,674,791; claims 1, 3, and 4 of U.S. Patent No. 6,693,579; claims 1, 2, 31, 32, and 59 of U.S. Patent No. 7,117,004; and claims 1, 3, 8, 9, and 11 of U.S. Patent No. 7,190,966. The notice of investigation named Samsung Electronics Co., Ltd. of Seoul, Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Telecommunications America LLC of Richardson, Texas (collectively, "Samsung") as respondents.

The Commission instituted Inv. No. 337–TA–613 on September 11, 2007, based on a complaint by InterDigital filed on August 7, 2007. 72 FR 51838. The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain 3G mobile handsets and components by reason of infringement of claims 1–4 of U.S. Patent No. 6,693,579; claims 1, 2, 7–10, 14, 15, 21, 22, 24, 30–32, 34, 35, 46, 47, 49, 59, and 60 of U.S. Patent No. 7,117,004; and claims 1–3 and 6–12 of U.S. Patent No. 7,190,966. The notice of investigation named Nokia Corporation of Finland and Nokia Inc. of Irving, Texas (collectively, "Nokia") as respondents.

On October 24, 2007, the ALJ consolidated Inv. No. 337–TA–601 with Inv. No. 337–TA–613.

On October 23, 2007, InterDigital moved to amend the complaint and notice of investigation of Inv. No. 337–TA–613 to add allegations of infringement of claims 1–3 and 5–11 of recently issued U.S. Patent No. 7,286,847 ("the '847 patent") by Nokia. The Commission investigative attorney supported the motion. No other party responded to the motion.

On November 9, 2007, the ALJ issued the subject ID granting InterDigital's motion, finding that there was good cause to amend the complaint and notice of investigation. No petitions for review were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.14 and 210.42(c) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(c).

Issued: December 6, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25172 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–543]

In the Matter of Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade

Commission has instituted a formal enforcement proceeding relating to a cease and desist order issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3061. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 21, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Broadcom Corporation ("Broadcom") of Irvine, California, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain baseband processor chips and chipsets, transmitter and receiver (radio) chips, power control chips, and products containing same, including cellular telephone handsets by reason of infringement of certain claims of U.S. Patent Nos. 6,374,311; 6,714,983 ("the '983 patent"); 5,682,379 ("the '379 patent"); 6,359,872 ("the '872 patent"); and 6,583,675. 70 Fed. Reg. 35707 (June 21, 2005). The complainant named Qualcomm Incorporated ("Qualcomm") of San Diego, California as the only respondent. The '379 patent and '872 patent were terminated from this investigation.

On October 19, 2006, the presiding administrative law judge ("ALJ") issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond ("ID"), finding a violation of section 337 as to the '983 patent only. On December 8, 2006, the Commission issued a notice of its decision to review and modify in part the ALJ's final ID. The modification made by the Commission did not affect the finding of violation.

On March 21–22, 2007, the Commission held a public hearing on the issues of remedy and the public interest. Subsequently, the Commission extended the target date for completion of this investigation to June 7, 2007.

On June 7, 2007, the Commission issued a limited exclusion order, with certain exemptions, prohibiting the importation of Qualcomm's baseband processor chips or chipsets, including chips or chipsets incorporated into circuit board modules and carriers, that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of the '983 patent, as well as handheld wireless communication devices, including cellular telephone handsets and PDAs, containing Qualcomm baseband processor chips or chipsets that are programmed to enable the power saving features covered by these claims. The Commission also issued a cease and desist order that prohibits Qualcomm from engaging in certain activities in the United States related to the infringing chips.

On November 9, 2007, complainant Broadcom filed a complaint for enforcement proceedings under Commission Rule 210.75. Broadcom asserts that respondent Qualcomm has violated the Commission's cease and desist order by continued marketing of infringing, imported baseband processor chips and chipsets, and continued testing and programming of imported baseband processor chips and chipsets to transform them into infringing products. On December 5 and 7, 2007, respectively, Qualcomm filed a letter opposing institution of Broadcom's complaint, and Broadcom filed a letter in response to Qualcomm's opposition.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether Qualcomm is in violation of the Commission's cease and desist order issued in the investigation, and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Complainant Broadcom, (2) respondent Qualcomm, and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Issued: December 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25173 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–417 and 731–TA–953, 954, 957–959, 961, and 962 (Review)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty order on carbon and certain alloy steel wire rod ("wire rod") from Brazil and antidumping duty orders on wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the countervailing duty order on wire rod from Brazil and the antidumping duty orders on wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: December 10, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special

assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On December 10, 2007, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (72 FR 50696, September 4, 2007) was adequate and that the respondent interested party group responses with respect to Canada and Moldova were adequate and decided to conduct full reviews with respect to the antidumping duty orders concerning wire rod from Canada and Moldova. The Commission found that the respondent interested party group responses with respect to Brazil, Indonesia, Mexico, Trinidad and Tobago, and Ukraine were inadequate. However, the Commission determined to conduct full reviews concerning the countervailing duty order on wire rod from Brazil and the antidumping duty orders on wire rod from Brazil, Indonesia, Mexico, Trinidad and Tobago, and Ukraine to promote administrative efficiency in light of its decision to conduct full reviews with respect to the orders concerning wire rod from Canada and Moldova. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25174 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–955, 960, 963 (Preliminary) (Third Remand)]

Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission ("Commission") hereby gives notice of the court-ordered remand of its preliminary determinations in the antidumping Investigation Nos. 731–TA–955, 960, 963 concerning carbon and certain alloy steel wire rod from Egypt, South Africa, and Venezuela. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

EFFECTIVE DATE: December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer, Office of Investigations, telephone 202–205–3193, or Robin L. Turner, Office of General Counsel, telephone 202–205–3103, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record of Investigation No. 731–TA–1088 may be viewed on the Commission's electronic docket ("EDIS") at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—In September 2005, the Commission determined on remand that there is no potential that subject imports from South Africa will exceed the applicable individual statutory negligibility threshold of three percent of total wire rod imports in the imminent future, and that with respect to Egypt, South Africa and Venezuela collectively, there is no potential that aggregate subject imports from these countries would exceed seven percent of total wire rod imports in the imminent future. 19 U.S.C. 1677(24). The Court of International Trade ("CIT") issued an opinion in the matter on January 17, 2007, *Co-Steel Raritan, Inc.* v. *United States*, Slip Op. 07–7 (Ct. Int'l Trade Jan. 17, 2007), and an order on November 8, 2007, *Gerdau Ameristeel U.S. Inc.* v. *United States International Trade Commission*, Slip Op. 07–165 (Ct. Int'l Trade Nov. 8, 2007), remanding the matter to the Commission for further proceedings not inconsistent with its opinion.

Participation in the proceeding.—Only those persons who were interested parties to the original investigation (i.e., persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding. Such persons need not re-file their appearance notices or protective order applications to participate in the remand proceeding. Business proprietary information ("BPI") referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

Written submissions.—The Commission is reopening the record in this proceeding for the limited purpose of seeking new factual information regarding South African producers of steel wire rod that did not respond in the original investigation. In addition, the Commission will permit the parties to file comments pertaining to the inquiries that are the subject of the CIT's remand instructions and any new factual information. Comments should be limited to no more than twenty (20) double-spaced and single-sided pages of textual material. The parties may not submit any new factual information in their comments and may not address any issue other than the inquiries that are the subject of the CIT's remand instructions. Any such comments must be filed with the Commission no later than January 29, 2008.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not

accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.
Issued: December 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25236 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–590]

In the Matter of Certain Coupler Devices for Power Supply Facilities, Components Thereof, and Products Containing Same; Notice of Commission Issuance of a Limited Exclusion Order Against the Infringing Products of Eight Respondents Found in Default And Issuance of Cease and Desist Orders Against the Five Domestic Defaulters; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against eight respondents found in default and cease and desist orders against the five domestic defaulters, and has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337").

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Topower Computer Industrial Co., Ltd. ("Topower") of Xindian City, Taiwan. 72 FR 2554 (January 19, 2007). Topower alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coupler devices for power supply facilities, components thereof, and products containing same by reason of the infringement of one or more of claims 1–14 of U.S. Patent No. 6,935,902. The complaint named thirty respondents located in China, Germany, Taiwan, and the United States (California, North Carolina, and Minnesota). Topower originally requested a general exclusion order. The investigation was assigned to Administrative Law Judge (ALJ) Robert L. Barton, Jr., and subsequently reassigned to Judge Charles E. Bullock. Twenty-two respondents have been terminated from this investigation based on either a settlement agreement, consent order, or withdrawal of allegations.

On August 6, 2007, Topower filed a motion for an order directing respondents Aspire/Apevia International, Ltd. ("Aspire"), Xion/Axpertec, Inc. ("Xion"), JPAC Computer, Inc. ("JPAC"), Sunbeam Co. ("Sunbeam"), Super Flower Computer, Inc. ("Super Flower"), Taiwan Youngyear Electronics Co., Ltd. ("Taiwan Youngyear"), Sun Pro Electronics Co., Ltd. ("Sun Pro"), and Leadman Electronics Co., Ltd. ("Leadman") to show cause why they should not be found in default for failure to respond to the Complaint and Notice of Investigation and advised that it was no longer seeking a general exclusion order. On August 30, 2007, the ALJ issued an order to show cause by September 14, 2007, why the respondents should not be found in default pursuant to Commission Rule 210.16. Order No. 37. On September 25, 2007, the ALJ issued an initial determination finding the eight respondents in default. Order No. 39. The Commission published notice in the **Federal Register** of its decision not to review this determination, and requested briefing from interested parties on remedy, the public interest, and bonding. 72 FR 58883 (October 17, 2007).

The Commission investigative attorney (IA) submitted briefing on November 8, 2007. The IA proposed a limited exclusion order and cease and desist orders directed to infringing coupler devices, components thereof, and products containing same of the defaulted respondents. The IA recommended allowing entry under bond of 100 percent of entered value during the period of Presidential review. Topower agreed with the recommendations of the IA.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)–(E), 19 U.S.C. 1337(g)(1)(A)–(E), has been met with respect to the defaulting respondents. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c), 19 CFR 210.16(c), the Commission presumed the facts alleged in the complaint to be true.

The Commission determined that the appropriate form of relief in this investigation includes a limited exclusion order prohibiting the unlicensed entry of certain coupler devices for power supply facilities, components thereof, and products containing same by reason of infringement of one or more of claims 1–14 of U.S. Patent No. 6,935,902. The order covers certain coupler devices for power supply facilities, components thereof, and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of respondents Aspire, Xion, JPAC, Sunbeam, Super Flower, Taiwan Youngyear, Sun Pro, and Leadman, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission also determined to issue cease and desist orders prohibiting domestic respondents Aspire, Xion, JPAC, Sunbeam, and Leadman from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for certain coupler devices for power supply facilities, components thereof, and products containing same covered by the above-mentioned claims of U.S. Patent No. 6,935,902. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order and cease and desist orders. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period

shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance.

The Commission has therefore terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.41).

Issued: December 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25235 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 423(c) of the Tax Reform Act of 1986, as amended (19 U.S.C. 2703 note), requires the United States International Trade Commission to determine annually the amount (expressed in gallons) that is equal to 7 percent of the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. This determination is to be used to establish the "base quantity" of imports of fuel ethyl alcohol with a zero percent local feedstock requirement that can be imported from U.S. insular possessions or CBERA-beneficiary countries. The base quantity to be used by U.S. Customs and Border Protection in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption, as determined by the Commission.

For the 12-month period ending September 30, 2007, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 6.46 billion gallons; 7 percent of this amount is 452.5 million gallons (these figures have been rounded). Therefore, the base quantity for 2008 should be 452.5 million gallons.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Douglas Newman, (202) 205–3328, *douglas.newman@usitc.gov*, in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart, *william.gearhart@usitc.gov*, of the Commission's Office of the General Counsel at (202) 205–3091. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Section 423(c) of the Tax Reform Act of 1986, as amended, which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from U.S. insular possessions or CBERA-beneficiary countries, requires that the Commission determine annually the amount that is equal to 7 percent of the U.S. domestic market for fuel ethyl alcohol. The Commission published its notice instituting this investigation in the **Federal Register** of March 21, 1990 (55 F.R. 10512), and published its most recent previous determination for the 2007 amount in the **Federal Register** of January 5, 2007 (72 F.R. 580). The Commission uses official statistics of the U.S. Department of Energy to make these determinations, as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations.

By order of the Commission.

Issued: December 20, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25175 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1111–1113 (Final)]

Glycine From India, Japan, and Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: December 18, 2007.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On September 28, 2007, the Commission established a schedule for the conduct of the final phase of the subject investigations (72 FR 55247). Although the Department of Commerce ("Commerce") had not yet made its preliminary less than fair value determination ("LTFV") regarding India, the Commission, for administrative purposes, included India in the investigation schedule, pending Commerce's preliminary LTFV determination. On November 7, 2007, Commerce issued its preliminary determination in the investigation of glycine from India (72 FR 62827; as amended 72 FR 62826), and the Commission revised its schedule (72 FR 65060, November 19, 2007). On December 7, 2007, Commerce issued a notice of postponement of its final determination in the investigation of glycine from India (72 FR 69187). The Commission, therefore, is revising its schedule with respect to the investigation concerning India.

The Commission's revised schedule with respect to India is as follows: A supplemental brief addressing only Commerce's final antidumping duty determination is due on April 8, 2008. The brief may not exceed five (5) pages in length.

For further information concerning this investigation see the Commission's

notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25176 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–625]

In the Matter of Certain Self-Cleaning Litter Boxes and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 26, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Applica Incorporated of Miramar, Florida; Applica Consumer Products, Inc. of Miramar, Florida; and Water Research Company of West Dundee, Illinois. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain self-cleaning litter boxes and components thereof by reason of infringement of certain claims of U.S. Patent No. RE36,847. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 21, 2007, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain self-cleaning litter boxes or components thereof by reason of infringement of one or more of claims 8, 13, 24–25, 27, 31–33, 36–37, 41–42, and 46–48 of U.S. Patent No. RE36,847, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Applica Incorporated, 3633 Flamingo Road, Miramar, Florida 33027;

Applica Consumer Products, Inc., 3633 Flamingo Road, Miramar, Florida 33027;

Waters Research Company, 213 West Main Street, West Dundee, Illinois 60118.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Lucky Litter, L.L.C., 2 N Riverside Plaza, Chicago, Illinois 60606;

Doskocil Manufacturing Co., Inc., 4209 Barnett Blvd., Arlington, Texas 76017;

OurPet's Company, 1300 East Street, Fairport Harbor, Ohio 44077.

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Theodore R. Essex is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist order or both directed against the respondent.

Issued: December 21, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25237 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–029]

Government In the Sunshine Act Meeting Notice

Agency Holding the Meeting: United States International Trade Commission.

Time and Date: January 3, 2008 at 11 a.m.

Place: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters To Be Considered:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1112 and 1113 (Final) (Glycine from Japan and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before January 10, 2008).
5. Outstanding action jackets: (1) Document No. GC–07–225 (Administrative matter).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 20, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–25099 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Request for Nominations

AGENCY: Occupational Safety and Health Administration, (OSHA), Labor.

ACTION: Request for nominations for persons to serve on MACOSH.

SUMMARY: OSHA intends to recharter the Maritime Advisory Committee for Occupational Safety and Health (MACOSH), which expires on June 26, 2008. MACOSH advises the Secretary of Labor on matters relating to occupational safety and health programs, new initiatives, and standards for the maritime industries of the United States which include Longshoring, Marine Terminals, and Shipyard Employment. The Committee will consist of 15 members and will be chosen from among a cross-section of individuals who represent the following interests: employers; employees; Federal and State safety and health organizations; professional organizations specializing in occupational safety and health; national standards setting groups; and academia. OSHA invites persons interested in serving on MACOSH to submit their names for consideration for committee membership.

DATE: Nominations for MACOSH membership should be postmarked by February 11, 2008

ADDRESSES: Nominations for MACOSH membership should be sent to: Dorothy Dougherty, Director, Directorate of Standards and Guidance, Room N–3718, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Joseph V. Daddura, Acting Director, Office of Maritime, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2086.

SUPPLEMENTARY INFORMATION:

Background: OSHA intends to recharter MACOSH for another 2 years. MACOSH was established to advise the Secretary on various issues pertaining to providing safe and healthful employment in the maritime industries. The Secretary consults with MACOSH on various related subjects, including: ways to increase the effectiveness of safety and health standards that apply to the maritime industries, injury and illness prevention, the use of stakeholder partnerships to improve training and outreach initiatives, and ways to increase the national dialogue on occupational safety and health. In addition, MACOSH provides advice on enforcement initiatives that will help improve the working conditions and the safety and health of men and women employed in the maritime industries.

Nominations: OSHA is looking for committed MACOSH members who have a strong interest in the safety and health of workers in the maritime industries. The Agency is looking for nominees to represent the following interests and categories: employees; employers; State or Federal safety and health organizations; professional organizations; national standards setting groups; and academia. OSHA seeks a broad-based and diverse membership for MACOSH. Nominations of women and minorities are encouraged. Nominations of new members or resubmissions of former or current members will be accepted in all categories of membership. Interested persons may nominate themselves or may submit the name of another person who they believe to be interested in and qualified to serve on MACOSH. Nominations may also be submitted by organizations from one of the categories listed above. Nominations should include the name, address, and telephone number of the candidate. Each nomination should include a summary of the candidate's training or experience relating to safety and health in maritime industries and the interest the candidate represents. In addition to listing the candidate's qualifications to serve on the committee, each nomination should state that the person consents to the nomination and acknowledges the commitment and responsibilities of serving on MACOSH.

Authority: Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1912.

Signed at Washington, DC on December 21, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–25144 Filed 12–27–07; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–16]

Report on the Selection of Eligible Countries for Fiscal Year 2008

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Public Law 108–199, Division D, (the "Act").

The Act authorizes the provision of Millennium Challenge Account ("MCA") assistance under section 605 of the Act to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation ("MCC") to take steps to determine the countries that, based to the maximum extent possible on objective and quantifiable indicators of a country's demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, will be eligible to receive MCA assistance for a fiscal year. These steps include the submission of reports to appropriate congressional committees

and the publication of notices in the **Federal Register** that identify, among other things:

1. The "candidate countries" for MCA assistance for a fiscal year, and all countries that would be candidate countries if they met the requirement of section 606(a)(1)(B) (section 608(a) of the Act);

2. The eligibility criteria and methodology that the MCC Board of Directors (the "Board") will use to select "eligible countries" from among the "candidate countries" (section 608(b) of the Act); and

3. The countries determined by the Board to be "eligible countries" for a fiscal year, the countries on the list of eligible countries with which the Board will seek to enter into a compact, and a justification for the decisions regarding eligibility and selection for negotiation (section 608(d)(1) of the Act).

This is the third of the above-described reports by MCC for fiscal year 2008 (FY08). It identifies countries determined by the Board to be eligible under section 607 of the Act for FY08 and those that the Board will seek to enter into compacts under section 609 of the Act, and the justification for such decisions.

Eligible Countries

The Board met on December 12, 2007 to select countries that will be eligible for MCA compact assistance under section 607 of the Act for FY08. The Board determined the following countries eligible for such assistance for FY08: Armenia, Benin, Bolivia, Burkina Faso, El Salvador, Georgia, Ghana, Honduras, Jordan, Lesotho, Madagascar, Malawi, Mali, Moldova, Mongolia, Morocco, Mozambique, Namibia, Nicaragua, Senegal, Tanzania, Timor Leste, Ukraine and Vanuatu, and with which MCC may seek to enter into a compact: Bolivia, Burkina Faso, Jordan, Malawi, Moldova, Namibia, Senegal, Tanzania, Timor Leste, and Ukraine.

In accordance with the Act and with the "Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2008" submitted to the Congress on September 17, 2007, selection was based primarily on a country's overall performance in relation to three broad policy categories: (1) "Ruling justly"; (2) "encouraging economic freedom"; and (3) "investing in people." The Board relied upon 17 publicly available and independent indicators to assess policy performance and demonstrated commitment in these three areas, to the maximum extent possible, for determining which countries would be eligible for MCA compact assistance. In determining eligibility, the Board considered if a country performed above the median in relation to its peers on at least half of the indicators in each of the three policy categories, and above the median on "control of corruption" and, if the country performed substantially below the median on any indictor, whether it is taking appropriate action to address the shortcomings. Scorecards reflecting each country's performance on the indicators are available on MCC's Web site at *www.mcc.gov*.

The Board also considered whether any adjustments should be made for data gaps, lags, trends, or recent events since the indicators were published, as well as strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country's commitment to fighting corruption and promoting democratic governance, its economic policies to promote the sustainable management of natural resources, and its effective protection of human rights and the rights of people with disabilities. In addition, the Board considered the opportunity to reduce poverty, promote economic growth and poverty reduction in a country, in light of the overall context of the information available to it as well as the availability of appropriated funds.

One country was selected as eligible for the first time in FY08: Malawi, a low income candidate, was selected under section 606(a) of the Act. Malawi (1) performed above the median in relation to their peers on at least half of the indicators in each of the three policy categories; (2) performed above the median on corruption; and (3) in cases where they performed substantially below the median on an indicator, there was either evidence that the data did not adequately reflect their policy performance or that the government is taking corrective action to address the problem.

Malawi is currently participating in the threshold program. Malawi meets the eligibility criteria for the first time in FY08, scoring above the median on 13 of 17 indicators, including the corruption indicator. The government of Malawi has demonstrated a strong commitment to fighting corruption, and is well into the implementation of a threshold program focused on accelerating anticorruption reforms and improving fiscal policy. There is a significant opportunity for a compact with Malawi to reduce poverty and promote economic growth. Roughly seven million people (over half the population) live on less than $2 a day. Although Malawi now meets the MCA eligibility criteria for compact assistance, successful implementation of its threshold program—and of the corresponding reform commitments—remains critical. Hence, the government of Malawi will be required to demonstrate successful implementation of the threshold program during the compact development process in order to reach a compact and then to continue to receive MCA funding under a compact.

Seventeen of the countries selected eligible for MCA assistance for FY08 were in the "low income country" category and were previously selected as eligible in at least one prior fiscal year—Benin, Bolivia, Burkina Faso, Ghana, Georgia, Honduras, Lesotho, Madagascar, Mali, Moldova, Mongolia, Mozambique, Nicaragua, Senegal, Tanzania, Timor Leste and Vanuatu. Six of the countries selected as eligible for MCA assistance for FY08 were in the "lower middle income country" category and were previously selected as eligible in at least one prior fiscal year—Armenia, El Salvador, Jordan, Morocco, Namibia, and Ukraine.

On December 12, 2007, the Board reselected these countries based on their continued performance since their prior selection. The Board also determined that no material change has occurred in the performance of these countries on the selection criteria since the FY07 selection that would justify not including them in the FY08 eligible country list. Eleven countries—Armenia, Benin, El Salvador, Honduras, Madagascar, Mali, Morocco, Mozambique, Namibia, Timor Leste, and Ukraine—either did not perform above the median on control of corruption or did not perform above the median in relation to their peers on at least half of the indicators in each of the three policy categories. Cape Verde was not reselected as eligible, as this is the third year it does not meet the criteria in its new lower middle income country competition. MCC does not believe that a serious policy reversal or a pattern of actions inconsistent with the selection criteria has occurred in any of these countries. In analyzing performance, MCC found that these countries did not meet the criteria, due to one or a combination of the following factors:

- Graduation from the "low income country" to the "lower middle income country" category,
- Data improvements and revisions,

• The introduction of two new indicators and a new methodology in the "iInvesting in people" category,
• Slight declines in performance, and
• Score changes within the margin of error.

Therefore, all of the 12 countries can continue with compact implementation or compact development, providing they demonstrate progress toward meeting the criteria. These MCC countries will be required to develop and implement a remediation plan to address policy performance and/or data issues which prevent countries from meeting the eligibility criteria. The remediation process will give MCC and other U.S. Government agencies a basis for policy dialogue with the country about how to improve performance while allowing the country to demonstrate commitment to and progress toward meeting the eligibility criteria.

The Board also did not reselect Sri Lanka and the Gambia. Sri Lanka was not reselected this year due to the ongoing conflict in the country, which has escalated to a level that precludes MCC activities and which is inconsistent with the performance of an MCC-eligible country. The Gambia's eligibility was suspended in previous years and it was not considered this year for eligibility.

Finally, a number of countries that performed well on the quantitative elements of the selection criteria (i.e., on the policy indicators) were not chosen as eligible countries for FY08. As discussed above, the Board considered a variety of factors in addition to the country's performance on the policy indicators in determining whether they were appropriate candidates for assistance (e.g., the country's commitment to fighting corruption and promoting democratic governance; the availability of appropriated funds; and the countries in which MCC would likely have the best opportunity to reduce poverty and generate economic growth).

Selection for Compact Negotiation

The Board also authorized MCC to invite Malawi to submit a proposal for a compact, as described in section 609 of the Act. MCC will initiate the process by inviting Malawi to submit a program proposal to MCC for due diligence review (previously eligible countries will not be asked to submit another proposal for FY08 assistance). MCC has posted guidance on the MCC Web site (*www.mcc.gov*) regarding the development and submission of MCA program proposals. Submission of a proposal is not a guarantee that MCC will finalize a compact with an eligible country. Any MCA assistance provided under section 605 of the Act will be contingent on the successful negotiation of a mutually agreeable compact between the eligible country and MCC, approval of the compact by the Board, and availability of funds.

Dated: December 21, 2007.

William G. Anderson, Jr.,

Vice President and General Counsel, Millennium Challenge Corporation.

Henry Pitney,

Alternate Certifying Officer.

[FR Doc. E7–25312 Filed 12–27–07; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–098)]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Thursday, January 17, 2008, 8 a.m. to 4:30 p.m. and Friday, January 18, 2008, 8 a.m. to 4:30 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, room 6H45, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

–Earth Science Division Update
–NASA Planning for the Earth Science Decadal Survey Implementation
–Cost Estimates of the Decadal Survey Proposed Missions
–Earth Science Data and Information Systems

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 5 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 5 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: December 20, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–25301 Filed 12–27–07; 8:45 am]

BILLING CODE 7510–13–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

National Counterterrorism Center

Privacy Act of 1974; System of Records

AGENCY: National Counterterrorism Center, Office of the Director of National Intelligence.

ACTION: Notice to establish systems of records.

SUMMARY: The Office of the Director of National Intelligence (ODNI) National Counterterrorism Center (NCTC) is establishing several systems of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. These systems of records are maintained by NCTC.

DATES: This action will be effective on February 6, 2008, unless comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

Mail: Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, Director, Information Management Office, 703–482–3610.

SUPPLEMENTARY INFORMATION: NCTC was established by Executive Order (EO) 13354 (Aug. 27, 2004) and codified as an element of the ODNI in the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004.

NCTC serves as the primary organization in the United States Government for integrating and analyzing all intelligence pertaining to terrorism possessed or acquired by the United States Government (except purely domestic terrorism); conducts strategic operational planning and assigns lead operational responsibilities for counterterrorism activities; serves as the central and shared knowledge bank on known and suspected terrorists and international terror groups; provides all-source intelligence support to government-wide counterterrorism activities; ensures that agencies, as appropriate, have access to and receive intelligence needed to accomplish their assigned activities; and ensures that agencies have access to and receive all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis. The Director of NCTC serves as the principal adviser to the Director of National Intelligence (DNI)on intelligence operations relating to counterterrorism. The NCTC Director advises the DNI on how well United States Government counterterrorism program recommendations and budget proposals conform to priorities established by the President; sets priorities for counterterrorism collection and analysis; and develops integrated collection strategies to fill key information gaps. The DNI has designated the Director, NCTC, as Mission Manager for Counterterrorism.

NCTC's partner organizations include, but are not limited to: Central Intelligence Agency; Department of Defense; Department of Homeland Security; Department of Justice/Federal Bureau of Investigation; Department of State; Department of Energy; Nuclear Regulatory Commission; United States Capitol Police; Department of Treasury; Department of Agriculture; Department of Health and Human Services.

Several of the systems of records being published contain information about known or suspected terrorists that derive from law enforcement and intelligence sources. In addition, information from several of these systems is provided to agencies for the purpose of conducting intelligence and law enforcement activities within the scope of their lawful counter-terrorism responsibilities and authorities. Accordingly, to protect classified and sensitive information and to prevent the compromise of ongoing counterterrorism investigations and intelligence sources and methods, the DNI is proposing to exempt records in these systems from certain portions of the Privacy Act and to continue to exempt from certain portions of the Privacy Act those records for which the source agency claimed exemption. As required by the Privacy Act, a proposed rule is being published concurrently with this notice to seek public comment on the proposal to exempt these systems.

In accordance with 5 U.S.C. 552a(r), the ODNI has provided a report of these new systems of records to the Office of Management and Budget and to Congress.

Dated: December 13, 2007.

John F. Hackett,

Director, Information Management Office.

SYSTEM NAME:

National Counterterrorism Center Human Resources Management System (ODNI/NCTC–001).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to SECRET.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NCTC staff (NCTC employees, detailees, assignees, employees of NCTC industrial contractors, and independent contractors to NCTC) and applicants for positions at NCTC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data including name, address, title, grade, social security number, employing entity, NCTC assignment and emergency contact information; knowledge, skills, and relevant experience; recruitment and hiring records; awards and evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333, as amended, 46 Fed. Reg. 59,941 (1981).

PURPOSE(S):

The NCTC Human Resource System serves as the human resource records management system for NCTC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of NCTC. Paper and other hard-copy records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 128–Disposition of Federal Records, records will be maintained and

disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

NCTC Human Resource System Manager, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Data is obtained directly from subjects and from personnel records maintained by subjects' employers. Data is also generated by NCTC in accordance with ODNI human resource policies governing recruitment, evaluation, promotions, and awards.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3);(d)(1),(2),(3),(4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(5). Records may be exempted from these subsections or additionally, from the requirements of subsections (c)(4);(e)(2),(3),(5),(8),(12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

National Counterterrorism Center Access Authorization Records (ODNI/NCTC–002).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to SECRET.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NCTC staff (NCTC employees, detailees, assignees, employees of NCTC industrial contractors, and independent contractors to NCTC) and other individuals given access to NCTC facilities and systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

NCTC personnel biographic and job-related data including name, social security number, employing entity, job title and phone number, role-based accesses and permissions, emergency contact information, and supervisory point of contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333, as amended, 46 Fed. Reg. 59,941 (1981).

PURPOSE(S):

NCTC Access Authorization Records provide data regarding eligible users' access to NCTC facilities and internal and external systems and databases; access authorization records enable NCTC to monitor compliance with NCTC's access policies and to provide metrics/statistics regarding levels of access as related to official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of NCTC. Paper and other hard-copy records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other

safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228—Disposition of Federal Records, access authorization records will be maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule (GRS) Nos. 18 (facility access) and 24 (computer access).

SYSTEM MANAGER(S) AND ADDRESS:

NCTC Information Management Officer, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

NCTC staff, other individuals seeking access, and their employing entities provide personnel-related information upon entrance on duty and/or as part of access authorization requirements. Authorized NCTC officials provide information about specific grants of access to eligible systems users.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

National Counterterrorism Center Telephone Directory (ODNI/NCTC–003).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to SECRET.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office of the Director of National intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NCTC staff (NCTC employees, detailees, assignees, employees of NCTC industrial contractors, and independent contractors to NCTC).

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data, including name, employer, job title, address, phone numbers, and emergency contact information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333, as amended, 46 Fed. Reg. 59,941 (1981).

PURPOSE(S):

The NCTC Telephone Directory serves as the central personnel directory for NCTC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of NCTC. Paper and other hard-copy records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other

safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228-Disposition of Federal Records, the NCTC Telephone Directory will be maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule (GRS) No. 23.

SYSTEM MANAGER(S) AND ADDRESS:

NCTC Information Management Officer, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures.

Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

NCTC staff (NCTC employees, detailees, assignees, employees of NCTC industrial contractors, and independent contractors to NCTC) provide this information upon entrance on duty at NCTC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

National Counterterrorism Center Knowledge Repository (SANCTUM)(ODNI/NCTC–004).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism.

CATEGORIES OF RECORDS IN THE SYSTEM:

Classified and unclassified information from diplomatic, financial, military, homeland security, intelligence, or law enforcement activities relating to counterterrorism or from any Federal, State, or local government; foreign government information; public source material; or, information from other sources necessary to fulfill the mission of NCTC. This includes information concerning known or suspected terrorists including, but not limited to, reports, message traffic, biographic data, biometrics, relationships or associations, or other information related to counterterrorism.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); E.O. 12,333, as amended, 46 Fed. Reg. 59,941 (1981).

PURPOSE(S):

NCTC Knowledge Repository (SANCTUM) supports NCTC's approach to strengthening the sharing of terrorism information through the development of an integrated information technology architecture and knowledge base. Specifically, SANCTUM provides a centralized repository of information needed to fight terrorism as well as a set of common services to access, manage, enrich, and deliver this information to end users and mission-oriented applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of NCTC. Paper and other hard-copy records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel with a need to know may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

NCTC SANCTUM System Manager, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Information may be obtained from diplomatic, financial, military, homeland security, intelligence, or law enforcement activities relating to counterterrorism, or from any Federal, State, or local government; foreign government information; private sector or public source material; or, information from other sources necessary to fulfill the mission of NCTC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3);(d)(1),(2),(3),(4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4);(e)(2),(3),(5),(8),(12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

National Counterterrorism Center Online (NCTC Online or NOL)(ODNI/NCTC–005).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism or counterterrorism and individuals who offer information pertaining to terrorism and counterterrorism. The system will also contain information about individuals who have access to the system for counterterrorism purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Classified and unclassified intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism; message traffic (cables); finished intelligence products and results of intelligence analysis and reporting (including law enforcement information); information gleaned through links to other systems, databases and collaborative features such as e-mail, communities of interest, and on-line chat rooms; information systems security analysis and reporting; publicly available information (including information contained in media reports and commercial databases); data concerning the providers of information; and, information from other sources necessary to fulfill the mission of NCTC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333, as amended, 46 Fed. Reg. 59,941 (1981).

PURPOSE(S):

National Counterterrorism Center Online is maintained for the purpose of compiling, assessing, analyzing, integrating, and disseminating information relating to terrorism and counterterrorism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of NCTC. Paper and other hard-copy records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel with a need to know may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

NCTC Online System Manager, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, D.C. 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Information may be obtained from diplomatic, financial, military, homeland security, intelligence or law enforcement activities relating to counterterrorism or from any federal, state, or local government; foreign government information; private sector or public source material; information from other sources necessary to fulfill the mission of NCTC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

National Counterterrorism Center Partnership Management Records (ODNI/NCTC–006).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NCTC staff (NCTC employees, detailees, assignees, employees of NCTC industrial contractors, and independent contractors to NCTC) and external participants in activities relating to intelligence matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning the purpose or topic of the intelligence activity; the timing, location, or participants involved in each intelligence activity; and, the results of each intelligence activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333, as amended, 46 Fed. Reg. 59,941 (1981).

PURPOSE:

NCTC Partnership Management Records are used to manage, track, and facilitate NCTC's relationships with other governmental entities, non-governmental entities, representatives of such entities, and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of NCTC. Paper and other hard-copy records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel with a need to know may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228—Disposition of Federal Records, records in the system will not be disposed of until such time as the National Archives and Records Administration approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER AND ADDRESS:

NCTC Partnership Management Database System Manager, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Information concerning NCTC's external outreach and liaison efforts with governmental and non-governmental entities, their representatives, and associated individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

National Counterterrorism Center Tacit Knowledge Management Records (ODNI/NCTC–007).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office Of The Director Of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NCTC staff (nctc employees, detailees, assignees, employees of NCTC industrial contractors, and independent contractors to NCTC).

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation relating to the training, skills, and experience of NCTC staff in matters of intelligence analysis, including name, employing entity, job title, relevant employment history and specific expertise.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform And Terrorism Prevention Act Of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act Of 1947, As Amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589; Exec. Order No.12,333, As Amended, 46 Fed. Reg. 59,941 (1981).

PURPOSE(S):

NCTC Tacit Knowledge Management Records constitute a repository of pertinent knowledge and experience held by the NCTC workforce that NCTC can draw upon to modify, enhance, or

otherwise inform its intelligence integration and analysis activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to more than one ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of NCTC. Paper and other hard-copy records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name or other identifier, information may be retrieved from this system of records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel with a need to know may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(D) and 36 Cfr Chapter 12, Subchapter B, Part 1228—Disposition Of Federal Records, Records will not be disposed of until such time as the National Archives And Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

NCTC Information Management Officer, c/o Director Information Management Office, Office Of The Director Of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("Notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office Of The Director Of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the privacy act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Personal interviews with NCTC staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this system of records may be exempted from the requirements of subsections (C)(3); (D)(1), (2), (3), (4); (E)(1) And (E)(4)(G), (H), (I); And (F) Of The Privacy Act Pursuant To 5 U.S.C. 552a(K)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (C)(4);(E)(2),(3),(5),(8),(12); and (G) of the privacy act consistent with any exemptions claimed under 5 U.S.C. 552a(J) or (K) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

National Counterterrorism Center Terrorism Analysis Records (ODNI/NCTC–008).

SECURITY CLASSIFICATION:

The classification of records in this system can range from unclassified to top secret.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office Of The Director Of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism or who have been linked in any manner to terrorism; individuals who offer information pertaining to terrorism and counterterrorism. This system will also contain information about individuals who have access to the system for counterterrorism purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Classified and unclassified information from diplomatic, financial, military, homeland security, intelligence, or law enforcement activities relating to counterterrorism, or from any Federal, State, or local government; foreign government information; public source material; or information from other sources necessary to fulfill the mission of NCTC. This includes information concerning known or suspected terrorists including, but not limited to, reports, message traffic, biographic data, biometrics, relationships or associations, or other information related to counterterrorism.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub.

L. No. 108–458, 118 stat. 3638 (Dec. 17, 2004); the National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333, as amended, 46 Fed. Reg. 59,941 (1981).

PURPOSE(S):

NCTC Terrorism Analysis Records serve NCTC analysts in developing threat reports, threat matrices, analytic reports and advisories, situation reports, and other terrorism analytical products for distribution to intelligence consumers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable To More Than One Odni Privacy Act System Of Records, Subpart C Of Odni's Privacy Act Regulation Published Concurrently with this notice and incorporated by reference (See Also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

NONE.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities within NCTC. Paper and Other Hard-Copy Records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name or other identifier. Information may be retrieved from this system of records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel with a need to know may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant To 44 U.S.C. 3303a(D) and 36 CFR Chapter 12, Subchapter B, Part 1228—Disposition of Federal Records, Records will not be disposed of until such time as the National Archives And Records Administration Approves an Applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

NCTC Information Management Officer, c/o Director, Information Management Office, Office Of The Director Of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "record access procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "privacy act request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the director, information management office, office of the director of national intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the privacy act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "record access procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Information may be obtained from diplomatic, financial, military, homeland security, intelligence, or law enforcement activities relating to counterterrorism, or from any federal, state, or local government; foreign government information; private sector Or public source material; or information from other sources necessary to fulfill the mission of NCTC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records Contained Within This System Of Records May Be Exempted From The Requirements Of Subsections (C)(3); (D)(1),(2),(3),(4); (E)(1) And (E)(4)(G),(H),(I); And (F) Of The Privacy Act Pursuant To 5 U.S.C. 552a(K)(1) And (K)(2). Records May Be Exempted From These Subsections Or, Additionally, From The Requirements Of Subsections (C)(4);(E)(2),(3),(5),(8),(12); And (G) Of The Privacy Act Consistent With Any Exemptions Claimed Under 5 U.S.C. 552a(J) Or (K) By The Originator Of The Record, Provided The Reason For The Exemption Remains Valid And Necessary.

SYSTEM NAME:

Terrorist identities records (ODNI/NCTC–009).

SECURITY CLASSIFICATION:

The classification of records in this system can range from unclassified to top secret.

SYSTEM LOCATION:

National Counterterrorism Center (NCTC), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism; information concerning individuals affiliated with terrorist groups; individuals possessing certain visas; and individuals who may have been misidentified in relation to one or more of the previous categories

for purposes of avoiding future misidentification. The system will also contain information about individuals who have access to the system for counterterrorism purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism or counterterrorism, including names and aliases; dates of birth; places of birth, alien registration numbers, visa numbers, social security account numbers, or unique identifying numbers; passport information; countries of origin or nationalities; physical identifiers; known locations; photographs or renderings; fingerprints or biometrics; employment data; phone numbers or license plate numbers; and other information about such individuals. This system includes the Terrorist Identities Datamart Environment (TIDE), which maintains international terrorist watch list recommendations and distributes them to the Terrorist Screening Center for screening by U.S. government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,388, 70 FR 62,023 (2005); Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333 as amended, 46 FR 59,941 (1981); Homeland Security Presidential Directive-6; Homeland Security Presidential Directive-11.

PURPOSE(S):

NCTC Terrorist Identities Records implement NCTC's mission to serve as the central and shared knowledge bank on known and suspected terrorists pursuant to Section 119 of the National Security Act of 1947, 50 U.S.C. 404o, as well as Homeland Security Presidential Directive-6, "Integration and Use of Screening Information" (September 16, 2003) and Homeland Security Presidential Directive-11, "Comprehensive Terrorist—Related Screening Procedures" (Aug. 27, 2004).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of NCTC. Paper and other hard-copy records are stored in secured areas within the control of NCTC.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel with a need to know may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228–Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

NCTC Terrorist Identities Records System Manager, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Information may be obtained from diplomatic, financial, military, homeland security, intelligence or law enforcement activities relating to counterterrorism, or from any Federal, State, or local government; foreign government information; private sector or public source material; information from other sources necessary to fulfill the mission of NCTC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

[FR Doc. E7–25267 Filed 12–27–07; 8:45 am]
BILLING CODE 3910–A7–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Office of the National Counterintelligence Executive

Privacy Act of 1974; System of Records

AGENCY: Office of the National Counterintelligence Executive, Office of the Director of National Intelligence.

ACTION: Notice to establish systems of records.

SUMMARY: The Office of the National Counterintelligence Executive (ONCIX) is establishing a system of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. This system of records is maintained by ONCIX.

DATES: This action will be effective on February 6, 2008, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments, identified by [RIN number], by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.*

Mail: Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, Director, Information Management Office, 703–482–3610.

SUPPLEMENTARY INFORMATION: The National Counterintelligence Executive and the Office of the National Counterintelligence Executive (ONCIX) were established in statute by the Counterintelligence Enhancement Act of 2002 and codified as an element of the Office of the Director of National Intelligence (ODNI) in the Intelligence Reform and Terrorism Prevention Act IRTPA) of 2004.

The mission of the ONCIX is to serve as the head of national counterintelligence for the United States Government. The counterintelligence components of the United States Government are responsible for identifying, assessing, prioritizing, and countering the intelligence threats to the United States. The ONCIX is charged with fostering integration of these components to best address threats presented by the intelligence services of foreign states and similar organizations of non-state actors, such as transnational terrorist groups.

The National Counterintelligence Executive serves as the principal advisor to the Director of National Intelligence (DNI) on issues relating to the overall strategy and performance of the Intelligence Community relating to counterintelligence. Under the direction of the National Counterintelligence Executive, ONCIX develops an annual integrated national counterintelligence strategy, sets priorities for counterintelligence collection, investigations and operations, and ensures that budget and staffing recommendations conform to established programmatic priorities. The ONCIX produces annual foreign intelligence threat assessments and other analytic counterintelligence products, including in-depth espionage damage assessments.

The DNI has designated the National Counterintelligence Executive as the Mission Manager for Counterintelligence. As Mission Manager, the National Counterintelligence Executive works through the National Counterintelligence Policy Board to meet the goals of the nation's strategic counterintelligence mission. Partner organizations on the Board include, but are not limited to: Central Intelligence Agency; Department of Defense/Joint Chiefs of Staff; Department of Energy; Department of Homeland Security; Department of Justice/ Federal Bureau of Investigation and Department of State.

The system of records published herewith contains information about acts of espionage or other intelligence-related crimes. Accordingly, to protect classified and sensitive law enforcement information and to prevent the compromise of counterintelligence investigations and methods, the DNI is proposing to exempt this system of records from certain portions of the Privacy Act and to continue to exempt from certain portions of the Privacy Act those records for which the source agency claimed exemption.

As required by the Privacy Act, a proposed rule is being published concurrently with this notice to seek public comment on the proposal to exempt this system. In accordance with 5 U.S.C. 552a(r), the ODNI has provided a report of this new system of records to the Office of Management and Budget and to Congress.

Dated: December 13, 2007.

John F. Hackett,

Director, Information Management Office.

SYSTEM NAME:

Damage Assessment Records (ONCIX/ODNI–001).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to CLASSIFIED.

SYSTEM LOCATION:

Office of the National Counterintelligence Executive (ONCIX), Office of the Director of National Intelligence (ODNI), Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals convicted of or indicted for espionage or other intelligence-related crimes; individuals whose identities and government affiliation are known or believed to have been compromised as a result of unauthorized disclosures; individuals interviewed in response to significant and particular unauthorized disclosures of classified information or individuals mentioned in such interviews, including colleagues of individuals convicted of or indicted for espionage or intelligence-related crimes or individuals with any knowledge of the facts surrounding the unauthorized disclosure; individuals who may have knowledge of facts surrounding significant and particular unauthorized disclosures of classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Final damage assessments; records about unauthorized disclosures of classified material including law enforcement records (e.g., convictions, subpoenae, rap sheets) and records of investigations conducted by the FBI or other law enforcement elements; transcripts of ONCIX debriefings/ interviews with individuals charged with or convicted of intelligence crimes, and with associates potentially knowledgeable of the disclosure or the resulting damage to national security; publicly available information about and psychological evaluations/profiles of the individuals charged/convicted of

espionage or intelligence crimes; personal information and personally identifiable information (such as address, phone number, social security number (SSN), date of birth (DOB)) belonging to individuals charged or convicted or other individuals interviewed in connection with an investigation of the disclosure or assessment of the damage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The Counterintelligence Enhancement Act of 2002, as amended, 50 U.S.C. 402b, 402c; The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 12,333, 46 Fed. Reg. 59,941 (1981); Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004).

PURPOSE:

The ONCIX Counterintelligence Damage Assessment Record System supports the ONCIX's statutory responsibility to evaluate the extent to which the national security or the nation's intelligence activities may have been compromised as a result of the record subject's unauthorized disclosure of classified material.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Final Damage Assessments may be disclosed as set forth in the General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of the ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of the ODNI. Paper and other hard copy records are stored in secured areas within the control of ONCIX.

RETRIEVABILITY:

The records in this system are retrieved by name, personal identifier, subject matter.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government facility with access to the facility limited to only authorized personnel or authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding an appropriate security clearance and who have a "need to know." Software controls are in place to limit access, and other safeguards exist to monitor and audit access and to detect intrusions. Communications are encrypted where required.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228–Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

ONCIX Damage Assessment system Manager, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access and amendment procedures. Individuals seeking to learn if this system contains information about them should address inquiries to the ONCIX at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request."

Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations for obtaining access to records or for appealing an initial determination concerning access to records are contained in the ODNI Privacy Act regulation, published in this volume of the **Federal Register**.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ONCIX at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations regarding requests to amend, for disputing the contents of one's record or for appealing initial determinations concerning these matters are contained in the ODNI Privacy Act regulation, published in this volume of the **Federal Register**.

RECORD SOURCE CATEGORIES:

Records derived from human and record sources consulted in the course of investigating disclosure of classified information.

EXEMPTIONS:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1),(2),(3),(4); (e)(1) and (e)(4),(G),(H),(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2),(3),(5),(8) and(12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for protecting the record from disclosure remains valid and necessary.

[FR Doc. E7–25272 Filed 12–27–07; 8:45 am]
BILLING CODE 3910–A7–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Office of the Inspector General

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, Office of the Director of National Intelligence.

ACTION: Notice to establish systems of records.

SUMMARY: The Office of the Inspector General (OIG) of the Office of the Director of National Intelligence (ODNI) is establishing several new systems of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. These systems of records are maintained by the OIG.

DATES: This action will be effective on February 6, 2008, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments, identified by [RIN number], by any of the following methods: *Federal eRulemaking Portal: http://www.regulations.gov.*

Mail: Director, Information Management Office, Office of the Director of National Intelligence, Washington, D.C. 20511.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, Director, Information Management Office, 703–482–3610.

SUPPLEMENTARY INFORMATION: The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), section 1078, amended the Inspector General Act of 1978 to grant the Director of National Intelligence (DNI) the authority to establish an Office of the Inspector General (OIG) with "any of the powers and responsibilities" set forth in the Inspector General Act of 1978.

On September 7, 2005, by ODNI Instruction 2005–10, the DNI established the OIG to detect and deter waste, fraud, abuse, and misconduct involving the ODNI and Intelligence Community programs and personnel, and to promote economy, efficiency and effectiveness in the ODNI and Intelligence Community operations. The OIG has responsibility for programs and operations internal to the ODNI, as well as responsibilities over community-wide and cross-agency matters that are within the DNI's authorities.

The ODNI OIG has a threefold mission: (i) To perform, on behalf of the DNI, audits, investigations, and inspections of the ODNI and component elements; (ii) to support the DNI's responsibilities under the IRTPA to improve, reform and integrate the activities of the U.S. Intelligence Community as a whole, with particular emphasis on the sharing and dissemination of intelligence information, quality of analysis, joint duty, and effective execution of the budget; and (iii) to identify, develop and lead collaborative projects involving the Inspectors General of the 16 Intelligence Community agencies. Where the systems of records published herewith contain sensitive personnel information or law enforcement or classified information, the DNI is proposing to exempt the systems of records from certain portions of the Privacy Act and to continue in effect exemptions claimed by record source agencies where the reason for the exemption remains valid. As required by the Privacy Act, a proposed rule is being published concurrently with this notice to seek public comment on the proposal to exempt these systems. In accordance with 5 U.S.C. 552a(r), the ODNI has provided a report of this new system of records to the Office of Management and Budget and to Congress.

Dated: December 13, 2007.

John F. Hackett,

Director, Information Management Office.

SYSTEM NAME:

Office of the Inspector General (OIG) Human Resources Records (ODNI/OIG–001).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OIG staff; military and civilian personnel detailed or assigned to the OIG; and current and former OIG contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data including name, social security number, residence, emergency contacts, employing organization, employee identification, photographs, training records, skills information, travel records, financial claims information, leave requests and approvals, conduct records, performance records and awards, suitability-related records, medical information, grievance records, other records arising from routine administrative activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No.12,333, 46 Fed. Reg. 59,941 (1981); The Inspector General Act of 1978, as amended, 5 U.S.C. App. 1; ODNI Instruction 2005–10.

PURPOSE(S):

Records in this system enable the OIG to carry out its lawful and authorized responsibilities to administer its workforce; facilitate and expedite processing of employee transactions, including benefits elections and administrative actions; provide management with necessary data for statistical reports; and provide reference to monitor, record, and manage personnel with respect to performance, assignments, training, conduct, time and attendance, administrative claims, and other matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also: *http://www.dni.gov*). In addition, the following routine use(s) may apply: a. A record from this system of records maintained by the OIG may be disclosed as a routine use to appropriate personnel within the Office of Personnel Management who have a need to know for purposes relating to the administration of retirement benefits for individuals covered by this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of the Central Intelligence Agency. Paper and other hard-copy records are stored in secured areas within the control of the OIG.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are stored in a secure government or contractor facility with access to the facility limited to

authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Paper files are maintained in a locked drawer. Electronic files are maintained in secure, limited-access file-servers. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228—Disposition of Federal Records, records will not be disposed until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Office of the Inspector General, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request, and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act published concurrently with this notice.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act published concurrently with this notice.

RECORD SOURCE CATEGORIES:

Human resources data originates from individuals covered by the system, educational institutions, private organizations, federal agencies and other ODNI staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1),(2),(3),(4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a (k)(1) and (k)(5). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4);(e)(2),(3),(5),(8),(12) and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Office of the Inspector General (OIG) Experts Contact Records (ODNI/OIG–002).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Governmental and private sector experts, academics, business professionals and other individuals who have served as advisers, consultants or contractors to the ODNI or who are known to have expertise in, or access to information about subjects of interest to the ODNI or other elements of the Intelligence Community (IC), as defined by 401a(4) of the National Security Act, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information, including contact information and areas of expertise or interest, professional credentials, history of involvement with IC activities, clearances, accesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec.Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333, 46 Fed. Reg. 59,941 (1981), The Inspector General Act of 1978, as amended, 5 U.S.C. App.1; ODNI Instruction 2005–10.

PURPOSE(S):

Records in this system facilitate communication by authorized ODNI OIG personnel with governmental, academic or private sector experts who may serve as advisers, consultants or contractors to the ODNI OIG, assisting it to carry out authorized responsibilities overseeing ODNI functions, supporting ODNI's responsibilities with respect to activities of the IC as a whole, and leading collaborative projects involving the IC Inspectors General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and incorporated by reference (see also *http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of the

Central Intelligence Agency. Paper and other hard-copy records are stored in secured areas within the control of the OIG.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this System of Records by automated or hand searches based on existing indices and automated capabilities utilized in the normal course of business. Only authorized personnel with a need to know may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are stored in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228-Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Office of the Inspector General, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request, and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act published concurrently with this notice.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act published concurrently with this notice.

RECORD SOURCE CATEGORIES:

Information is obtained directly from subject individuals; from U.S. government personnel; and from the media, libraries, commercial databases and other public sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained within this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1),(2),(3),(4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a (k)(1) and (k)(5). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4);(e)(2),(3),(5),(8),(12) and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Office of Inspector General (OIG) Investigation and Interview Records (ODNI/OIG–003).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Office of the Director of National Intelligence (ODNI), Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are interviewed by or provide information to the OIG; persons who are the subjects of OIG reviews, inquiries, or investigations; persons involved with matters under investigation by the OIG, and persons who have filed grievances with the OIG or with other elements of the Intelligence Community (IC), as defined by 401a(4) of the National Security Act of 1947, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of interviews, signed statements, correspondence, reports of investigations, forms, cables, internal memoranda of the ODNI and other IC elements, criminal records of individuals covered by the system, and materials relating to employee grievances and other matters of interest to or inspected by the OIG.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3638 (Dec. 17, 2004); The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (2004); Exec. Order No. 12,333, 46 Fed. Reg. 59,941 (1981); The Inspector General Act of 1978, as amended, 5 U.S.C. App. 1; ODNI Instruction 2005–10.

PURPOSE(S):

Records in this system detail the OIG's conduct of personnel grievance and misconduct-related investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published concurrently with this notice and

incorporated by reference (see also *http://www.dni.gov*). In addition, the following routine uses may apply:

a. A record from this system of records maintained by the OIG may be disclosed as a routine use to officials within the IC where the investigation of a grievance, allegation of misconduct or other personnel issue is a matter within their administrative or supervisory responsibility and there is a need to know, or where the data is necessary to conduct management responsibilities including evaluation of current and proposed programs, policies and activities, selected assignments, and requests for awards or promotions.

b. Unclassified records in the system, or unclassified portions thereof, including information identifying individuals covered by the system, may be disclosed as a routine use to the public or to the media for release to the public when the matter under investigation has become public knowledge or the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the Inspector General process, or is necessary to publicly demonstrate the accountability of Intelligence Community employees, officers, or individuals covered by the system, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

c. Records in the system may be disclosed to members of the President's Council on Integrity and Efficiency or the Executive Council on Integrity and Efficiency for peer reviews and the preparation of reports to the President and Congress on the activities of the Inspectors General.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under the control of the Central Intelligence Agency. Paper records and other hard-copy records are stored in secured areas within the control of the OIG and maintained in separate folders in a locked filing cabinet dedicated exclusively to OIG investigative files.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this system of records by automated or hand searches based on existing indices, and by automated means utilized in the normal course of business. Only authorized personnel with a need to know may search this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are stored in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Paper files are maintained in a locked file cabinet. Electronic files are maintained in secure, limited-access file-servers. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and who have a valid investigative or business reason to access the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B, Part 1228–Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Office of the Inspector General, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request, and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act published concurrently with this notice.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act published concurrently with this notice.

RECORD SOURCE CATEGORIES:

Information is obtained from federal, state, local and foreign government entities, as well as from individuals, including U.S. citizens and foreign nationals, pursuant to the authorized activities of investigatory staff of the ODNI, of other IC elements and of federal contractors performing investigatory functions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this System of Records pertaining to the enforcement of criminal laws may be exempted from the requirements of subsections (c)(3) and (4); (d)(1),(2),(3),(4); (e)(1),(2),(3),(5),(8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) as claimed by ODNI or by the originator of the record. Records constituting classified or non-criminal investigatory records may be exempted from the requirements of subsections (c)(3); (d)(1),(2),(3),(4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy

Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) as claimed by ODNI or by the originator of the records, provided the reason for the exemption remains valid and necessary.

[FR Doc. E7–25273 Filed 12–27–07; 8:45 am]
BILLING CODE 3910–A7–P–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of the Trade Agreements Act of 1979; Correction

AGENCY: Office of the United States Trade Representative.

ACTION: Correction of certain procurement thresholds under the World Trade Organization Agreement on Government Procurement, the United States-Australia Free Trade Agreement, the United States-Bahrain Free Trade Agreement, the United States-Chile Free Trade Agreement, the Dominican Republic-Central American-United States Free Trade Agreement, the United States-Morocco Free Trade Agreement, and the United States-Singapore Free Trade Agreement.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476 or *Jean_Grier@ustr.eop.gov.*

SUMMARY: On December 14, 2007, the Office of the United States Trade Representative (USTR) published notice of the Procurement Thresholds for Implementation of the Trade Agreements Act of 1979 (72 FR 71166). That Notice included three incorrect procurement threshold values due to inadvertent calculation errors. This notice provides the corrected thresholds.

Now, therefore, I, Susan C. Schwab, United States Trade Representative, in conformity with the provisions of Executive Order 12260, and in order to carry out the trade agreement obligations of the United States under the World Trade Organization Agreement on Government Procurement (WTO/GPA), Chapter 15 of the United States-Australia Free Trade Agreement (U.S.-Australia FTA), Chapter 9 of the United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA), Chapter 9 of the United States-Chile Free Trade Agreement (U.S.-Chile FTA), Chapter 9 of the Dominican Republic-Central American-United States (DR–CAFTA), Chapter 9 of the United States-Morocco Free Trade Agreement (U.S.-Morocco FTA), and Chapter 13 of the United States-Singapore Free Trade Agreement (U.S.-Singapore FTA), do hereby determine, effective on January 1, 2008, for the calendar years 2008–2009, the following thresholds shall apply and replace those set out in the Determination published on December 14, 2007 (72 FR 71166):

$7,443,000—for the procurement of construction services by all entities listed in the WTO/GPA, U.S.–Australia FTA, U.S.–Chile FTA, DR–CAFTA, U.S.–Morocco FTA, and the U.S.–Singapore FTA.

$528,000—for the procurement of goods and services by sub-central entities listed in the WTO/GPA, U.S.–Australia FTA, U.S.–Chile FTA, DR–CAFTA, U.S.–Morocco FTA, and the U.S.–Singapore FTA.

$595,000—for the procurement of goods and services by entities listed in U.S. Annex 3 of the WTO/GPA; List B in Annex 15–A of the U.S.–Australia FTA; List B in Annex 9–A, Section 3 of the U.S.–Bahrain FTA; List B in Annex 9.1, Section C of the U.S.–Chile FTA; List B in Annex 9.1, Section C of the DR–CAFTA; List B in Annex 9.1, Section C of the U.S.–Morocco FTA; and Annex 13A, Section C of the U.S.–Singapore FTA.

Susan C. Schwab,
United States Trade Representative.

[FR Doc. E7–25330 Filed 12–27–07; 8:45 am]
BILLING CODE 3190–W8–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Acquisition of Green Products and Services

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: Proposed policy letter on the acquisition of green products and services.

SUMMARY: OFPP is proposing to issue a policy letter on green procurement policies and strategies. The policy letter would address: (1) General responsibilities of agencies for the procurement of green products and services; (2) the relationship of green products and services to other socio-economic programs; (3) automatic substitution policies; (4) listing of green products in Federal catalogues and online ordering systems; (5) green requirements for paper and printing; (6) application of green requirements in service contracting; and (7) energy efficiency. The proposed policy letter would implement specific provisions of Executive Order (E.O.) 13423, *Strengthening Federal Environmental, Energy, and Transportation Management,* Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962), the Energy Policy Act of 1992 (42 U.S.C. 6903), the Energy Policy Act of 2005 (42 U.S.C. 6361), and Section 9002 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102). The proposed policy letter, when finalized, would supersede OFPP Policy Letter 92–4, *Procurement of Environmentally-Sound and Energy-Efficient Products and Services,* dated November 2, 1992.

Comment Date: Comments must be received in writing on or before February 26, 2008 to be considered in the formulation of the final policy letter.

ADDRESSES: Submit comments by any of the following methods:

- *E-mail: OFPPGreen@omb.eop.gov.*
- *Facsimile:* (202) 395–5105.
- *Mail:* Office of Federal Procurement Policy, Office of Management and Budget, Room 9013, 725 17th Street, NW., Washington, DC 20503.

Instructions: Please submit comments only and cite "Proposed OFPP Policy Letter" in all correspondence. All comments will be posted without change to *http://www.whitehouse.gov/omb/procurement/green/green_comments.html,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Daumit, Policy Analyst, at (202) 395–1052, for clarification of content.

SUPPLEMENTARY INFORMATION: The proposed policy letter provides guidance on green purchasing policies and strategies. It requires agencies to identify opportunities and give preference to the acquisition of green products and services, including but not limited to: (1) Alternative fuels and alternative fuel vehicles and hybrids; (2) biobased products; (3) Energy Star® and Federal Energy Management Program (FEMP)-designated products; (4) environmentally-preferable products and services; (5) electronics registered on the Electronic Product Environmental Assessment Tool; (6) low or no toxic or hazardous chemicals or materials or products; (7) non-ozone depleting substances; (8) recycled-content and/or remanufactured products; (9) renewable energy; and (10) water-efficient products.

In addition, the proposed policy letter:

- Requires agencies to first consider mandatory and preferred sources to obtain green products and services that meet their performance needs, and

where these sources are unable to meet their needs, to purchase green products and services from other sources.

• Requires agencies to implement automatic substitution policies for the purchase of functionally equivalent green products and services in place of non-green products and services ordered through central supply agencies.

• Requires GSA, DLA, and other central supply agencies to supply designated green products and phase out any competing non-green products from their catalogs and on-line ordering systems. Agencies are encouraged in their comments to identify anticipated needs for non-green products listed in Federal catalogs and on-line ordering systems that may extend beyond January 1, 2010 where green products are currently available.

• Requires agencies to include requirements and preferences for the use of green products in all new service contracts and other existing service contracts as they are recompeted and encourages agencies to incorporate these requirements and preferences into existing contracts as they are modified or extended through options.

• Discusses agencies' responsibilities for accurate, complete, and timely reporting.

Reference information on green acquisition polices and green purchasing programs may be found on OFPP's homepage at *http://www.whitehouse.gov/omb/procurement/index_green.html.*

Paul A. Denett,

Administrator.

Policy Letter No. 07–XX

To The Heads of Executive Departments And Establishments

Subject: Acquisition of Green Products and Services.

1. *Purpose.* This policy letter provides Executive branch policies for the acquisition, use and disposition of green products and services, including but not limited to: recycled content products; water-efficient, energy-efficient, Energy Star® and those products with the lowest watt stand-by power; biobased products; environmentally preferable products; alternative fuels; hybrid and alternative fuel vehicles; non-ozone depleting substances; renewable energy; and all services that may include the supply or use of any of these products. Agency acquisition policies and programs shall enhance and, where appropriate, mandate the purchase and use of green products and services covered in this policy letter.

2. *Authority.* This policy letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy Act, 41 U.S.C. 405(a), Section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, the Energy Policy Act of 1992, 42 U.S.C. 6903(19), the Energy Policy Act of 2005, 42 U.S.C. 6361, Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, and Executive Order (E.O.) 13423, Strengthening Federal Environmental, Energy, and Transportation Management.

3. *Applicability.* This Letter applies to all executive agencies.

4. *Rescission.* This policy letter rescinds Office of Federal Procurement Policy (OFPP) Policy Letter 92–4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services, dated November 2, 1992.

5. *Definitions.*

Alternative fuel is defined by Section 301 of the Energy Policy Act of 1992, as implemented by the Secretary of Energy through rulemaking, at 10 CFR Part 490.2.

Biobased product means a product determined by the Secretary of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

Energy efficient or FEMP-designated product means a product designated by the Federal Energy Management Program, Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

Energy Star® product means a product that is rated for energy efficiency under an Energy Star® program established by Section 324A of the Energy Policy and Conservation Act.

Environmentally preferable means products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Electronic Product Environmental Assessment Tool (EPEAT) is an environmental procurement tool designed to help institutional purchasers in the public and private sectors evaluate, compare and select electronic products based on their environmental attributes. The first EPEAT standard applies to computer desktops, laptops and monitors.

EPEAT-registered products are those products which meet the Institute of Electronic and Electrical Engineers (IEEE) 1680 Standard for the Environmental Assessment of Personal Computer Products, and products registered under similar standards developed after the date of this policy letter, and are listed on the EPEAT Product Registry located at *www.epeat.net.*

Executive agency means an Executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

Life-cycle cost effective means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 CFR Parts 436.18(a), (b), and (c), 436.20, and 436.21.

Ozone-depleting substances means any substance designated as a Class I or Class II substance by the Environmental Protection Agency (EPA) in 40 CFR Part 82.

Postconsumer content means a material or product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item.

Recovered material means waste material and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Recycled content products means products containing recovered materials designated for federal preferred procurement by the EPA under Section 6002 of RCRA. The products are also known as EPA-designated items.

Renewable energy means energy produced by solar, wind, biomass, landfill gas, hydrokinetic, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

Sustainable means to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations of Americans.

Water efficient product or service means a product or service that uses less water than competing products or services that serve the same purpose, including those meeting EPA's WaterSense standards.

6. *Background.* E.O. 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, issued on January 26, 2007 (72 FR 3919), directs federal agencies to conduct their environmental, transportation, and energy-related activities in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner. In agency acquisitions of goods and services, the Executive Order requires: (i) use of sustainable environmental practices, including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products, and (ii) use of paper of at least 30 percent postconsumer fiber content.

Other goals of E.O. 13423 address improving energy efficiency, consuming renewable energy, reducing water consumption, increasing diversion of solid waste, ensuring sustainable/green construction of buildings, reducing petroleum use, and ensuring acquisition and use of EPEAT-registered electronic products. E.O. 13423 further requires that agency programs to reduce and better manage the use of toxic and hazardous chemicals include reducing the acquisition of such chemicals.

Acquiring green products and services is a key element of successfully implementing E.O. 13423, an effective environmental management system (EMS), and a sustainability program. This policy letter provides guidance to agencies for implementing the green acquisition requirements of E.O. 13423, including its implementation within an EMS framework. E.O. 13423 also provides guidance to agencies that do not have an EMS or have not yet incorporated goals toward sustainability but are still required to implement an affirmative procurement program for green products and services as part of their overall acquisition strategy.

7. *Policy.* It is the policy of the federal government to develop and implement green purchasing policies and affirmative procurement programs in order to conserve resources and be good stewards of the environment and reduce our negative impact on the environment. The purchase of green products applies to all acquisition and contracting mechanisms used by federal agencies, including service contracts, purchases made with government purchase and fleet cards and purchases below the micropurchase threshold.

8. *Responsibilities.*

A. *General requirements.* In implementing this policy, Executive agencies shall:

(1) Identify opportunities for and give preference to the acquisition of green products and services including but not limited to:

(a) Alternative fuels and Alternative fuel vehicles (AFVs) and hybrids as required by Section 303 of the Energy Policy Act of 1992 and amended by the Energy Policy Act of 2005 and E.O. 13423;

(b) biobased products designated by the Department of Agriculture (USDA) under section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA);

(c) Energy Star®, FEMP-designated, and those electronic products with the lowest available stand-by power as required by section 104 of the Energy Policy Act of 2005 and E.O. 13423;

(d) Environmentally-preferable products and services in accordance with E.O. 13423;

(e) EPEAT-registered electronics in accordance with E.O. 13423;

(f) Low or no toxic or hazardous chemicals or materials or products containing lesser or no toxic or hazardous constituents;

(g) Non-ozone depleting substances under the Clean Air Act as contained in EPA's Significant New Alternatives Program (SNAP);

(h) Recycled content and/or remanufactured products designated by EPA under section 6002 of RCRA;

(i) Renewable energy as required by section 203 of the Energy Policy Act of 2005, E.O. 13423; and

(j) Water efficient products, including those meeting EPA's "WaterSense" standards.

(2) Ensure representation of environmental and energy experts, managers, or technical personnel on integrated procurement teams for all major acquisitions and consider each of the following factors:

(a) Sustainable design practices;

(b) Life cycle cost analysis;

(c) Product or packaging take back (return to manufacturer for recycling or remanufacturing purposes); and

(d) Maximization of energy and resource recovery in solid waste management.

(3) Incorporate green purchasing requirements within agency, organizational, and facility environmental management systems. Guidance can be found in *Incorporating Environmentally Preferable Purchasing into Environmental Management Systems*, available at *http://www.epa.gov/epp/pubs/grn-pur/green-pur-ems.htm*.

(4) Develop and implement a formal, comprehensive, written affirmative procurement program (APP), also referred to as a green purchasing plan, for all products and services covered by this policy letter.

(a) Minimally, an APP must:

- State a preference for the acquisition of the green products and services identified above;
- Delineate the roles and responsibilities of contracting officials, program managers, product specifiers, and purchase card holders and administrators;
- Promote the acquisition of green products and services internally within the agency and externally to all product vendors and service providers, including other federal, state, and local agencies;
- Provide for annual compliance monitoring, corrective action, and/or auditing as appropriate;
- Provide mechanisms for reporting on the effectiveness of the program to demonstrate compliance;
- Require flow down of green product preferences to contractors and subcontractors; and
- For recycled content products only, require estimates of the total amount of recovered materials used in items supplied or used under the contract, certification that the minimum recycled content requirement was met, where appropriate, and implement procedures for verifying the estimates and certifications.

(b) An effective APP should also address:

- Preference for green products and services in the agency's annual procurement forecasts for all products and services;
- Development of templates for incorporating green purchasing requirements into solicitations and contracts and/or using the model templates developed by other agencies;
- Use of Federal Business Opportunities (FedBizOpps) and other e-procurement tools to publicize and promote requirements for green products and services and/or sustainable acquisitions;
- The incorporation of green product requirements in the agency's automated contract writing system;
- Strategic sourcing opportunities for purchasing green products and services;
- Achievement of best value based on life cycle cost assessments of cradle-to-grave manufacture, use and disposition;
- Past performance evaluation of contractors' adherence to green

components/sustainable aspects of contracts;

• Green and/or sustainable standards and performance indicators in statements of work, source selection factors, and performance-based acquisitions;

• Reporting of green contract requirements implementation through the Federal Procurement Data System (FPDS); and

• For agencies that manage government specifications or commercial item descriptions, review and revise, as necessary, specifications and standards to permit the acquisition of green products and services.

(5) Work with private standard setting organizations and participate, pursuant to OMB Circular A–119 and the National Technology Transfer and Advancement Act (NTTAA), in the development of voluntary standards and specifications defining green products, practices and services.

(6) Develop and require training on the acquisition of green products and services as well as agency sustainable practices for requirements personnel, procurement personnel, purchase card and travel card holders and administrators, fleet managers, and facilities managers.

(7) Conduct pilot projects to test and measure results from the purchase and use of green products and services. Agencies may be requested to serve as a lead agency in coordinating a pilot and reporting government-wide results associated with the pilot.

(8) Ensure that the agency (a) meets at least 95 percent of its requirements for acquiring an electronic product with an EPEAT-registered electronic product, unless there is no EPEAT standard for such product, (b) enables the Energy Star® feature on agency computers and monitors, (c) establishes and implements policies to extend the useful life of agency electronic equipment, and (d) uses environmentally sound practices with respect to disposition of agency electronic equipment that has reached the end of its useful life.

B. *Relationship of green purchasing requirements to other socio-economic programs.* Executive agencies should first determine their specific performance requirements for products and services then identify sources that effectively meet the agency's performance needs. If an agency determines that a green product or service can meet its performance needs, it shall first consider mandatory and preferred sources to obtain green products or services. If these sources do not offer products or services that meet the agency's performance needs, the agency shall obtain such products and services from other sources.

Nonprofit agencies employing people who are blind or severely disabled under the AbilityOne Program pursuant to the Javits-Wagner-O'Day Act and Federal Prison Industries' UNICOR programs are mandatory sources. See Subparts 8.6 and 8.7 of the Federal Acquisition Regulation (FAR). Small businesses, including Small Disadvantaged, Women-Owned, Native American, Alaska Native, HUB-zone, and Service-Disabled Veterans, are preferred sources.

C. *Automatic substitution policies.* Executive agencies in coordination with General Services Administration (GSA) and the Defense Logistics Agency (DLA) shall implement automatic substitution policies in accordance with the following guidelines:

(1) GSA and DLA shall coordinate with Chief Acquisition Officers and Senior Officials appointed under Section 3(d) of E.O. 13423 to identify opportunities and establish policies to automatically substitute functionally equivalent green products and services in place of non-green products and services ordered by customer agencies. These products and services may include, but are not limited to, general office products, other paper products such as tissues and towels, biobased cleaning products, and/or any other green products and services appropriate to agencies' needs.

GSA and DLA shall report to the OFPP Administrator annually on the products and services for which these automatic substitution policies have been implemented.

(2) GSA and DLA shall provide only Energy Star® and FEMP-designated energy efficient products for all categories of products covered by the Energy Star® and FEMP programs, unless the head of an agency provides written justification as covered in paragraph 8.G.(2) of this policy letter.

D. *Compliance and listing of green products in federal catalogs and on-line ordering systems.* GSA, DLA and any other central supply source shall:

(1) Clearly identify and prominently display designated green products and services covered in this policy letter in federal catalogs and on-line ordering systems; and

(2) Phase out competing non-green products from their supply catalogs, contracts, specifications, inventories, and schedules, in accordance with the following deadlines:

(a) For a green product designated prior to the publication of this policy letter—by January 1, 2010 or an alternative deadline established in consultation with the Federal Environmental Executive and the Administrator of OFPP.

(b) For a green product designated after the publication of this policy letter—the latter of January 1, 2010 or within one year after the date specified in subparagraph (c) or an alternative deadline established in consultation with the Federal Environmental Executive and the Administrator of OFPP.

(c) The date referred to in subparagraph (b) is the date a notice is issued in the **Federal Register** by the manager of a green product program at USDA, EPA, or DOE designating new products for its lists that :

(i) Can meet the functional performance requirements of competing non-green products in the same or similar product category; and

(ii) Adequately address factors that would otherwise justify exemptions from green purchasing products as described in paragraph 8.G of this policy letter.

E. *Requirements for paper and printing.* In implementing the policy for paper and paper products acquired through GSA, the Government Printing Office, or private entities, Executive agencies shall:

(1) Require the use of printing and writing paper containing a minimum of 30 percent postconsumer fiber;

(2) To the maximum extent practicable, ensure that all copier machines, faxes, and printers are set up to print double-sided documents and that any reports, studies, analyses, assessments or any other contract deliverables are provided as double-sided copies;

(3) To the maximum extent practicable, require that all printing services require the use of recycled content paper and double-sided copying;

(4) To the maximum extent practicable, refrain from specifying printing and writing papers that do not contain a minimum of 30 percent postconsumer fiber for products with a limited useful life such as annual reports, catalogues, training materials, and telephone directories as appropriate; and

(5) To the maximum extent practicable, provide and transfer documents electronically to eliminate paper requirements.

F. *Service contracting.* Executive agencies must include requirements and preferences for the use of green products in all new service contracts and recompeted service contracts where green products may be substituted for

equivalent non-green products in the performance of the contract. Agencies are also encouraged to incorporate these requirements and preferences into existing contracts as they are modified or extended through options. Requirements and opportunities to incorporate sustainable practices and green products in service contracts are provided below. Agencies should explore further opportunities for including these practices and products in all relevant service contracts.

(1) Buildings and leased space: When acquiring leased space or entering into construction contracts for buildings and other major assets, agencies shall:

(a) implement the five Guiding Principles for High Performance and Sustainable Buildings identified in the *Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding* and relate technical guidance found on the Whole Building Design Guide *(www.wbdg.org)* as long as it is life cycle cost effective to do so; and

(b) ensure that new buildings are 30 percent more energy efficient than the 2004 International Energy Conservation Code for residential buildings or the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2004 for non-residential buildings, if life-cycle cost effective.

(2) Energy efficiency: In order to meet government-wide goals for energy efficiency, sustainable building, green product and service acquisition, and renewable energy, agencies are authorized and encouraged to use Energy Savings Performance Contracts (ESPC) and Utility Energy Savings Contracting (UESC) programs. ESPC and UESC programs are innovative tools for investing in building improvements to reduce energy and water use and increase the portion of remaining energy needs supplied from renewable energy sources. Agencies may use any combination of appropriated funds and private financing to carry out an individual project by covering its up front costs, as long as the entire project's future cost savings exceed the amounts required over time to repay the private financing.

(3) Fleet and rental car services: GSA and or other federal fleet service providers shall, to the maximum extent practicable, include requirements for increasing alternative fuel use, retread tires, re-refined motor oil, biolubricants, and other vehicle related products designated as recycled content, energy efficient, biobased or environmentally preferable and reducing petroleum use to the maximum extent practicable. Agencies should also ensure that Government travel arrangements for federal employee travel contain preferences for alternative fuel vehicles filled with alternative fuel, hybrids, and other designated green products as feasible and applicable.

(4) Janitorial services: Agencies shall include requirements for recycled content products (e.g., towels, sanitary tissue products, and plastic trash can liners) and biobased and/or environmentally preferable cleaning products in all janitorial contracts.

(5) Laundry services: Agencies and their contractors shall request energy and water efficient equipment, and environmentally preferable or biobased detergents in laundry service contracts.

(6) Meeting and conference services: Agencies shall, wherever possible, contract for meeting and conference services with contractors offering such green attributes as proximity to mass transportation, shuttle services using alternative fuel vehicles, recycling services, the use of recycled content and/or biobased products, energy and water efficient facilities, linen/towel reuse programs, reusable china and linens for food service, or sourcing food from local providers.

G. *Exemptions from requirements.* Exemptions from the purchase requirements covered in this policy letter require written justifications in accordance with the following:

(1) A decision not to procure EPA-designated recycled content products or USDA-designated biobased items directly or though a service contract requires written justification by the agency that a determination was made that such items:

(a) Are not reasonably available within the time required;

(b) Fail to meet performance standards established in applicable specifications or fail to meet the reasonable performance standards of the procuring agency;

(c) Are only available at an unreasonable price (based on life cycle cost); or

(d) Are not available from a sufficient number of sources to maintain a satisfactory level of competition.

(2) A decision not to procure Energy Star® or FEMP designated energy efficient products directly or through a service contract requires written justification by the head of the agency that a determination was made that such products:

(a) Are not cost effective over the life of the product taking energy cost savings into account; or

(b) Are not reasonably available to meet the functional requirement of the agency.

9. *Federal Acquisition Regulatory Councils.* The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council shall conduct periodic reviews of the relevant parts of the FAR to assure (1) that no unintended limitations to the acquisition of green products and services are contained therein, and (2) that the procurement policies established by this policy letter are fully reflected in the FAR.

10. *Reporting requirements.* Agency activities conducted pursuant to this policy letter will be reported biennially to the President as required by E.O. 13423 and as otherwise required by statute.

A. OFPP will collect data annually from agencies. Each Executive agency shall provide accurate, complete and timely data to OFPP in its annual requests. Requests may include, but are not limited to:

(1) Quantitative data on purchases of indicator items;

(2) Contract compliance data reported through the FPDS system;

(3) Data documenting the results of participation in agency or government-wide pilots;

(4) Evidence of preference language included in service contracts, procurement forecasts, solicitations, and/or competitive sourcing studies; and/or

(5) Evidence of annual training, compliance monitoring, corrective action plans and implementation of corrective actions.

B. Criteria for agency reporting to OFPP on green product purchasing and service acquisitions will be updated as necessary to ensure consistency with the requirements of this policy letter.

11. *Information.* Questions or inquiries about this policy letter should be directed to the Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone: 202–395–3501.

12. *Judicial review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or

procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

13. *Effective date.* This policy letter is effective December 28, 2007.

Paul A. Denett,

Administrator.

[FR Doc. E7–25211 Filed 12–27–07; 8:45 am]

BILLING CODE 3110–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2008–1; Order No. 50]

Notice

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a docket to develop a record which will allow it to meet statutory requirements pertaining to a review of nonpostal services. It solicits comments from the Postal Service and others to assist in this task.

DATES: Initial briefs due June 18, 2008; reply briefs due July 2, 2008. See Supplementary Information section for additional dates.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: The Postal Accountability and Enhancement Act (PAEA), Public Law No. 109–435, 120 Stat. 3198 (December 20, 2006), amends the Postal Reorganization Act, 39 U.S.C. 101, *et seq.*, by, among other things, limiting the Postal Service's authority to provide nonpostal services to those it offered as of January 1, 2006. 39 U.S.C. 404(e)(2). The term "nonpostal service" is defined in section 404(e)(1) as "any service that is not a postal service defined under section 102(5)[,]" which defines the term "postal service" to mean "the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto[.]" *Id.* at § 102(5).

Section 404(e)(3) directs the Commission to review each nonpostal service offered by the Postal Service on the date of the PAEA's enactment, December 20, 2006, within two years of that date. The purpose of the review is to determine which nonpostal services should continue, taking into account the public need for the service and the private sector's ability to meet that need. Any nonpostal service that the Commission concludes should not continue shall terminate. Section 404(e)(4). Finally, for any nonpostal service that it concludes should continue, the Commission "shall designate whether the service shall be regulated under this title as a market dominant product, a competitive product, or an experimental product." Section 404(e)(5).

The Commission is initiating this docket to fulfill its responsibilities under section 404(e).[1] To develop a record on which to base its findings, the Commission adopts the following procedural schedule:

1. By no later than March 19, 2008, the Postal Service shall, in the form of a sworn statement, identify and provide a complete description of each nonpostal service offered by the Postal Service on the date of enactment of the PAEA.[2] The description shall include the current status of each nonpostal service and the Postal Service's proposed classification of each such service, *i.e.*, as a market dominant, competitive, or experimental product. The foregoing shall be accompanied by a sworn statement from a knowledgeable person (or persons) addressing the public need for each service and such other matters, if any, the Postal Service deems relevant (collectively, Postal Service statement).

2. By no later than April 30, 2008, any interested person (party) may respond to the Postal Service statement by submitting a sworn statement from a knowledgeable person (or persons) addressing, at a minimum, the ability of the private sector to meet the public need for any nonpostal service that the party asserts should not be offered by the Postal Service (party's statement). A party may also address such other matters, if any, the party deems relevant.

3. By no later than May 21, 2008, the Postal Service and any interested person may submit a reply to any party's statement. Such reply shall be in the form of a sworn statement by a knowledgeable person (or persons).[3]

4. Initial briefs are due no later than June 18, 2008. Reply briefs may be filed and are due no later than July 2, 2008.

Section 505 of title 39 requires the designation of an officer of the Commission in all public proceedings to represent the interests of the general public. The Commission hereby designates Robert Sidman to serve as the public representative, representing the interests of the general public. Pursuant to this designation, he will direct the activities of Commission personnel assigned to assist him and, will, upon request, provide their names for the record. Neither Mr. Sidman nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It Is Ordered

1. Docket No. MC2008–1 is established for the purpose of developing a record concerning nonpostal services offered by the Postal Service.

2. The procedural schedule set forth in the body of this order is adopted.

3. Robert Sidman is designated as the public representative, representing the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

(Authority: 39 U.S.C. 404.)

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E7–25243 Filed 12–27–07; 8:45 am]

BILLING CODE 7710–FW–P

[1] As a result of this proceeding, the Commission will classify nonpostal services it determines should continue as either market dominant, competitive, or experimental products and will include those services in the Mail Classification Schedule. *See* 39 CFR 3020.13. Section 3642 of title 39 provides for adding to, removing from, or transferring products between the lists. Accordingly, because this proceeding has potential Mail Classification Schedule implications, the Commission is adopting the MC docket designation.

[2] If the services identified differ from the nonpostal services offered as of January 1, 2006, the Postal Service shall identify those services no longer offered, provide a brief description of such services, and indicate their current status.

[3] Any party, including the Postal Service, may submit legal memoranda on matters at issue at any time prior to May 21, 2008.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 57031/December 21, 2007]

Securities Exchange Act of 1934; Order Granting Registration of Egan-Jones Rating Company As A Nationally Recognized Statistical Rating Organization

Egan-Jones Rating Company, a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of

credit ratings described in clauses (i) through (iii) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by Egan-Jones Rating Company is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g–1 (17 CFR 240.17g–1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly,

It is ordered, under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of Egan-Jones Rating Company with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (iii) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–25244 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57011; File No. SR–Amex–2007–25]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, to Allow Registered Options Traders to Quote Remotely From Off the Amex's Trading Floor on a Limited Basis

December 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2007, the American Stock Exchange LLC ("Amex" 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 substantially by the Amex. The Amex filed Amendment No. 1 to the proposal on December 13, 2007.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its rules to allow Registered Options Traders ("ROTs") to quote remotely from off the Amex's trading floor on a limited basis. The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to amend Amex Rule 958—ANTE, "Options Transactions of Registered Options Traders and Supplemental Registered Options Traders and Remote Registered Options Traders," to allow a ROT to submit electronic quotations and orders from a location off the Amex's trading floor on a limited basis. The proposal would accommodate ROTs on days when they are not able to be present on the Amex's physical trading floor. For example, rather than calling in sick to work and thereby relinquishing the ability to quote and submit orders altogether, a ROT would be able to stream quotes and submit orders from away from the Amex's physical trading floor.[4]

The proposal would allow ROTs to quote and place orders remotely (*i.e.,* from off the trading floor) on a temporary basis for a maximum of 20 days throughout the calendar year.[5] For purposes of a ROT's "in-person" requirement, as set forth in Amex Rules 958—ANTE (g) and 958—ANTE (h), any transactions that occur through this limited remote quoting program will be deemed to be "on the floor." A ROT must notify the Amex's Division of Regulation and Compliance immediately following the day or days when he or she chooses to submit quotes and orders from off the Amex's trading floor.

The Amex will employ the same surveillance procedures that are currently used for ROTs quoting from on the floor. Furthermore, the Amex notes that there is an independent way to monitor when a ROT is off the floor because all members are required to scan in. The Amex represents that it will be able to monitor for compliance with the Amex's trading rules, as well as the federal securities laws and the rules and regulations promulgated thereunder.

2. Statutory Basis

The Amex believes that the 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 it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex 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

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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes and replaces the original filing in its entirety.

[4] A ROT would be able to establish connectivity via the Internet through its clearing firm.

[5] Quoting and submitting orders for one hour will qualify as one entire day.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

(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 at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rulecomments@sec.gov*. Please include File Number SR–Amex–2007–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–25. 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 at *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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office 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–Amex–2007–25 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25197 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57016; File No. SR–Amex–2006–31]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Annual Shareholder Meeting Requirements

December 20, 2007.

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 7, 2006, the American Stock Exchange LLC ("Amex" 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 substantially prepared by the Exchange. On December 13, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On December 20, 2007, the Exchange filed Amendment No. 2 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend section 704 (Annual Meetings) of the Amex *Company Guide*. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com*.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex seeks to amend its annual shareholder meeting requirement applicable to its listed issuers. Currently, section 704 of the Amex *Company Guide* requires all listed companies to hold an annual meeting of their shareholders in accordance with such listed company's charter, by-laws, and applicable state or other laws. An annual meeting allows the equity owners of a company the opportunity to elect directors and meet with management to discuss company affairs. The Exchange believes, however, that this requirement is not necessary for certain issuers of specific types of securities because the holders of such securities do not directly participate as equity holders and vote in the election of directors. In addition, Amex seeks to clarify when an issuer should hold its annual meeting and remove the notice requirement for delayed annual meetings.

First, Amex proposes to amend section 704 of its *Company Guide* to explicitly state that an issuer generally must hold an annual meeting within one year of the end of its fiscal year if it is subject to the annual shareholder meeting requirement. In addition, a new listing that was not previously subject to the requirement to hold an annual meeting would be required to hold its first annual shareholder meeting within one year of its fiscal year end following the date of listing. Amex proposes two exceptions to these general requirements: (1) An issuer is not required to hold an annual meeting if its fiscal year is less than twelve months long as a result of a change in fiscal year end; and (2) an issuer does not have to hold an annual meeting in the same year in which such issuer completes its initial public offering. Amex believes that codifying this time frame and the exceptions will provide additional transparency to the annual shareholder meeting requirement.

Amex also proposes to list a variety of securities, the issuers of which should not be subject to the foregoing general

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange states that Amendment No. 2 supersedes and replaces the proposed rule change, as originally filed, and Amendment No. 1 in their entirety.

annual shareholder meeting requirement. For example, Amex proposes to exempt from the requirement issuers of a number of securities listed pursuant to section 107 (Other Securities) of the *Company Guide* and certain other securities issued by various passive business organizations.[4] The Exchange states that these types of securities are typically not an issuer's primary equity security, and their holders have only limited economic interests or other rights, which do not include voting rights. Although many of these products are issued by operating companies with listed equity securities and are thus subject to an annual meeting requirement pursuant to the primary market's rules, the Exchange submits that the *Company Guide* should specifically exempt from such requirement those operating companies which do not issue common stock or voting preferred stock.

Similarly, Amex proposes to exempt from the general annual meeting requirement portfolio depository receipts and index fund shares, which are securities issued by unit investment trusts ("UITs") and open-end management investment companies, respectively (collectively, "ETFs"), and typically organized as business trusts. ETFs, which are generally passive investment vehicles that seek to match the performance of an index, must obtain an exemptive order from the Commission before they offer securities. As a result, their operations are circumscribed by numerous representations and conditions contained in the applicable orders, and they do not typically experience the need for operational or other changes requiring a shareholder vote, and, by extension, a shareholder meeting.[5] In addition, UITs do not have boards of directors, which the UITs' unitholders would need to elect.[6] Accordingly, the Exchange submits that section 704 of the Amex *Company Guide* should specifically exclude ETFs from an annual shareholder meeting requirement.

Amex also proposes to exempt from the annual meeting requirement issuers of a variety of trust issued receipts ("TIRs")[7] based on securities, commodities, and currencies. Traditional TIRs (i.e., HOLDRs) are securities issued by a trust that holds, but does not manage, specific securities on behalf of investors in the trust. Other types of TIRs also include Commodity-Based Trust Shares[8] and Currency Trust Shares.[9] The Exchange states that these trusts typically do not hold shareholder (or unitholder) meetings because the trusts have no board of directors and essentially serve as conduits for the investors' indirect investments in the underlying securities, commodities, and/or currencies of the trusts. Similarly, the Exchange lists Partnership Units, which are securities issued by a partnership that invests in a combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or securities.[10] A holder of a Partnership Unit does not have the right of equity ownership of the partnership, but instead, obtains a beneficial interest in the partnership. Because the partnership is a conduit for the investment in the underlying assets, the operation and management of the partnership is performed by a general partner without holding annual meetings. Lastly, Paired Trust Shares (also known as MACROS) are securities designed to track either the positive or negative performance of a benchmark underlying asset.[11] The shares are issued by a trust in pairs, with the trust not holding the underlying asset, but instead holding only short-term U.S. Treasuries and cash equivalents. As the market price of the underlying asset fluctuates, U.S. Treasuries and cash are moved between the trusts. As indicated above in connection with TIRs, issuers of Paired Trust Shares typically do not hold shareholder (or unitholder) meetings because the trusts have no board of directors and essentially serve as conduits for the investors' indirect investments in the performance of the underlying benchmark asset. As a result, Amex believes that section 704 of the Amex *Company Guide* should specifically exempt the issuers of TIRs, Commodity-Based Trust Shares, Currency Trust Share Shares, Partnership Units, and Paired Trust Shares from the annual shareholder meeting requirement.

For these reasons, Amex has not generally required issuers of these securities to hold annual shareholder meetings in the past, consistent with their respective governance and organizational documents. However, in order to provide greater certainty and transparency for listed issuers, Amex believes it is appropriate to revise section 704 of the *Company Guide* to clarify that only issuers of voting and non-voting common stock and voting preferred stock, and their equivalents (e.g., callable common stock) are required to hold an annual shareholder meeting. With respect to the proposed list of securities, the issuers of which would be exempt from holding an annual meeting, if such issuers also list common stock or voting preferred stock, or their equivalent, such issuers must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.[12] In addition, the Exchange notes that the proposed annual meeting requirement and the listed exemptions from such requirement do not supplant any applicable state or federal securities laws concerning annual shareholder meetings. The Exchange further notes that the proposed rule change is similar to the changes approved by the Commission that were proposed by The Nasdaq Stock Market, Inc. (n/k/a The NASDAQ Stock Market LLC) ("Nasdaq")[13] and the New York Stock Exchange LLC ("NYSE").[14]

Finally, Amex proposes to remove the provision from section 704 of the *Company Guide* that requires an issuer, who is unable to hold an annual shareholder meeting in a timely manner,

[4] The various types of securities which the Exchange believes should not be subject to the annual shareholder meeting requirement include: bonds and debentures; currency and index warrants; trust preferred securities; contingent value rights; equity-linked term notes; index-linked exchangeable notes; index-linked securities; commodity-linked securities; currency-linked securities; trust certificate securities; investment trusts based on securities of individual issuers, stock indexes, or debt instruments; equity derivatives; trust issued receipts; commodity-based trust shares; currency trust shares; certain partnership interests; and paired trust shares. Amex believes that the foregoing securities should be exempt because they do not entitle their respective holders to voting rights.

[5] The Exchange states that ETFs are registered under, and remain subject to, the Investment Company Act of 1940, which already imposes various shareholder-voting requirements that may be applicable to the ETFs.

[6] The Exchange states that UITs are typically operated or administered by a corporate trustee, and the portfolio of a UIT, which generally consists of a fixed pool of securities, is not actively managed.

[7] A trust issued receipt is defined in Amex Rule 1200(b) as a security: (1) that is issued by a trust which holds specified securities deposited with the trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (3) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

[8] *See* Amex Rule 1200A.

[9] *See* Amex Rule 1200B.

[10] *See* Amex Rule 1500.

[11] *See* Amex Rule 1400.

[12] *See* proposed Commentary .01 to Section 704 of the Amex *Company Guide*.

[13] *See* Securities Exchange Act Release No. 53578 (March 30, 2006), 71 FR 17532 (April 6, 2006) (SR–NASD–2005–073) (approving certain changes to Nasdaq's annual shareholder meeting requirement).

[14] *See* Securities Exchange Act Release No. 54029 (June 21, 2006), 71 FR 37147 (June 29, 2006) (SR–NYSE–2005–68) (approving, among other things, certain changes to NYSE's annual shareholder meeting requirement).

to notify the Exchange and the stockholders of such issuer of the reasons for the delay, and then use good faith efforts to hold the meeting as soon as reasonably practicable in light of the circumstances causing the delay. Amex believes it is more appropriate to address annual meeting delays through its "Continued Listing and Evaluation and Follow-Up" procedures which are a part of the rules governing suspension and delisting in section 1009(a)(i) of the *Company Guide*.[15] Amex currently does not rely on the notification required in section 704 of the *Company Guide* to monitor compliance with the annual shareholder meeting requirement. Instead, the Exchange staff utilizes an electronic database supplemented by manual review of proxy statements and, in the case of issuers that do not file proxy statements, other Commission filings to determine compliance. The electronic database receives public filings on a real-time basis (i.e., deemed to be within one business day) and generates alerts, which are investigated by analysts. Finally, because neither Nasdaq nor NYSE require its respective listed issuers to notify them of their good faith efforts to hold the annual meeting as soon as reasonably practicable, continuing to enforce such a provision at Amex places the Exchange at a competitive disadvantage.

2. Statutory Basis

The Exchange 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 prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[15] *See* Section 1009(a) of the Amex *Company Guide*.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that 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

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 Amex 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–Amex–2006–31 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–31. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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–Amex–2006–31 and should be submitted on or before January 18, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25202 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56993; File No. SR–CBOE–2007–104]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Range Options

December 19, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 6, 2007, the Chicago Board Options Exchange, Incorporated (the "CBOE" or "Exchange") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposed rule change on December 3, 2007.[3] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety. The purpose of Amendment No. 1 is to: (i) revise the proposed changes to CBOE Rule 12.3, *Margin Requirements*, to specify initial and/or maintenance margin requirements for margin and cash accounts and to conform the proposed rule

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publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to provide for the listing and trading of Range Options that may overlie any index that is eligible for options trading on the Exchange.[4] The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.org.legal.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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 states that the purpose of the proposed rule change is to enable the initial and continued listing and trading on the Exchange of Range Options that overlie any index eligible for options trading on the Exchange. Range Options are European-style options that have a positive payout if the settlement value of the underlying index falls within the specified Range Length at expiration. Range Options will be based on the same framework as existing options that are traded on the Exchange. However, the maximum payout amount will be capped (as specified by the Exchange at listing) and the specific exercise settlement amount may vary based on where on the Range Length the settlement value of the underlying index value falls.

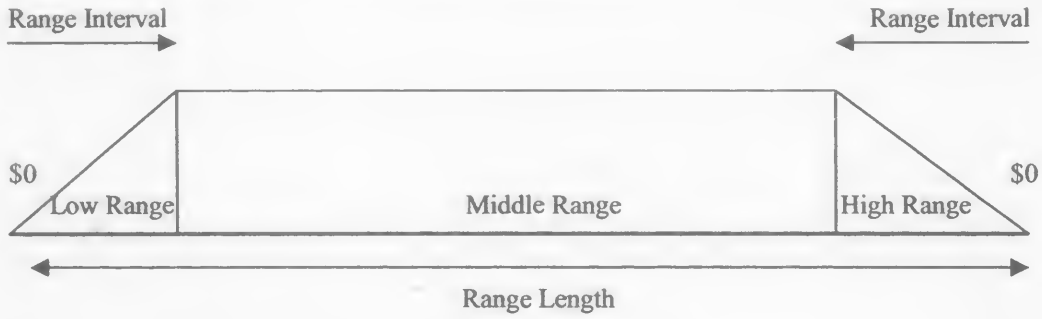
The Payout Structure of Range Options

The universe of possible payout amounts for Range Options resembles the shape of an isosceles trapezoid spread over a range of index values or the "Range Length." The Range Length, or the bottom parallel (and longer) line of the trapezoid, defines the entire length of index values for which the option pays a positive amount if the settlement value of the underlying index falls within the specific Range Length. In other words, the Range Length equals the total span between two underlying index values, as set by the Exchange at listing, that is used to determine whether a Range Option is in or out of the money at expiration.

The Range Length is comprised of three segments that are defined by the "Range Interval," which is a value that the Exchange will specify at listing and the minimum Range Interval will be at least 5 index points. Using the isosceles trapezoid diagram below, the "Range Interval," defines congruent triangles on opposite sides of the trapezoid, which have base angles of equal degrees and equal base lengths.

The first triangle at the start of the Range Length defines the "Low Range" for the Range Option and if the settlement value of the underlying index value falls in the Low Range (the "Low Range Exercise Value"), the option will pay an amount that *increases* as the index value increases within the Low Range. To determine the exercise settlement amount if the settlement value of the index falls within the Low Range, the Low Range Exercise Value will be multiplied by the contract multiplier, set by the Exchange at listing.

The second triangle at the end of the Range Length defines the "High Range" for the Range Option and if the settlement value of the underlying index falls in the High Range, the option will pay an amount that *decreases* as the index value increases within the High Range ("High Range Exercise Value"). To determine the exercise settlement amount if the settlement value of index falls within the High Range, the High Range Exercise Value will be multiplied by the contract multiplier, set by the Exchange at listing. Lastly, the Low Range and High Range are segments of equal lengths at opposite ends on the Range Length and if the settlement value of the underlying index falls at the starting value of the Low Range, at the ending value of the High Range or outside of either the Low Range or the High Range, the option will pay $0.



text to existing rule text for other products; (ii) revise the proposed definitions of "Range Interval," "Low Range and Low Range Exercise Value," "High Range and High Range Exercise Value," "Exercise Settlement Amount," and to add a new proposed definition of "exercise price;" (iii) revise proposed CBOE Rule 20.3 to state specifically that Range Options are a separate class from other options overlying the same index; (iv) revise proposed CBOE Rules 20.6, *Position Limits*, and 20.7, *Reports Related Position Limits and Liquidation of Positions*, to provide that Range Options will be aggregated with other option contracts on the same underlying index, including other classes of Range Options overlying the same index, for position limit purposes; (v) revise proposed CBOE Rule 20.11 to reference certain rules of The Options Clearing Corporation ("OCC"); (vi) add new proposed CBOE Rule 20.12 to provide that, for purposes of Range Options, reference in the Exchange Rules to the "appropriate committee" shall be read to be the "Exchange;" (vii) provide additional information regarding FLEX options; (viii) delete footnote 2 from the original proposed rule change, because the proposal referenced therein, SR–CBOE–2006–99, is now effective (*See* Securities Exchange Act Release No. 56792 (November 15, 2007), 72 FR 65776 (November 23, 2007)); and (ix) make conforming changes, clarifications and corrections in the "Purpose" section of the filing.

[4] Range Options are European-style, cash settled options that have a payout if the settlement value of the underlying index falls within the specified Range Length at expiration. The term "Range Length" is defined in proposed CBOE Rule 20.1(c).

The third segment of the Range Option is defined as the "Middle Range," and its length is equal to the Range Length minus twice the Range Interval, or as illustrated in the above diagram, its length is equal to the length of the top parallel (and shorter) line of the trapezoid. If the settlement value of the underlying index falls anywhere within the Middle Range at expiration, the payout is a fixed amount (set by the Exchange at listing) and does not vary depending on where in the Middle Range the index value falls. Also, if the index value falls in the Middle Range, this will be the highest amount that can be paid out for a Range Option and is defined as the "Maximum Range Exercise Value." To determine the exercise settlement amount if the settlement value of the index falls anywhere within the Middle Range, the Maximum Range Exercise Value will be multiplied by the contract multiplier, set by the Exchange at listing.

Unlike other options, Range Options will only be of a single type, and there will not be traditional calls and puts. Also, the exercise or "strike" price for Range Options will be the Range Length that, akin to a regular strike price, will be used to determine if the Range Option is in or out of the money. When applicable, the "strike price" for a Range Option (*i.e.*, the Range Length) will be used to determine the degree that the option is in-the-money (capped at the Maximum Range Exercise Value) if the settlement value of the underlying index falls within either the High or Low Range of the Range Length.

Determination and Example of Exercise Values

The examples and diagrams below demonstrate the variations of payout amounts for Range Options. Assume the Exchange identifies the S&P 500 Index ("SPX") as the underlying index and defines the Range Length as between 1340 and 1410. Also assume that the Exchange sets the Range Interval at 10 index points and the Maximum Range Exercise Value at 10 and the contract multiplier as $100.

Payout if Closing Value of Underling Index Falls in Low or High Ranges

Example 1: If, at expiration, the underlying index value falls in either the Low Range or the High Range, the payout will be determined based on where the settlement value falls within the respective range. If the settlement value falls within the Low Range, the Low Range Exercise Value will equal a value that falls within a progressive upward slope that ends at the beginning of the Middle Range. For example, if the settlement value of the SPX is 1342, the exercise settlement amount would be $200 ($100 x 2) or if the settlement value of the SPX is 1347, the exercise settlement would be $700 ($100 x 7). If at expiration, the settlement value of the SPX is 1340 or lower, the option would expire worthless.

Example 1: Low Range Exercise Value

1340 ◄----------	Low Range	----------► 1349							
Settlement Value of SPX									
1340	1341	1342	1343	1344	1345	1346	1347	1348	1349
Low Range Exercise Value									
0	1	2	3	4	5	6	7	8	9

Example 2: If the settlement value falls within the High Range, the High Range Exercise Value will equal a value that falls within a regressive downward slope that starts at the end of the Middle Range. For example, if the settlement value of the SPX is 1402, the exercise settlement amount would be $800 ($100 x 8) or if the settlement value of the SPX is 1406, the exercise settlement would be $400 ($100 x 4). If at expiration, the settlement value of the SPX is 1410 or higher, the option would expire worthless.

Example 2: High Range Exercise Value

1401 ◄----------	High Range	----------►1410							
Settlement Value of SPX									
1401	1402	1403	1404	1405	1406	1407	1408	1409	1410
High Range Exercise Value									
9	8	7	6	5	4	3	2	1	0

Maximum, Fixed Payout if Underlying Index Value Falls in Middle Range

Example 3: If at expiration, the settlement value of the SPX is 1351, the option holder would be entitled to receive and the writer would be obligated to pay $1,000 ($100 x 10) and if the settlement value of the SPX is 1375, the exercise settlement amount would also be $1,000. This is because if the settlement value of the SPX falls anywhere within the Middle Range at expiration, the payout is a fixed amount (Maximum Range Exercise Value times the contract multiplier) and does not vary depending on where in the Middle Range the SPX value falls.

Example 3: Underlying index value falls within Middle Range

1340 ◄----------	Range Length	----------►1410
Low Range	Middle Range Maximum Range Exercise Value = 10	High Range
1340 1349	1350 1400	1401 1410
	SPX = 1351 SPX = 1375	

Benefits of Range Options

The Exchange believes that the introduction of Range Options will provide advantages to the investing public that are not provided for by other index options. First, the Exchange believes that Range Options offer investors a relatively low risk security where the risk reduction results from knowing the maximum risk exposure when the contract is written. While there may be variations in the exercise settlement amount, the maximum exercise settlement amount is set at listing and the maximum risk therefore is limited and known at listing. Second, Range Options are structured similar to two-sided European binary options that provide additional flexibility because the option pays a reduced amount if the underlying index settles outside the main range covered by the option.

Proposed New Rules

To accommodate the introduction of Range Options, the Exchange proposes to adopt new Chapter XX to its rules and to make amendments to existing CBOE Rules 6.1, *Days and Hours of Business*, and 12.3, *Margin Requirements*. An introductory paragraph to Chapter XX will explain that the proposed rules in the proposed Chapter are applicable only to Range Options. Trading in Range Options will also be subject to the rules in Chapter I through XIX, XXIV, XXIVA and XXIVB, in some cases supplemented by the proposed rules in the Chapter, except for existing rules that will be replaced by the proposed rules in the Chapter and except where the context otherwise requires. As proposed, the majority of the rules governing index options will equally apply to Range Options. Those new proposed rules and those proposed amendments to existing rules pertaining to Range Options are described below.

(a) *Definitions (Proposed CBOE Rule 20.1).*

Proposed Chapter XX includes new definitions applicable to Range Options in CBOE Rule 20.1. In particular, the terms "Range Option," "settlement value," "Range Length," "Range Interval," "Low Range and Low Range Exercise Value," "High Range and High Range Exercise Value," "Middle Range and Maximum Range Exercise Value," "contract multiplier," "exercise settlement amount," and "exercise price" are proposed to be defined.

(b) *Days and Hours of Business (Proposed CBOE Rule 20.2 and Amendment to CBOE Rule 6.1).*

Proposed CBOE Rule 20.2 and an amendment to CBOE Rule 6.1, *Days and Hours of Business Days and Hours of Business*, provide that transactions in Range Options may be effected during normal Exchange option trading hours for other options on the same index.

(c) *Designation of Range Option Contracts and Maintenance Listing Standards (Proposed CBOE Rules 20.3 and 20.4).*

Proposed CBOE Rule 20.3 provides that the Exchange may from time to time approve for listing and trading on the Exchange Range Option contracts that overlie any index that is eligible for options trading on the Exchange. Range Options will be a separate class from other options overlying the same index. The Exchange may add new series of Range Options of the same class (*i.e.*, overlying the same index) as provided for by the rules governing options on the same underlying index. Additional series of Range Options may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market or to meet customer demand. The opening of a new series of Range Options on the Exchange will not affect any other series of options of the same class previously opened.

Proposed CBOE Rule 20.4 provides that the maintenance listing standards with respect to options on indexes set forth in CBOE Rule 24.2 and the Interpretations and Policies thereunder will be applicable to Range Options on indexes. CBOE Rule 24.2, *Designation of the Index*, sets forth initial and maintenance listing criteria for index options.

(d) *Limitation of Liability of Exchange and of Reporting Authority (Proposed CBOE Rule 20.5).*

Proposed CBOE Rule 20.5 provides that CBOE Rule 6.7, *Exchange Liability*, will be applicable in respect of any class of Range Options and that CBOE Rule 24.14, *Disclaimers*, will be applicable in respect of any reporting authority that is the source of values of any index underlying any class of Range Options.

(e) *Position Limits, Reporting Relating to Position Limits and Liquidation of Positions and Exercise Limits (Proposed CBOE Rules 20.6–20.8).*

Proposed CBOE Rule 20.6 provides that in determining compliance with CBOE Rules 4.11, *Position Limits*, 24.4, *Position Limits for Broad-Based Index Options*, 24.4A, *Position Limits for Industry Index Options*, and 24.4B, *Position Limits for Options on Micro Narrow-Based Indexes as Defined Under Rule 24.2(d)*, cash-settled Range Options will have a position limit equal to those for options on the same underlying index. In determining compliance with the applicable position limits, Range Options shall be aggregated with other option contracts on the same underlying index, including other classes of Range Options overlying the same index.

Proposed CBOE Rule 20.7 provides that Range Options will be subject to the same reporting and other requirements triggered for options on the same underlying index. In computing reportable Range Options, Range Options will be aggregated with other option contracts on the same underlying index, including other classes of Range Options overlying the same index.

Proposed CBOE Rule 20.8 provides that exercise limits for Range Options will be the same as those for other options on the same underlying index. To illustrate, CBOE Rule 24.4 provides that the standard position limit for options on the CBOE Russell 2000 Volatility Index ("RVX") is 50,000 contracts, and the near-term position

limit is 30,000 contracts. Therefore, the standard position limit for Range Options overlying the RVX would also be 50,000 contracts, and the near-term position limit would be 30,000 contracts. The 30,000 contract near-term position limit would also be the applicable exercise limit for Range Options on the RVX.[5]

For the purpose of determining compliance with the above limits, Range Options on the RVX would be aggregated with all other options on the RVX, including all series of Range Options on the RVX. This same aggregation would also be utilized to calculate the reporting requirements set forth in CBOE Rule 4.13, *Reports Related to Position Limits*.[6]

(f) *Determination of Settlement Value of the Underlying Index (Proposed CBOE Rule 20.9).*

Proposed CBOE Rule 20.9 provides that Range Options that are "in-the-money," or "out-of-the-money" are a function of the settlement value of the underlying index and whether at expiration the settlement values falls within or outside of the Range Length.

(g) *Premium Bids and Offers; Minimum Increments (Proposed CBOE Rule 20.10).*

Proposed CBOE Rule 20.10 provides that all bids or offers made for Range Option contracts will be deemed to be for one contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract, which is not made all-or-none, will be deemed to be for that amount or any lesser number of option contracts. An all-or-none bid or offer will be deemed to be made only for the amount stated. Proposed CBOE Rule 20.10 also provides that all bids or offers made for Range Option contracts will be governed by the CBOE Rule 24.8, *Meaning of Premium Bids and Offers*, as that rule applies to index options.

(h) *Exercise of Range Options (Proposed CBOE Rule 20.11).*

Proposed CBOE Rule 20.11 provides that Range Options will be exercised at expiration if the settlement value of the underlying index falls within the Range Length, and that Range Options shall be subject to the exercise by exception processing procedures set forth in OCC Rules 805 and 1804. OCC Rules 805 and 1804 contain provisions which, *inter alia*, permit option holders to give instructions to not exercise an option contract.

(i) *Exchange Authority (Proposed CBOE Rule 20.12).*

Proposed CBOE Rule 20.12 provides that for purposes of Range Options, references in the Exchange Rules to the appropriate committee shall be read to be the Exchange.[7] The Exchange is proposing this provision because it may determine to assign the applicable authorities with respect to Range Options to committees and/or Exchange staff. This provision will provide the Exchange with flexibility to delegate the authorities under the rules with respect to Range Options to an appropriate committee or appropriate Exchange staff and will not have to make a rule change merely to accommodate the reassignment of such authority. For example, the Exchange may determine to delegate the authority to determine the applicable opening parameter settings to the Office of the Chairman.

(j) *FLEX Trading (Proposed CBOE Rule 20.13).*

Proposed CBOE Rule 20.13 provides that Range Options will be eligible for trading as Flexible Exchange Options as provided for in Chapter XXIVA and XXIVB.[8] For purposes of CBOE Rules 24A.4 and 24B.4, the parties will designate the Range Length, Range Interval and Maximum Exercise Value. CBOE Rules 24A.9 and 24B.9, regarding the minimum quote width, will not apply to Range Options.

(k) *Margin (Proposed Amendment to CBOE Rule 12.3).*

The Exchange is proposing to amend CBOE Rule 12.3, *Margin Requirements*, to include requirements applicable to Range Options.[9] Under the proposed requirements, for a margin account, no Range Option carried for a customer will be considered of any value for purposes of computing the margin requirement in the account of such customer and each Range Option carried for a customer will be margined separately. The initial and maintenance margin required on any Range Option carried long in a customer's account will be 100% of the purchase price of such Range Option. The initial and maintenance margin required on any Range Option carried short in a customer's account will be the Maximum Range Exercise Value times the contract multiplier.

For a cash account, a Range Option carried short in a customer's account will be deemed a covered position, and eligible for the cash account if either one of the following is held in the account at the time the option is written or is received into the account promptly thereafter: (i) Cash or cash equivalents equal to 100% of the Maximum Range Exercise Value times the contract multiplier; or (ii) an escrow agreement. The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement: (A) cash, (B) cash equivalents, (C) one or more qualified equity securities, or (D) a combination thereof having an aggregate market value of not less than 100% of the Maximum Range Exercise Value times the contract multiplier and that the bank will promptly pay the member organization the cash settlement amount in the event the account is assigned an exercise notice.

The Exchange believes that these proposed levels are appropriate because risk exposure is limited with Range Options and the proposed customer initial and maintenance margin is equal to the maximum risk exposure.[10]

(l) *Options Disclosure Document.*

In order to accommodate the listing and trading of Range Options, it is expected that OCC will amend its By-Laws and Rules to reflect the different structure of Range Options. In addition, it is expected that OCC will seek a revision to the Options Disclosure Document ("ODD") to incorporate Range Options.

(m) *Systems Capacity.*

The Exchange represents that it believes the Exchange and the Options Price Reporting Authority have the

[5] *See* CBOE Rule 24.5, *Exercise Limits*, which provides, *inter alia*, that in determining compliance with CBOE Rule 4.12, exercise limits for index option contracts shall be applicable to the position limits prescribed for option contracts with the nearest expiration date in CBOE Rules 24.4 or 24.4A.

[6] CBOE Rule 4.13 sets forth the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts (long or short) in any single class of option contracts.

[7] Thus, for example, references to determinations regarding the applicable opening parameter settings established by the "appropriate Procedure Committee" in CBOE Rule 6.2B, *Hybrid Opening System ("HOSS")*, shall be read to be by the "Exchange." *See e.g.*, Securities Exchange Act Release No. 55919 (June 18, 2007), 72 FR 34495 (June 22, 2007) (rule change providing, *inter alia*, that for purposes of Credit Options, references in the Exchange Rules to the appropriate committee shall be read to be the Exchange.).

[8] FLexible Exchange® Options (FLEX Options) are customized equity or index option contracts that provide investors with the ability to customize key contract terms, like exercise prices, exercise styles and expiration dates. More information about FLEX options may be found at: *http://www.cboe.com/institutional/IndexFlex.aspx*.

[9] The Exchange is proposing the addition of new subparagraph (n) to CBOE Rule 12.3 for Range Options and is proposing to reserve subparagraph (m). The Exchange is seeking to reserve subparagraph (m) because the Exchange previously proposed to use that paragraph to codify margin requirements for a product that is the subject of a pending rule filing. *See* SR–CBOE–2006–105 (proposal to list and trade binary options on broad based indexes).

[10] In accordance with CBOE Rule 12.10, *Margin Required is Minimum*, the Exchange has the ability to determine at any time to impose higher margin requirements than those described above in respect of any Range Option position when it deems such higher margin requirements are appropriate.

necessary systems capacity to handle the additional traffic associated with the listing and trading of Range Options as proposed herein. The Exchange does not anticipate that there will be any additional quote mitigation strategy necessary to accommodate the trading of Range Options.

(n) *Surveillance Program.*

The Exchange represents that it will have in place adequate surveillance procedures to monitor trading in Range Options prior to listing and trading such options, thereby helping to ensure the maintenance of a fair and orderly market for trading in Range Options.

2. Statutory Basis

The Exchange believes 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. Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) Act [11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE believes that the proposed rule change will not 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

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 CBOE 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–2007–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–104. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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–CBOE–2007–104 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25181 Filed 12–27–07; 8:45 am]

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[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56997; File No. SR–CBOE–2007–129]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Regarding the CBSX Floor Post

December 19, 2007.

On November 2, 2007, 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" or "Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposal to eliminate from the rules of the CBOE Stock Exchange ("CBSX") the requirement that CBSX maintain a space on the CBOE trading floor to allow for in-person price discovery in CBSX securities (the "Floor Post") and the requirement that CBSX Designated Primary Market-Makers ("DPMs") staff the Floor Post. The proposal was published for comment in the **Federal Register** on November 14, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

CBSX is the Exchange's stock trading facility. It is an all-electronic trading platform. In connection with the establishment of CBSX, the Exchange established a Floor Post on the CBOE trading floor (apart from the equity option trading posts) to allow for in-person price discovery. All CBSX DPMs currently are required to maintain personnel at the Floor Post to respond to price discovery inquiries from brokers. Any resulting orders/trades are entered and processed electronically. There is no open-outcry trading on CBSX.

The Exchange proposes to modify Rule 51.12 to state that CBSX "may" maintain a Floor Post. Currently, Rule 51.12 states that CBSX "will" maintain a Floor Post. The Exchange stated that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56762 (November 7, 2007), 72 FR 64096.

it intends to continue to maintain the Floor Post; however, this change will permit the Exchange to remove the Floor Post if at a later time the Exchange deems such action prudent.

The Exchange also proposes to eliminate the requirement that CBSX DPMs maintain personnel at the Floor Post. As proposed, it would be optional for CBSX DPM firms to staff the Floor Post. The Exchange stated that some CBSX DPMs have requested this change to allow them to more efficiently allocate resources.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[5] which requires that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–CBOE–2007–129) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25182 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57005; File No. SR–CBOE–2007–122]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Amending Its Obvious Error Rule for Options on Indices, ETFs, and HOLDRS

December 20, 2007.

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 October 31, 2007, 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 substantially prepared by the Exchange. On December 14, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 24.16, which is the Exchange's rule applicable to the nullification and adjustment of transactions in index options, options on exchange-traded funds ("ETFs"), and options on HOLding Company Depository ReceiptS ("HOLDRS"). The Exchange is proposing to amend the rule to change the manner in which it applies the obvious price error provision to transactions occurring as part of the Hybrid Opening System ("HOSS") process. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.cboe.com.*

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 Exchange is proposing to amend CBOE Rule 24.16, which is its obvious error rule pertaining to index options, options on ETFs, and options on HOLDRS. The proposal would revise the obvious price error provision that pertains to transactions occurring as part of the HOSS opening rotation process. Currently, Rule 24.16 provides that an obvious price error would be deemed to have occurred when the execution price of a buy (sell) transaction is above (below) the fair market value of the option by at least a prescribed minimum error amount.[3] For purposes of transactions occurring on HOSS, "fair market value" is currently defined as the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). The Exchange is proposing to revise the fair market value calculation to provide additional conditions that would apply during regular HOSS rotations and during HOSS rotations in index options series that are being used to calculate the final settlement price of volatility indexes. The additional conditions are intended to reasonably factor the amount of available liquidity into the fair market value calculation during these rotations.

With respect to regular HOSS rotations, the Exchange is proposing to add a condition that the option contract quantity subject to nullification or adjustment would not exceed the size of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).[4] For example, assume that the opening transactions in series XYZ totaled 200 contracts at a price $0.75. Also assume that a member representing non-CBOE Market-Maker A sold 200 contracts, trading 100 contracts with CBOE Market-Maker B and 100 contracts with non-CBOE Market-Maker C. Finally, assume that the first quote after the transaction in question that does not reflect the erroneous transaction is bid 100 contracts for $0.95 and offered 150 contracts at $1.15. In this scenario, an erroneous sell transaction would be deemed to have occurred in accordance with the obvious price error provision because the $0.75 price received by non-CBOE Market-Maker A is at least $0.125 lower than the fair market value of $1.05.[5] In addition, because the size of the bid in the first quote after that does not reflect the erroneous transaction is for 100 contracts, up to 100 contracts executed on the opening on behalf of non-CBOE Market-Maker A would be subject to

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, for series trading with normal bid-ask differentials as established in CBOE Rule 8.7(b)(iv), the prescribed minimum error amount is as follows: $0.125 if the fair market value is below $2, $0.20 if the fair market value is $2 to $5, $0.25 if the fair market value is above $5 to 10, $0.40 if the fair market value is above $10 to 20, and $0.50 if the fair market value is above $20. *See* CBOE Rule 24.16(a)(1).

[4] For erroneous sell transactions, the size of the bid would be used. For erroneous buy transactions, the size of the offer would be used.

[5] $1.05 is the midpoint of $0.95 and $1.15.

nullification or adjustment under the obvious price error provision.[6] Any nullifications or adjustments would occur on a pro rata basis considering the overall size of the HOSS opening trade. Thus, 50 contracts executed against CBOE Market-Maker B would have a price adjustment to $1.05 (provided the adjusted price does not violate A's limit price) and 50 contracts executed against non-CBOE Market-Maker C would have a price adjustment to $1.05 (provided the adjusted price does not violate A's or C's limit price).

With respect to HOSS rotations in index options series being used to calculate the final settlement price of a volatility index,[7] the Exchange is proposing to add a condition that the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) must be for at least the overall size of the HOSS opening transaction(s).[8] If the size of the quote is less than the overall size of the opening transaction(s), then the obvious price error provision shall not apply. For example, if the opening trade in Series XYZ is for a total of 200 contracts and the bid or offer, as applicable, of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) is for 500 contracts, then the quote would be used to determine the fair market value and whether an obvious price error occurred. If the bid or offer, as applicable, of the quote is for only 100 contracts, then the trade would not be subject to nullification or adjustment under the obvious price error provision.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to 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 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 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 by the Exchange with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–122. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office 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–CBOE–2007–122 and should be submitted on or before January 18, 2008.

[6] A HOSS transaction involving a non-CBOE Market-Maker is adjusted based on the first non-erroneous quote after the erroneous transaction on CBOE, provided the price does not violate the non-CBOE Market-Maker's limit price. Otherwise, the transaction is nullified. *See* Rule 24.16(a)(1)(ii)(B) and (c)(3).

[7] The Exchange states that CBOE's and the CBOE Futures Exchange, LLC's (a designated contract market approved by the Commodity Futures Trading Commission and a wholly-owned subsidiary of CBOE) rules provide for the listing and trading of options and futures, as applicable, on various volatility indexes. This proposed obvious price error provision would be utilized only for those index options series used to calculate the final settlement price of a volatility index and only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month. Thus, for example, the proposed obvious price error provision would be used for the relevant Standard & Poor's 500 Stock Index ("SPX") options series on settlement days for CBOE Volatility Index ("VIX") options and futures contracts. The Exchange notes that, during the final settlement date, traders holding hedged volatility futures positions to settlement can be expected to trade out of their SPX options on that date. Traders who hold short, hedged VIX futures would liquidate that hedge by selling their SPX options, while traders holding long, hedged VIX positions would liquidate their hedge by buying SPX options. In order to seek convergence with the VIX final settlement value, these traders would be expected to liquidate their hedges by submitting orders in the appropriate SPX option series during the SPX opening on the final settlement date of the VIX futures contract. To the extent: (i) traders who are liquidating hedges predominately are on one side of the market (*e.g.*, seek to buy the particular SPX options); and (ii) those traders' orders predominate over other orders during the SPX opening on the final settlement date for the VIX futures contract, trades to liquidate hedges may contribute to an order imbalance during the SPX opening on that date. The same is equally applicable with respect to the final settlement dates of other volatility index options and futures. In light of this potential for a large order imbalance in the applicable series on these dates, the Exchange believes that the application of a modified obvious price error provision is reasonable and appropriate and will contribute to a fair and orderly opening.

[8] *See supra* note 4.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25187 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57012; File No. SR–CBOE–2007–03]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Amending its Obvious Error Rule for Options on Indices, ETFs, and HOLDRS

December 20, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 21, 2007, 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 substantially prepared by the Exchange. On December 20, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 24 .16, which is the Exchange's rule applicable to the nullification and adjustment of transactions in index options, options on exchange-traded funds ("ETFs"), and options on HOLding Company Depository ReceiptS ("HOLDRS"). The Exchange is proposing to amend the rule in order to: (i) Modify the nullification and adjustment provisions for erroneous prints and erroneous quotes in the underlying; (ii) eliminate the nullification and adjustment provision for trades below intrinsic value; and (iii) modify the nullification provision for no bid series. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.cboe.com.*

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 Exchange proposes to make various amendments to CBOE Rule 24.16, which is its obvious error rule pertaining to index options, options on ETFs, and options on HOLDRS. First, the proposal would modify the rule's provisions pertaining to erroneous prints and erroneous quotes in the underlying. Currently, the rule provides that a trade resulting from an erroneous print disseminated in the underlying market which is later cancelled or corrected by that underlying market may be adjusted or nullified.[3] Similarly, the rule also provides that a trade resulting from an erroneous quote in the underlying security may be adjusted or nullified.[4] Under the revised rule, the appropriate Exchange committee would identify particular underlying or related instrument(s) that would be used to determine an erroneous print or quote and would also identify the relevant market(s) trading the underlying or related instrument to which the Exchange would look for purposes of applying the obvious error analysis. The underlying or related instrument(s) may include the underlying or related ETF(s), HOLDRS(s), and/or index value(s),[5] and/or related futures product(s),[6] and the relevant underlying market(s) may include one or more markets. The underlying or related instrument(s) and relevant market(s) would be designated by the appropriate Exchange committee and announced to the membership via Regulatory Circular. For a particular ETF, HOLDRS, index value, and/or futures product to qualify for consideration as a "related instrument," the revised rule requires that: (i) The option class and related instrument must be derived from or designed to track the same underlying index; or (ii) in the case of S&P 100-related options, the options class and related instrument must be derived from or designed to track the S&P 100 Index or the S&P 500 Index. Thus, as an example for illustrative purposes only, for options on the Nasdaq 100 Index Tracking Stock (ETF option symbol "QQQ") , the appropriate Exchange committee may determine to designate the underlying Nasdaq 100 ETF and the primary market where it trades, as well as a related futures product overlying the Nasdaq 100 Index and the primary market where that futures product trades, as the instruments that would be considered by the Exchange in determining whether an erroneous print or an erroneous quote has occurred that would form the basis for an adjustment or nullification to a transaction in the related options.[7]

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under the current rule, to be adjusted or nullified, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period. *See* CBOE Rule 24.16(a)(3).

[4] Under the current rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market during the time period encompassing two minutes before and after the dissemination of such quote. *See* Rule 24.16(a)(4).

[5] An "index value" is the value of an index as calculated and reported by the index's reporting authority. Use of an index value would only be applicable for purposes of identifying an erroneous print in the underlying (and not an erroneous quote). *See* proposed changes to CBOE Rule 24.16(a)(3).

[6] To confirm, the Exchange states that it is only proposing that it may designate underlying or related ETF(s), HOLDRS(s), and/or index value(s), and/or related futures product(s). The Exchange states that it is not proposing to designate any of the individual underlying stocks (or related options or futures on any of the individual underlying stocks) that comprise a particular ETF, HOLDR, or index (any such proposal would be the subject of a separate rule filing).

[7] Using this example, under the revised rule, the designated instruments and markets would be announced by Regulatory Circular. Thereafter, for a transaction in the QQQ options class to be adjusted or nullified due to an erroneous print in an underlying or related instrument that is later cancelled or corrected, the trade must be the result of: (i) An erroneous print in the underlying Nasdaq 100 ETF that is higher or lower than the average trade in the underlying Nasdaq 100 ETF on the primary market during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the ETF during the same period; or (ii) an erroneous print in the designated futures product overlying the Nasdaq 100 Index that is higher or lower than the average trade in the designated futures product on the designated market during a two-minute period before and after the erroneous print by an

Continued

As another example for illustrative purposes only, for the Exchange's class of options on the S&P 100 Index (index option symbol "OEX"), the appropriate Exchange committee may determine to designate the following underlying or related instruments: the S&P 100 Index value as calculated and reported by Standard and Poor's (the index's reporting authority); the S&P Depository Receipts traded on the American Stock Exchange; and the S&P 500 futures contract traded on the Chicago Mercantile Exchange.[8]

The Exchange states that the proposed change is intended to address member feedback and to provide relief in those scenarios where an erroneous options transaction may occur as the result of an erroneous print or erroneous quote in markets other than the primary market for the underlying security. The Exchange believes the proposed change recognizes that market participants trading in the overlying index, ETF, and HOLDRS options may base their options prices on trading in various products and markets, while maintaining reasonable and objective criteria for these types of obvious error reviews.

Second, the proposal would eliminate the nullification and adjustment provision for trades below intrinsic value. CBOE Rule 24.16(a)(5) currently states that an obvious pricing error will be deemed to have occur when the transaction price of an option series is more than $0.10 below the intrinsic value of the same option. The purpose of deleting this provision is to account for circumstances under which options are correctly priced $0.10 or more below the intrinsic value. For example, this might occur in options with underlying securities that are hard-to-borrow, extremely volatile issues where one market participant seeks to transfer the risk of selling or buying a security to other market participants by trading options, and options that are European-style exercise thus preventing exercise prior to expiration. Additionally, the Exchange notes that elimination of this provision is consistent with the Exchange's current rule for equity options, which does not have an obvious error review for trades below intrinsic value.[9]

Third, the proposal would modify the nullification provision for no bid series. Currently, the rule simply provides that electronic transactions in series that are quoted no bid on the Exchange are subject to nullification provided that at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at the time of execution. Under the revised rule, additional criteria and clarifying language would be added. Specifically, an electronic transaction in a series quoted no bid on the Exchange would be subject to nullification provided: (i) The bid in that series immediately preceding the execution was, and for five seconds prior to the execution remained, zero; and (ii) at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid and offered at the same price or lower as that series at the time of execution. Thus, for example, if a trade occurs in the ABC 45 call option series when the series was quoted $0.00—$0.10, the trade may be nullified if: (i) The bid was at $0.00 for at least five seconds prior to the execution; and (ii) at least one call option series in ABC with a strike below 45 (*e.g.*, the ABC 30, 35 or 40 call option series) had a bid of $0.00 and an offer of $0.10 or less at the time of execution.

The revised no bid provision would provide that, when determining the Exchange's quotes in the relevant series, bids and offers of the parties to the subject trade that are in any of the series in the same options class shall not be considered. The revised rule would also provide that each group of series in an options class with a non-standard deliverable will be treated as a separate options class. Thus, for example, if due to a reorganization certain of the series in the ABC option class have a deliverable of 150 shares per options contract (as compared to the standard 100 shares per option contract), all ABC option series that are subject to the 150 contract delivery requirements would be considered separately from the ABC option series that are subject to the 100 contract delivery requirements for purposes of applying the no bid provision. Finally, the revised rule would clarify that the no bid provision is intended to apply to series quoted no bid on the Exchange (as opposed to series for which the national best bid is quoted no bid).[10]

The proposed changes to the no bid provision are intended to address the Exchange's experience in applying the provision to particular trading scenarios that have occurred. The Exchange believes that the additional criteria and clarifications are reasonable and objective, and would serve to better identify instances where the no bid provision is intended to apply.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

amount at least five times greater than the average quote width for the futures product during the same period. *See* proposed changes to CBOE Rule 24.16(a)(3). For an options transaction to be adjusted or nullified due to an erroneous quote in an underlying or related instrument, an erroneous quote would occur when: (i) The underlying Nasdaq 100 ETF has a width of at least $1.00 and has a width at least five times greater than the average quote width for such ETF on the primary market during the time period encompassing two minutes before and after the dissemination of such quote; or (ii) the designated futures product overlying the Nasdaq 100 Index has a width of at least $1.00 and has a width at least five times greater than the average quote width for such futures product on the designated market during the period encompassing two minutes before and after the dissemination of such quote. *See* proposed changes to CBOE Rule 24.16(a)(4).

[8] Using this example, under the revised rule, the designated instruments and markets would be announced by Regulatory Circular. Thereafter, for a transaction in the OEX options class to be adjusted or nullified due to an erroneous print in an underlying or related instrument that is later cancelled or corrected, the trade must be the result of: (i) An erroneous report of the underlying S&P 100 Index value that is higher or lower than the average price in the index during a two-minute period before and after the erroneous report by an amount at least five times higher or lower than the difference between the highest and lowest index values during the same period; or (ii) an erroneous print in the S&P Depository Receipts or S&P 500 futures contract, as applicable, that is higher or lower than the average trade in the designated instrument during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the designated instrument during the same period. *See* proposed changes to CBOE Rule 24.16(a)(3). To be adjusted or nullified due to an erroneous quote in the underlying or related instrument, an erroneous quote would occur when the S&P Depository Receipts or S&P 500 futures contract, as applicable, has a width of at least $1.00 and has a width at least five times greater than the average quote width for such instrument on the relevant market during the time period encompassing two minutes before and after the dissemination of such quote. *See* proposed changes to CBOE Rule 24.16(a)(4) and note 5 *supra*.

[9] See CBOE Rule 6.25.

[10] Consistent with the existing provisions, for a nullification to be granted, any member or person associated with a member that believes it participated in a transaction that falls within the no bid series parameters must also satisfy the notification procedures set forth in paragraph (b) of CBOE Rule 24.16.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–03. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office 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–CBOE–2007–03 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25198 Filed 12–27–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57013; File No. SR-CBOE–2007–140]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List and Trade Options on Shares of the iShares MSCI Mexico Index Fund

December 20, 2007.

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 November 27, 2007, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to list and trade options on shares of the iShares MSCI Mexico Index Fund (the "Fund Options").

The text of the proposed rule change is available on the Exchange's website (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to obtain approval to list for trading on the Exchange options on the iShares MSCI Mexico Index Fund ("Fund"). The Exchange currently has in place initial listing and maintenance standards set forth in CBOE Rules 5.3.06 and 5.4.08, respectively (the "Listing Standards"), that are designed to allow the Exchange to list options on funds structured as open-end investment companies, such as the Fund, without having to file for Commission approval to list for trading options on the Fund.[3] The Exchange submits that the Fund meets substantially all of the Listing Standards requirements. In particular, all of the requirements set forth in CBOE Rule 5.3.06 are met, except for the requirement concerning the existence of a comprehensive surveillance sharing agreement ("CSSA"). However, the Exchange submits that sufficient mechanisms exist that would provide the Exchange with adequate

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CBOE Rules 5.3.06 and 5.4.08 set forth the initial listing and maintenance standards for registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trust or other similar entities traded on a national securities exchange or through the facilities of a national securities exchange.

surveillance and regulatory information with respect to the Fund.

The Fund is registered pursuant to the Investment Company Act of 1940 as a management investment company designed to hold a portfolio of securities that track the MSCI Mexico Index ("Index").[4] The Index consists of stocks traded primarily on the Bolsa Mexicana de Valores (the "Bolsa"). The Fund employs a "representative sampling" methodology to track the Index, which means that the Fund invests in a representative sample of securities in the Index that have a similar investment profile as the Index.[5] Barclays Global Fund Advisors ("BGFA" or the "Adviser") expects the Fund to closely track the Index so that, over time, a tracking error of 5% of less is exhibited. Securities selected by the Fund have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Index. The Fund will not concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except, to the extent practicable, to reflect the concentration of the Index. The Fund will invest at least eighty percent (80%) of its assets in the securities comprising the Index and/or related American Depositary Receipts ("ADRs"). In addition, at least ninety percent (90%) of the Fund's assets will be invested in the securities comprising the Index or in other related Mexican securities or ADRs. The Fund may also invest its other assets in futures contracts, options on futures contracts, listed options, over-the-counter ("OTC") options and swaps related to the Index, as well as cash and cash equivalents. The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

Shares of the Fund ("Fund Shares") are issued and redeemed, on a continuous basis, at net asset value ("NAV") in aggregation size of 100,000 shares, or multiples thereof (a "Creation Unit"). Following issuance, Fund Shares are traded on an exchange like any other equity securities. The Fund Shares trade in the secondary markets in amounts less than a Creation Unit and the price per Fund Share may differ from its NAV, which is calculated once daily as of the regularly scheduled close of business of the New York Stock Exchange ("NYSE").[6]

State Street Bank and Trust Company, the administrator, custodian, and transfer agent for the Fund, calculates the Fund's NAV. Detailed information on the Fund can be found at *http://www.ishares.com*.

The Exchange has reviewed the Fund and determined that the Fund Shares satisfy the Listing Standards, except for the requirement set forth in CBOE Rule 5.3.06(A), which requires the Fund to meet the following condition, "any non-U.S. component securities of an index or portfolio of securities on which the Units are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio[.]" The Exchange currently does not have in place a surveillance agreement with Bolsa.

The Exchange notes that the Commission, in the past, has been willing to allow a national securities exchange to rely on a memorandum of understanding entered into between regulators in the event the exchanges themselves cannot enter into a CSSA.

The Exchange previously made attempts to enter into a CSSA with Bolsa as part of seeking approval to list and trade options on: (1) The CBOE Mexico 30 Index; (2) the iShares MSCI Emerging Markets Index Fund ("EEM"); and (3) the Vanguard Emerging Markets Fund ("VWO"), each of which held non-U.S. component securities that traded on Bolsa.[7] The Exchange also understands that the American Stock Exchange ("Amex") previously attempted to enter into a CSSA with Bolsa as part of seeking approval to list and trade options on the Mexico Index.[8]

The Commission noted in the Approval Order regarding the CBOE Mexico 30 Index that, in cases where it would be impossible to secure a CSSA, the Commission has relied in the past on surveillance sharing agreements between the relevant regulators.[9] The Commission further noted in the Approval Order that, pursuant to the terms of the memorandum of understanding executed by the Commission and the CNBV,[10] dated October 18, 1990 ("MOU"), it was the Commission's understanding that both the Commission and the CNBV could acquire information from and provide information to the other, similar to that which would be required in a CSSA between exchanges.[11] Therefore, should CBOE need information on Mexican trading in the component securities of the CBOE Mexico 30 Index, the Commission could request such information from the CNBV under the MOU.[12]

The practice of relying on surveillance agreements between regulators when a foreign exchange was unable or unwilling to provide a CSSA was affirmed by the Commission in the Commission's New Product Release ("New Product Release").[13] The Commission noted in the New Product Release that if securing a CSSA is not possible, an exchange should contact the Commission prior to listing a new derivative securities product. The Commission also noted that the Commission may determine instead that it is appropriate to rely on a memorandum of understanding between the Commission and the foreign regulator.

The Exchange requests that the Commission allow the listing and trading of the Fund Shares without a CSSA, upon reliance of the MOU entered into between the Commission and the CNBV, until the Exchange is able to secure a CSSA with Bolsa. The Exchange believes this request is reasonable and notes that the Commission has provided similar relief in the past. For example, the Commission approved, on a pilot basis, two CBOE proposals to list and trade options on the EEM and on the VWO.[14]

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[4] Morgan Stanley Capital International Inc. ("MSCI") created and maintains the Index.

[5] As of October 31, 2007, the Fund was comprised of 27 securities. America Movil SAB de DV-Series L had the greatest individual weight at 23.99%. The aggregate percentage weighting of the top five and ten securities in the Fund were 59.16% and 78.33%, respectively. More information may be accessed at the iShares MSCI Mexico Index Fund (EWW) Web Site (*http://www.ishares.com*).

[6] The regularly scheduled close of trading in the NYSE is normally 4:00 p.m. Eastern Time ("ET").

[7] *See* Securities Exchange Act Release Nos. 36415 (October 25, 1995), 60 FR 559620 (November 1, 1995) (SR-CBOE–95–45); 53621 (April 10, 2006), 71 FR 79568 (April 14, 2006) (SR-CBOE–2006–82); and 55491 (March 19, 2007), 72 FR 14145 (March 26, 2007) (SR-CBOE–2006–95).

[8] *See* Securities Exchange Act Release No. 34500 (August 8, 1994), 59 FR 41534 (August 12, 1994) (SR-Amex-94–20).

[9] *See* Securities Exchange Act Release No. 36415 (October 25, 1995), 60 FR 55620 (November 1, 1995) (SR-CBOE–95–45).

[10] The National Commission for Banking and Securities, or "CNBV," is Mexico's regulatory body for financial markets and banking.

[11] *See supra* note 9.

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998), at note 101.

[14] *See* Securities Exchange Act Release Nos. 53621 (April 10, 2006), 71 FR 19568 (April 14, 2006) (SR-CBOE–2006–32); 53930 (June 1, 2006), 71 FR 33322 (June 8, 2006) (SR-CBOE–2006–56); 54347 (August 22, 2006), 71 FR 51242 (August 29, 2006) (SR-CBOE–2006–72); 54876 (December 5, 2006), 71 FR 74968 (December 13, 2006) (SR-CBOE–2006–103); and 55758 (May 14, 2007), 72 FR 28090 (May

The Commission's approval of this request to list and trade options on the Fund would otherwise render the Fund compliant with all of the Listing Standards.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 [15] (the "Act") in general and furthers the objectives of Section 6(b)(5) [16] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest. Further, this proposed rule change is similar to a proposal that was submitted by Amex and recently approved by the Commission.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

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 comments on the proposal.

III. 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–2007–140 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-CBOE–2007–140. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE–2007–140 and should be submitted on or before January 18, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[19] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The listing of the Fund Options does not fully satisfy CBOE's applicable Listing Standards, specifically the requirement set forth in CBOE Rule 5.3.06(A) that requires the Fund to meet the following condition, "any non-U.S. component securities of an index or portfolio of securities on which the Units are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio[.]" The Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators where the listing SRO finds it impossible to enter into an information sharing agreement.[20] In this case, CBOE has attempted unsuccessfully to reach such an agreement with Bolsa.

Consequently, the Commission has determined to approve CBOE's listing and trading of the Fund Options and to allow CBOE to rely on the MOU [21] with respect to the underlying Fund components trading on Bolsa. The Commission believes that, regardless of the Commission's willingness to permit reliance on the MOU, CBOE should continue to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (1) Express language addressing market trading activity, clearing activity, and customer identity; (2) the Bolsa's reasonable ability to obtain access to and produce requested information; and (3) based on the CSSA and other information provided by the Bolsa, the absence of existing rules, law or practices that would impede the Exchange from obtaining foreign information relating to market activity, clearing activity, or customer identity, or in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[22] for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register** because it will enable the Exchange to immediately consider listing and trading the Fund Options, similar to products already traded on the Exchange,[23] and because it does not raise any new regulatory issues.

18, 2007) (SR-CBOE–2007–43); and 55491 (March 19, 2007), 72 FR 14145 (March 26, 2007) (SR-CBOE–2006–95).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] See Securities Exchange Act Release No. 56778 (November 9, 2007), 72 FR 65113 (November 19, 2007) (SR–Amex–2007–100).

[18] In approving this 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).

[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* note 9; *See also* New Product Release, *supra* note 13.

[21] *See supra* note 9.

[22] 15 U.S.C. 78s(b)(2).

[23] *See supra* note 14.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–CBOE–2007–140) be, and it hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25199 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57007; File No. SR–CHX–2007–17]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Elimination of Provisions Relating to Rule 10a–1

December 20, 2007.

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 August 31, 2007, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), and on October 22, 2007 amended, the proposed rule change as described in Items I and II below, which Items have been substantially prepared by CHX. CHX has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act.[3] 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

Through this filing, the Exchange proposes to amend its rules to eliminate all provisions that would impose a "price test" in connection with the short sale of securities or require that CHX's Matching System operate in a manner consistent with such a price test.

The text of this proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm,* and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

On June 28, 2007, the Commission approved final rules eliminating the price test of Rule 10a–1[4] and amending Regulation SHO.[5] The Commission's action prohibits any self-regulatory organization from having a price test and removes the "short exempt" marking requirement of Rule 200(g). The compliance date for these changes ("Compliance Date") was July 6, 2007.

The Exchange's rules currently include several provisions that should be eliminated to ensure that the Exchange's rules do not improperly impose a price test or otherwise require handling of short sale orders in a manner inconsistent with the Commission's latest action. Among others, these provisions include a requirement that participants effect short sales in compliance with Rule 10a–1; a description of the Matching System's repricing of sell short orders, when necessary to comply with Rule 10a–1; and a requirement that participants mark orders as "short exempt."[6] Through this filing, the Exchange would eliminate these provisions.

The Exchange filed Amendment No. 1 to the proposal to confirm that it is not eliminating a section of its "Short Sales" rule that imposes a requirement that a market maker notify the Exchange if it has a position in a security that is greater than or equal to 5% of the outstanding public float of that security, as determined by the company's most recent report on Form 10–K.[7] The Exchange's original proposal had sought to remove this provision from its rules.[8]

2. Statutory Basis

The proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] The Exchange believes that the proposed change is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by modifying CHX's rules to comply with the Commission's amendments to Rule 10a–1 and Regulation SHO.

B. Self-Regulatory Organization's Statement of 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 Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.10a–1.

[5] *See* Securities Exchange Act Release No. 34–55970 (June 28, 2007).

[6] *See* Article 9, Rule 23(a); Article 20, Rule 8(e)(5); and Article 11, Rules 3 and 4, respectively. Other provisions that must be eliminated are ones that relate to the "short exempt" order type and that refer to Rule 10a–1. *See* Article 1, Rule 2(hh) and Article 20, Rule 4(b)(23) (the "short exempt" order type); and Article 1, Rule 1(w) (referring to Rule 10a–1).

[7] *See* Article 9, Rule 23(b).

[8] This provision is one that apparently was inadvertently carried over from the Exchange's old trading model and is not necessary in the Exchange's new trading model. A separate provision of the Exchange's new trading model rules specifically requires that market makers keep data about their positions and report that information to the Exchange upon request. *See* Article 16, Rule 10. The Exchange will file a separate proposal to eliminate this provision, if it continues to believe that it is appropriate to do so.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

may designate, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] 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.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay of the proposal. The Commission believes that such waivers are consistent with the protection of investors and the public interest because the proposed rule change conforms CHX's rules to currently effective Commission Rules.[13] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–CHX–2007–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2007–17. 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, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2007–17 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of waiving the 30 day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56972; File No. SR–NASD–2007–035]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a/ Financial Industry Regulatory Authority, Inc.); Order Granting Approval of a Proposed Rule Change Related to Mandated Use of an Automated Liability Notification System

December 14, 2007.

I. Introduction

On May 25, 2007, the National Association of Securities Dealers, Inc. ("NASD")[1] filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] Notice of the proposal was published in the **Federal Register** on October 17, 2007.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

NASD Rule 11810(i) sets, forth the procedures that must be followed when a party is owed securities that have become the subject of a voluntary corporate action, such as a tender or exchange offer is seeking delivery of those securities. Under Rule 11810(i), the owed party delivers a liability notice to the owing or failing party. The liability notice sets a cut off date for the delivery of the securities by the owing party and provides notice to the owing party that it will be held liable for any damages caused by its failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

If the owing party delivers the securities in response to the liability notice, it has met its delivery obligation. If the owing party fails to deliver the securities in sufficient time for the owed party to participate in the voluntary corporate action, it will be liable for any damages that may accrue thereby (*i.e.*, the owing party must deliver proceeds equivalent to the proceeds that the owed party would have received if it had been able to participate in the offer). The owed party has the responsibility to communicate its intentions to the owing party and to prove, if necessary, that the owing party received the liability notice.

Prior to this proposed rule change, Rule 11810(i) required broker-dealers to send liability notices using "electronic media having immediate receipt capabilities." Although there was no one acceptable means for sending and tracking liability notices, NASD members advised the NASD that it was industry practice to send liability notices by fax. However, sending liability notices by fax is a manual, paper-intensive process that is subject to error. The financial risk to an owing firm that misses or incorrectly processes a liability notice relating to a voluntary corporate action can be considerable.

In response to industry need for a reliable and uniform method of transmitting liability notices, The Depository Trust Company ("DTC") developed the SMART/Track for Corporate Action Liability Notification Service ("SMART/Track"). SMART/Track is a web-based system for the communication of corporate action

[1] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA") in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 56639 (October 11, 2007), 72 FR 58918 (October 17, 2007) [File No. SR–NASD–2007–035].

liability notices that allows DTC participants and National Securities Clearing Corporation clearing members to create, send, process, and tract such notices. Transmitting liability notices through SMART/Track eliminates paper liability notices and provides firms with an electronic, centralized system for the distribution, management and control of liability notices. Use of SMART/Track helps reduce the risks, costs, and delays resulting from missing or inaccurate information associated with paper corporate action liability notices. Specifically, provides participants with (1) more timely receipt and distribution of corporation action liability notifications, (2) a centralized system to manage and control all liability notifications on all issues, (3) immediate identification of the security affected by a corporate action liability notification, (4) detailed disclosure and clearer explanation of the terms and conditions of the corporate action, and (5) an audit trail with a complete record of actions taken regarding a liability notice.

As amended, NASD Rule 11810(i) mandates the use of the automated liability notification system of a registered clearing agency when the parties to a failed contract involving securities that have become the subject of a voluntary corporate action are both participant in a clearing agency that has an automated service for corporate action liability notices.[4] When either or both parties to such a contract are not participants in a registered clearing agency that has an automated service for corporate action liability notices, Rule 11810(i) continues to require the liability notice to be issued using written or comparable electronic media having immediate receipt capabilities.

NASD will announce the effective date of the proposed rule change in a "Notice to Members" that will be published no later than sixty days from the date of approval of this rule change. The NASD anticipates that the effective date of the rule change will be thirty days following publication of the Notice to Members announcing the Commission's approval.

III. Discussion

Section 15A(b)(6) of the Act requires, among other things, that the rules of a securities association be designed to remove impediments 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.[5] The proposed rule change is consistent with the provisions of the Act because by eliminating the use of paper corporate action liability notices and requiring the use of a registered clearing agency's automated service for corporate action liability notices where available, the proposed rule change should help reduce the risks, costs, and delays resulting from missing or inaccurate information associated with paper corporate action liability notices.

Accordingly, for the reasons stated above the Commission finds that the rule change, is consistent with FINRA's obligation under Section 15A(b)(6) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 15a(b)(6) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASD–2007–035) be and hereby is approved.

For the Commission by the Division of Trading and Practices, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25179 Filed 12–27–07; 8:45 am]

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[4] Currently DTC is the only registered clearing agency operating an automated corporate liability notification service.

[5] 15 U.S.C. 78o–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57010; File No. SR–FINRA–2007–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Create Exception to Principal Approval Requirements for Certain Filed Sales Material

December 20, 2007.

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 November 1, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 substantially prepared by FINRA. 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

FINRA is proposing to amend NASD Rule 2210 (Communications with the Public) to create an exception from the principal approval requirements for certain filed sales material. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications With the Public

(a) No Change.

(b) Approval and Recordkeeping.

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

(*A*) A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department ("Department").

(*B*) With respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, [this requirement] *the requirements of paragraph (A)* may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(*C*) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.

(*D*) *The requirements of paragraph (A) shall not apply with regard to any advertisement, item of sales literature, or independently prepared reprint if, at the time that a member intends to publish or distribute it:*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(i) *another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and*

(ii) *the member using it in reliance upon this paragraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.*

(2) Recordkeeping

(A) Members must maintain all advertisements, sales literature, and independently prepared reprints in a separate file for a period *beginning on the date* of *first use and ending* three years from the date of last use. The file must include:

(i) *a copy of the advertisement, item of sales literature or independently prepared reprint, and the dates of first and (if applicable) last use of such material;*

(*ii*) the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given, *unless such approval is not required pursuant to paragraph (b)(1)(D); and*

(iii) for any advertisement, item of sales literature or independently prepared reprint for which principal approval is not required pursuant to paragraph (b)(1)(D), the name of the member that filed the advertisement, sales literature or independently prepared reprint with the Department, and a copy of the corresponding review letter from the Department.

(B) No Change.

(c) through (e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

NASD Rule 2210 (Communications with the Public) requires that a registered principal of a FINRA member firm approve in writing all advertisements, sales literature, and independently prepared reprints (collectively, "sales material") prior to use. Certain types of sales material, such as advertisements and sales literature concerning mutual funds or variable insurance products must be filed with the FINRA Advertising Regulation Department ("Department").

For funds and variable products that are sold through intermediary firms, a registered principal at the fund's or variable product's underwriter typically approves sales material internally and files the material with the Department. FINRA rules require registered principals at each of the intermediary firms that use the underwriter's sales material to re-approve in writing each of these items used by their firms. (The intermediary firm is not required to re-file the sales material with the Department so long as it is used without material change.) If firms have selling agreements with multiple fund families and insurance companies, the number of items that require re-approval can easily be in the hundreds, and often thousands, per firm annually.

Based on recommendations made by its Small Firms Rules Impact Task Force,[3] and to eliminate what FINRA regards as a compliance redundancy, FINRA is proposing to create an exception to Rule 2210's registered principal approval requirements for intermediary firms that use the sales material of another firm. The exception would apply only to sales material that another firm has filed with the Department, and for which the Department has issued a review letter finding that the material appears to be consistent with applicable standards.

The intermediary firm that relies on this exception could not materially alter the sales material or use it in a manner that is inconsistent with any conditions stated in the Department's review letter. For example, if the Department's review letter was based in part upon the representation by the filing firm that the sales material would be accompanied by a fund prospectus, the intermediary firm would be subject to a similar constraint.

Although FINRA anticipates that firms will utilize the exception primarily with respect to mutual fund and variable insurance product sales material, the exception is not limited to sales material for particular products. Thus, the exception also would apply to sales material for other products, such as real estate investment trusts or direct participation programs, provided the sales material meets the exception's requirements.

If this exception were adopted, FINRA believes it would save intermediary firms' compliance personnel numerous hours that are currently spent reviewing sales material that has already been approved by a registered principal at the product underwriter, and that the Department staff also has reviewed and found to be consistent with applicable standards. Of course, some firms may want to continue to review this sales material, and the proposal would allow them to do so.[4]

The proposed rule change would also revise certain of the advertising recordkeeping requirements. Today, Rule 2210(b)(2)(A) states that firms must maintain a copy of all sales material for a period of three years from the date of last use. Existing practice has been to assume that the record-keeping requirement begins on the date of first use. The proposal would codify this position. For sales material subject to the principal approval exception, firms would have to keep a record of the name of the firm that filed the sales material and a copy of the related FINRA review letter.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be the date FINRA publishes the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that creation of an exception that eliminates

[3] NASD established the Small Firms Rules Impact Task Force in September 2006 to examine how existing NASD rules impact smaller firms. In particular, the Task Force focuses on possible opportunities to amend or modernize certain conduct rules that may be particularly burdensome for small firms, where such changes are consistent with investor protection and market integrity.

[4] The proposed rule change would not affect the contractual obligations that exist between underwriters and intermediary firms. Some dealer agreements may, for example, restrict the ability of underwriters and product wholesalers to send their sales material directly to a retail firm's sales force. These restrictions can facilitate the intermediary firm's ability to supervise its sales force. The proposed rule change would not alter the underwriter's obligations to comply with these contractual restrictions.

[5] 15 U.S.C. 78o–3(b)(6).

the requirement for firms to re-approve sales material in limited circumstances where a registered principal of a firm has previously approved the sales material and the Department has previously supplied a favorable review letter is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest. This exception from the principal approval requirements of Rule 2210 will eliminate a current compliance redundancy and will continue to protect investors, since the initial firm creating all sales material subject to this exception will still have to obtain approval from its registered principal, file it for review with the Department, and obtain a favorable review letter from the Department.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether such 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–FINRA–2007–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2007–020. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2007–020 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25191 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57020; File No. SR–FINRA–2007–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto to Amend Trade Reporting Rules to Require Related Market Center Indicator on Certain Non-Tape Reports Submitted to FINRA

December 20, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2007, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD") 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 substantially prepared by FINRA.[3] On December 18, 2007, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend its trade reporting rules to require that on any non-tape report (a non-tape, non-clearing report or a clearing-only report) submitted to a FINRA Facility (*i.e.*, the Alternative Display Facility ("ADF"), a Trade Reporting Facility ("TRF")[4] or the OTC Reporting Facility ("ORF")) associated with a previously executed trade that was not reported to that same

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

[4] Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Accordingly, the TRFs are now doing business as the FINRA TRFs (*i.e.*, the FINRA/Nasdaq TRF, the FINRA/NSX TRF and the FINRA/NYSE TRF). The formal name change of each TRF is pending and once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

FINRA Facility, members identify the facility or market where the associated trade was reported. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

Background

Certain transactions can be trade reported in related tape (*i.e.*, the transaction is reported to the tape for publication) and non-tape (*i.e.*, the transaction is not reported to the tape for publication but is reported for clearing or regulatory purposes) reports. Non-tape reports can be (1) "non-tape, non-clearing," *i.e.* the transaction is not reported to the tape and is submitted to FINRA for regulatory—and not clearing—purposes, or (2) "clearing-only," *i.e.*, the transaction is not reported to the tape and is submitted to FINRA for clearing (and perhaps also regulatory) purposes.

A riskless principal transaction[5] can be submitted to FINRA as a single trade report properly marked as riskless principal, or as two separate reports: (1) A tape report to reflect the initial leg of the transaction and (2) a non-tape report to reflect the offsetting, "riskless" leg of the transaction. For example, where the initial leg of a riskless principal transaction is executed on and reported through an exchange (often referred to as the "street leg" or "street side"), a tape report is not submitted to FINRA to reflect the initial leg; however, members are permitted, but not required, to submit a non-tape report to FINRA for the offsetting, "riskless" leg of the transaction. Similarly, agency transactions where one member acts as agent on behalf of another member, which transactions are the functional equivalent of riskless principal transactions, can also be reported in related tape and non-tape reports. Thus, for example, similar to the riskless principal reporting structure, where Member A, as agent for Member B, executes a trade on an exchange (and that trade is reported to the tape through the exchange), Member A may submit a non-tape report to FINRA to reflect the offsetting portion of the agency trade between Member A and Member B.[6] Currently, a non-tape report provides no specific information pertaining to a related tape report and as such, it is difficult for FINRA to determine where the associated trade was reported, especially if that trade was reported to an exchange or another FINRA Facility.

Proposed Amendments to NASD Rules 6130, 6130A, 6130C and 6130E

FINRA is proposing to amend NASD Rules 6130 (relating to the NASD/Nasdaq TRF and ORF), 6130A (relating to the ADF), 6130C (relating to the NASD/NSX TRF) and 6130E (relating to the NASD/NYSE TRF) to require that on any non-tape report (either a non-tape, non-clearing report or a clearing-only report) submitted to a FINRA Facility associated with a previously executed trade that was not reported to that same FINRA Facility, members must identify the facility or market where the associated trade was reported. The proposed rule change also requires that members retain and produce to FINRA, upon request, documentation relating to the associated trade (*e.g.*, a confirmation from the exchange identifying the "street side" of a riskless principal transaction).

For example, pursuant to the proposed rule change, if the initial leg of a riskless principal (or agency) transaction is executed on and reported through the Nasdaq Exchange, a member submitting a non-tape report for the offsetting leg of the transaction to the NASD/Nasdaq TRF would be required to use a special indicator on that report to designate that the initial leg was reported through the Nasdaq Exchange. By way of further example, if the initial leg is executed otherwise than on an exchange and reported to the NASD/NYSE TRF, a member submitting a non-tape report for the offsetting leg to the NASD/Nasdaq TRF would be required to use a special indicator on that report to designate that the initial leg was reported to the NASD/NYSE TRF. Finally, if the initial leg is executed on and reported through a foreign exchange,[7] a member submitting a non-tape report for the offsetting leg to the ORF would be required to use a special indicator on that report to designate that the initial leg was reported through a foreign exchange.

In addition, FINRA is proposing to clarify and consolidate into a single paragraph in NASD Rules 6130, 6130A, 6130C and 6130E the rules relating to the submission of non-tape reports associated with previously executed trades. Pursuant to current Rules 6130(i), 6130A(d), 6130C(h) and 6130E(h), members are prohibited from submitting to a FINRA Facility any non-tape report, including but not limited to reports of step-outs and reversals, associated with a previously executed trade that was not reported to that FINRA Facility, except where such report reflects the offsetting, "riskless" portion of a riskless principal transaction.[8] This exception also applies to agency transactions where a FINRA member is acting as agent on behalf of another FINRA member.[9] The requirement proposed herein, *i.e.*, that a member identify on a non-tape report the market or facility where an associated trade was reported, would apply where a transaction falls within this exception for riskless principal or agency transactions and the related tape and non-tape reports are submitted to different FINRA Facilities or the non-tape report is associated with a trade that was reported to the tape through an exchange. Thus, for ease of reference, FINRA is proposing to include the proposed requirement that members identify the facility or market where the associated trade was reported in the same paragraph with the prohibition on the submission of certain non-tape reports to FINRA in current NASD Rules 6130(i), 6130A(d), 6130C(h) and 6130E(h) and to clarify that the proposed requirement applies where a non-tape report is permitted pursuant to current Rules 6130(i), 6130A(d), 6130C(h) and 6130E(h).

[5] For purposes of over-the-counter trade reporting requirements applicable to equity securities, a "riskless principal" transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal (the initial leg) and satisfies the original order by selling (buying) as principal at the same price (the offsetting, "riskless" leg).

[6] *See* FINRA *Regulatory Notice* 07–38 (August 2007).

[7] This leg would not be reported to FINRA pursuant to NASD Rule 6620(g).

[8] *See* Securities Exchange Act Release No. 55962 (June 26, 2007), 72 FR 36536 (July 3, 2007) (notice of filing and immediate effectiveness of SR–NASD–2007–040). SR–NASD–2007–040 became operative on November 5, 2007. *See also* FINRA *Regulatory Notice* 07–38 (August 2007).

[9] *See* FINRA *Regulatory Notice* 07–38 (August 2007).

FINRA believes that the proposed rule change will promote a more complete and accurate audit trail. Additionally, the proposed rule change will help ensure that members are not using non-tape reports to circumvent FINRA or Commission rules (*e.g.*, trade-through rules).

FINRA will announce the operative date of the proposed rule change on its Web site. In recognition of the technological and systems changes that the proposed rule change will require, the operative date will be at least 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote a more complete and accurate audit trail.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 FINRA 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–FINRA–2007–012 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2007–012. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2007–012 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25206 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56992; File No. SR–ISE–2007–119]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Amendment of International Securities Exchange Holdings, Inc.'s Certificate of Incorporation and Trust Agreement

December 19, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2007, the International Securities Exchange, LLC (the "ISE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. The ISE filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(3) 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 Exchange is proposing to make technical changes to the trust agreement (the "Trust Agreement") and the certificate of incorporation (the "Certificate of Incorporation") of its parent, International Securities Exchange Holdings, Inc. ("Holdings"), which will be adopted in connection with a corporate transaction (the "Transaction"), in which Holdings will become a wholly-owned indirect subsidiary of Eurex Frankfurt AG.

Certificate of Incorporation

The Exchange is proposing to make a technical change to the Certificate of Incorporation to correct the address of Holdings' registered address in the state of Delaware. Specifically, Article SECOND of the Certificate of Incorporation would be amended to read in its entirety as follows:

SECOND: The address of the Corporation's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, City of Dover, County

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 19b–4(f)(3).

of Kent, Delaware 19901. The name of its registered agent at such address is National Registered Agents, Inc.

Trust Agreement

In addition, the ISE is proposing to make a technical change to the Trust Agreement to provide that the full name of the trust is the "International Securities Exchange Trust." Specifically, section 2.1 of the Trust Agreement would be amended to read in its entirety as follows:

Name. The name of the Trust shall be the International Securities Exchange Trust (the "ISE Trust").

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

On December 13, 2007, the Commission approved a rule filing submitted by the Exchange in connection with the Transaction [5] which included the Certificate of Incorporation and the Trust Agreement. The purpose of this rule filing is to make technical changes to the Trust Agreement and the Certificate of Incorporation necessary to permit the Exchange and Holdings to effect the Transaction. The Exchange is proposing to make a technical change to the Certificate of Incorporation to correct the address of Holdings' registered address in the State of Delaware. In addition, the ISE is proposing to make a technical change to the Trust Agreement to provide that the full name of the trust is the "International Securities Exchange Trust."

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) of the Act [6] 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will permit the ISE to effect the Transaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and has, therefore, become effective pursuant to section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(3) [8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–ISE–2007–119 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–119. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2007–119 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25180 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Securities Exchange Act Release No. 56944 (December 13, 2007) (SR–ISE–2007–101).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 19b–4(f)(3).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57014; File No. SR–ISE–2007–111]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To List and Trade Options on the iShares MSCI Mexico Index Fund

December 20, 2007.

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 November 16, 2007, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to list and trade options on the iShares MSCI Mexico Index Fund (the "Fund Options"). ISE is not proposing any changes to the rules of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to obtain approval to list for trading on the Exchange options on the iShares MSCI Mexico Index Fund ("Fund"). The Exchange currently has in place initial listing and maintenance standards set forth in ISE Rules 502(h) and 503(h), respectively (the "Listing Standards"), that are designed to allow the Exchange to list funds structured as open-end investment companies such as the Fund without having to file for Commission approval to list for trading options on the Fund.[3] The Exchange submits that the Fund meets substantially all of the Listing Standard requirements. In particular, all of the requirements set forth in ISE Rule 502(h) are met except for the requirement concerning the existence of a comprehensive surveillance sharing agreement ("CSSA"). However, the Exchange submits that sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Fund.

The Fund is registered pursuant to the Investment Company Act of 1940 as a management investment company designed to hold a portfolio of securities which track the MSCI Mexico Index ("Index").[4] The Index consists of stocks traded primarily on the Bolsa Mexicana de Valores (the "Bolsa"). The Fund employs a "representative sampling" methodology to track the Index, which means that the Fund invests in a representative sample of securities in the Index that have a similar investment profile as the Index.[5] Barclays Global Fund Advisors ("BGFA" or the "Adviser") expects the Fund to closely track the Index so that, over time, a tracking error of 5%, or less, is exhibited. Securities selected by the Fund have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Index. The Fund will not concentrate its investments (i.e., hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except, to the extent practicable, to reflect the concentration in the Index. The Fund will invest at least 80% of its assets in the securities comprising the Index and/or in American Depositary Receipts ("ADRs"). In addition, at least 90% of the Fund's assets will be invested in the securities comprising the Index or in other related Mexican securities or ADRs. The Fund may also invest its other assets in futures contracts, options on futures contracts, listed options, over-the-counter ("OTC") options and swaps related to the Index, as well as cash and cash equivalents. The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

Shares of the Fund ("Fund Shares") are issued and redeemed, on a continuous basis, at net asset value ("NAV") in aggregation size of 100,000 shares, or multiples thereof (a "Creation Unit"). Following issuance, Fund Shares are traded on an exchange like other equity securities. The Fund Shares trade in the secondary markets in amounts less than a Creation Unit and the price per Fund Share may differ from its NAV which is calculated once daily as of the regularly scheduled close of business of the New York Stock Exchange ("NYSE").[6]

State Street Bank and Trust Company, the administrator, custodian, and transfer agent for the Fund, calculates the Fund's NAV. Detailed information on the Fund can be found at *http://www.ishares.com*.

The Exchange has reviewed the Fund and determined that the Fund Shares satisfy the Listing Standards except for the requirement set forth in ISE Rule 502(h)(1), which requires the Fund to meet the following condition: "any non-U.S. component stocks in the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio." The Exchange currently does not have in place a surveillance agreement with Bolsa.

The Exchange understands that the Commission has been willing to allow a national securities exchange to rely on a memorandum of understanding entered into between regulators in the event that the exchanges themselves cannot enter into a CSSA.

The Exchange further understands that the American Stock Exchange ("Amex") has previously attempted to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE Rules 502(h) and 503(h) set forth the initial listing and maintenance standards for registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or other similar entities that are traded on a national securities exchange or through the facilities of a national securities exchange.

[4] Morgan Stanley Capital International Inc. ("MSCI") created and maintains the Index.

[5] As of July 31, 2007, the Fund was comprised of 27 securities. America Movil SA de CV–Series L had the greatest individual weight at 25.57%. The aggregate percentage weighting of the top 5 and 10 securities in the Fund were 58.51% and 78.39%, respectively.

[6] The regularly scheduled close of trading in the NYSE is normally 4:00 p.m. Eastern Time ("ET").

enter into a surveillance agreement with Bolsa as part of seeking approval to list and trade options on the Mexico Index.[7] The Chicago Board Options Exchange ("CBOE") has also previously attempted to enter into a surveillance agreement with Bolsa at or about the time when the CBOE sought approval to list for trading options on the CBOE Mexico 30 Index in 1995, which was comprised of stocks trading on Bolsa.[8] Since Bolsa was unable to provide a surveillance agreement, the Commission allowed the CBOE to rely on the memorandum of understanding executed by the Commission and the CNBV,[9] dated as of October 18, 1990 ("MOU").[10] The Commission noted that in cases where it would be impossible to secure a CSSA, the Commission relied in the past on surveillance sharing agreements between the relevant regulators.[11] The Commission further noted that, pursuant to the terms of the MOU, it was the Commission's understanding that both the Commission and the CNBV could acquire information from, and provide information to, the other similar to that which would be required in a CSSA between exchanges and, therefore, should the Exchange or the CBOE need information on Mexican trading in the component securities of the Mexico Index or the CBOE Mexico 30 Index, the Commission could request such information from the CNBV under the MOU.[12]

The practice of relying on surveillance agreements or MOUs between regulators when a foreign exchange was unable, or unwilling, to provide an information sharing agreement was affirmed by the Commission in the Commission's New Product Release ("New Product Release").[13] The Commission noted in the New Product Release that if securing a CSSA is not possible, an exchange should contact the Commission prior to listing a new derivative securities product. The Commission also noted that it may determine instead that it is appropriate to rely on a memorandum of understanding between the Commission and the foreign regulator.

The Exchange has also recently contacted Bolsa with a request to enter into a surveillance agreement. Until such time that the Exchange is able to secure a surveillance agreement with Bolsa, the Exchange requests that the Commission allow the listing and trading of the Fund Shares without a CSSA, upon reliance on the MOU entered into between the Commission and the CNBV. The Exchange believes this request is reasonable and notes that the Commission has provided similar relief in the past. For example, the Commission approved, on a pilot basis, an ISE proposal to list and trade options on the iShares MSCI Emerging Markets Fund.[14]

The Commission's approval of this request to list and trade options on the Fund would otherwise render the Fund compliant with all of the Listing Standards.

2. Statutory Basis

The basis for this proposed rule change is found in section 6(b)(5) of the Act,[15] in that the proposed change will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Further, this proposed rule change is similar to a proposal previously submitted by Amex and recently approved by the Commission.[16]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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–ISE–2007–111 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–111 and should be submitted on or before January 18, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

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[7] *See* Securities Exchange Act Release No. 34500 (August 8, 1994), 59 FR 41534 (August 12, 1994).

[8] *See infra* New Product Release at note 13.

[9] The National Commission for Banking and Securities, or "CNBV," is Mexico's regulatory body for financial markets and banking.

[10] *See* Securities Exchange Act Release No. 36415 (October 25, 1995), 60 FR 55620 (November 1, 1995) (SR–CBOE–95–45).

[11] *Id.*

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998), at note 101.

[14] *See* Securities Exchange Act Release No. 56324 (August 27, 2007), 72 FR 50426 (August 31, 2007) (SR–ISE–2007–72).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release No. 56778 (November 9, 2007), 72 FR 65113 (November 19, 2007) (SR–Amex–2007–100).

exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[18] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The listing of the Fund Options does not fully satisfy ISE's applicable Listing Standards, specifically the requirement set forth in ISE Rule 502(h)(1), which requires the Fund to meet the following condition: "Any non-U.S. component stocks in the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio." The Exchange currently does not have in place a surveillance agreement with Bolsa.

The Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators where the listing SRO finds it impossible to enter into an information sharing agreement.[19] In this case, ISE has attempted unsuccessfully to reach such an agreement with Bolsa.

Consequently, the Commission has determined to approve CBOE's listing and trading of the Fund Options and to allow ISE to rely on the MOU[20] with respect to the underlying Fund components trading on Bolsa. The Commission believes that, regardless of the Commission's willingness to permit reliance on the MOU, ISE should continue to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (1) Express language addressing market trading activity, clearing activity, and customer identity; (2) the Bolsa's reasonable ability to obtain access to and produce requested information; and (3) based on the CSSA and other information provided by the Bolsa, the absence of existing rules, law or practices that would impede the Exchange from obtaining foreign information relating to market activity, clearing activity, or customer identity, or in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with section 19(b)(2) of the Act,[21] for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register** because it will enable the Exchange to immediately consider listing and trading the Fund Options, similar to products already traded on the Exchange,[22] and because it does not raise any new regulatory issues.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–ISE–2007–111) be, and it hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25200 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[17] In approving this 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).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 10; *See also* New Product Release, *supra* note 13.

[20] *See supra* note 10.

[21] 15 U.S.C. 78s(b)(2).

[22] *See supra* note 14.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57015; File No. SR-ISE–2007–117]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Amendment of the Exchange's Amended and Restated Constitution

December 20, 2007.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2007, the International Securities Exchange, LLC ("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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as one concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) 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.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Amended and Restated Constitution. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and on the Exchange's Internet Web site at *http://www.ise.com.*

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 purpose of this proposed rule change is to amend the Exchange's Constitution to make a clarifying change relating to the qualifications of the Chairman of the Board of Directors of the Exchange. Specifically, the Exchange previously amended its Constitution[5] to allow for the election of a Former Employee Director[6], with the intention that such Former Employee Director, if appointed, would be eligible to serve as the Chairman of the Board of Directors of the Exchange. However, in order to accomplish its intention, the Exchange must further amend the Constitution to explicitly

[5] Securities Exchange Act Release No. 56211 (August 6, 2007), 72 FR 45287 (August 13, 2007) (SR–ISE–2007–34).

[6] Section 3.2(b)(vi) of the Constitution provides that "[t]he Sole LLC Member may, in its sole and absolute discretion, elect one (1) additional director who shall meet the requirements of "Non-Industry Directors," except that such person was employed by the Exchange at any time during the three (3) year period prior to his or her initial election (the "Former Employee Director")."

provide that a Former Employee Director may become the Chairman of the Board of Directors of the Exchange. This proposed rule change will not affect the prohibition on an "industry representative" becoming Chairman of the Board of Directors of the Exchange as currently provided under the Constitution.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(1)[7] that an exchange be so organized and to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)[8] or 19(g)(2) of the Act[9]) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the exchange. The Exchange also believes this proposed rule change furthers the objective of Section 6(b)(5)[10] that an exchange have rules that, among other things, are designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(iii)[11] of the Act and Rule 19b–4(f)(3)[12] thereunder because it was designated by the Exchange as concerned solely with the administration of the Exchange. 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-ISE–2007–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–117. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office 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 No. SR–ISE–2007–117 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25201 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b)(1).
[8] 15 U.S.C. 78q(d).
[9] 15 U.S.C. 78s(g)(2).
[10] 15 U.S.C. 78f(b)(5).
[11] 15 U.S.C. 78s(b)(3)(A)(iii).
[12] 17 CFR 240.19b–4(f)(3).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57019; File No. SR–ISE–2007–120]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 710, Minimum Trading Increments

December 20, 2007.

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 December 17, 2007, the International Securities Exchange, LLC ("ISE" 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 substantially prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with 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

ISE proposes to amend Rule 710, Minimum Trading Increments, to decrease the size of the minimum quoting and trading increments applicable to the Exchange's foreign currency options ("FX options"). The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.ise.com*.

[13] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).

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. ISE 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

ISE proposes to amend its Rule 710, Minimum Trading Increments, to decrease the size of the minimum quoting and trading increments applicable to the Exchange's FX options.[5] The Exchange believes that by reducing the minimum trading increments applicable to ISE's FX options, the proposed rule change will provide market participants with additional trading opportunities in this product. Further, quoting and trading in smaller increments will enable market participants to trade FX options with greater precision as to price.

Currently, FX options traded on the Exchange have minimum increments of $0.05 or $0.10 depending on the price at which an FX option is quoting. Specifically, under the Exchange's current rules, the minimum trading increment for an FX options contract trading at less than $3.00 is $0.05, and for an FX options contract trading at $3.00 or higher, the minimum trading increment is $0.10. The proposed amendment to Rule 710 would set the minimum increment for all FX options at $0.01 regardless of the price at which the option is quoting. Although FX options would be trading in these narrower increments, they would not actually be trading in pennies[6] and would not be considered part of the Exchange's pilot program currently applicable to certain equity options.[7]

Currently, options on currency futures trade in these smaller increments on the Chicago Mercantile Exchange. Also, currencies trade on the cash market in these smaller increments. Further, the Commission recently approved a proposed rule change by the Philadelphia Stock Exchange ("Phlx") permitting that exchange to trade its U.S. dollar-settled foreign currency options in $0.01 increments.[8] As a competitive matter, ISE seeks the opportunity to offer market participants those same, more refined increments. The Exchange notes that providing these more refined increments will permit the Exchange's market makers the opportunity to provide better fills (meaning less spread than the current wider minimum increments rules allow) to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii) under the Act, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change to become operative on January 2, 2008.[9] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to start trading FX options in the same increments and at the same time as Phlx. For the reasons stated above, the Commission therefore designates the proposal to become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate

[5] The Exchange began trading FX options on the Euro, the British pound, the Japanese yen and the Canadian dollar on April 17, 2007. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (approving SR–ISE–2006–59).

[6] The Exchange notes that ISE's FX options have underlying values that modify the magnitude of traditionally quoted exchange rates that appear in the underlying foreign currency markets. As a result, the "rate-modified" FX options traded on the Exchange are quoted to reflect the sub-penny movements in the actual exchange rate of any underlying currency. Since all premiums in ISE's FX options are quoted in U.S. Dollars, customers will be able to trade this product in one-cent increments. Thus, while the Exchange's proposal seeks to set the minimum increment for all FX options at $0.01, the quoted values reflect much smaller currency increments with respect to the exchange rate of the underlying currency.

[7] The penny pilot, which permits certain options series to be quoted and traded in increments of $0.01, began on January 26, 2007. See Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (approving SR–ISE–2006–62). The penny pilot was extended through September 27, 2007. See Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (approving SR–ISE–2007–68). The penny pilot has been extended again through March 27, 2009. See Securities Exchange Act Release No. 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007) (approving SR–ISE–2007–74). With one exception, all series in options included in the penny pilot trading at a price of less than $3.00 are currently quoted and traded in minimum increments of $0.01, and those with a price of $3.00 or higher are currently quoted and traded in minimum increments of $0.05. A list of the options to be included in the penny pilot was communicated to the Exchange's members via a Regulatory Information Circular.

[8] *See* Securities Exchange Act Release No. 56933 (December 7, 2007), 72 FR 71185 (December 14, 2007) (approving SR–Phlx–2007–70).

[9] The Exchange also may decide to start using these smaller trading increments later than January 2, 2007. Telephone conversation between Samir M. Patel, Assistant General Counsel, ISE, and Natasha Cowen, Special Counsel, Division of Trading and Markets, Commission, dated December 19, 2007.

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–ISE–2007–120 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–120. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. 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–ISE–2007–120 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57002; File No. SR–MSRB–2007–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule G–14, Reports of Sales or Purchases, to Extend the Expiration Date of the Three-Hour Exception to the Fifteen-Minute Reporting Deadline

December 20, 2007.

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 November 27, 2007, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), 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 MSRB. The MSRB has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) of the Act,[3] 3 and Rule 19b–4(f)(6) 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 MSRB is filing with the Commission a proposed rule change consisting of an amendment to MSRB Rule G–14, Reports of Sales or Purchases (the "proposed rule change"). The proposed rule change would extend the expiration date of the three-hour exception to the fifteen-minute reporting deadline for certain when, as and if issued transactions under Rule G–14 RTRS Procedures, paragraph (a)(ii)(C). Under the current language of this provision, the three-hour reporting exception will automatically expire December 31, 2007. The proposed rule change provides that the three-hour exception will expire on June 30, 2008 in order to coincide with the effective date of other proposed changes to MSRB rules designed to improve transaction reporting of new issue municipal securities. The MSRB proposes an effective date for this proposed rule change of December 31, 2007. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

MSRB Rule G–14, on transaction reporting, requires all brokers, dealers and municipal securities dealers ("dealers") to report all transactions in municipal securities to the MSRB Real-Time Transaction Reporting System ("RTRS") within fifteen minutes of the time of trade execution, with limited exceptions. One exception listed in Rule G–14 RTRS Procedures, paragraph (a)(ii) is a "three-hour exception" that allows a dealer three hours to report a transaction in a when, as and if issued ("when-issued") security if all of the following conditions apply: (i) The CUSIP number and indicative data of the issue traded are not in the securities master file used by the dealer to process trades for confirmations, clearance and settlement; (ii) the dealer has not traded the issue in the previous year; and (iii) the dealer is not a syndicate manager or syndicate member for the issue.

The three-hour exception was designed to give a dealer time to add a security to its "securities master file" so that a trade can be reported through the dealer's automated trade processing systems. A securities master file

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

contains the information about a municipal security issue that is necessary for a dealer to be able to process transactions in the issue. It includes such items as the interest rate, dated date, interest payment cycle, and put and call schedules. The dealer's securities master file often contains information only for securities held in custody for customers and for securities that have been recently traded. If a dealer trades a security that is not in its securities master file, the relevant securities information must be obtained by the dealer from an information vendor before the trade can be processed and reported.[5]

For new issue transactions, a dealer's access to necessary securities information depends not only on its link with an information vendor but also on whether that vendor itself has the information on the new issue. Vendors currently obtain much of their new issue information through voluntary cooperation from underwriters. This process does not always result in all the vendors having the necessary securities information by the time trade executions begin. Dealers trading a new issue for the first time need the three-hour exception from the fifteen-minute trade reporting requirement for their first trades in a new issue because the securities information is not always available at the time the trade is executed.[6]

To address inefficiencies in the collection of new information securities data, Securities Industry and Financial Markets Association ("SIFMA"), industry members, securities information vendors, and other service providers in the municipal securities market have worked extensively with The Depository Trust and Clearing Corporation ("DTCC") to develop a centralized system for collecting and communicating new issue securities information. The system, called the "New Issue Information Dissemination System" ("NIIDS"), will be operated by DTCC and will act as a central collection point for standardized electronic files of new issue information provided by underwriters which will be disseminated in real-time to information vendors. DTCC plans to implement NIIDS in early 2008.[7]

MSRB has filed with the SEC another proposed rule change designed to improve new issue transaction reporting that includes requiring underwriter participation with NIIDS.[8] The proposed effective date for these changes is June 30, 2008. NIIDS, in conjunction with MSRB rules, should make it possible for dealers to report new issue trades earlier and thus eliminate the need for the three-hour exception for when-issued trade reports. Accordingly, an extension of the three-hour exception for when-issued transactions to June 30, 2008 will allow time for NIIDS to be implemented and will ensure that the three-hour exception is available up to the effective date of MSRB rules designed to improve new issue transaction reporting.

The proposed rule change would revise MSRB Rule G–14 RTRS Procedures (a)(ii)(C) by deleting the language regarding the expiration of the three-hour exception on December 31, 2007 and replacing the language to state that for when-issued transactions, the three-hour exception to the fifteen minute reporting rule will expire on June 30, 2008.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[9] which provides that the MSRB's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Act because it will allow the municipal securities industry to produce more accurate trade reporting and transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Although the MSRB did not publish for comment an exposure draft of the proposed rule change, the MSRB received one letter requesting that the expiration of the three-hour exception be extended to no earlier than the time that changes to MSRB rules to require underwriter participation with NIIDS become effective.[10]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from November 27, 2007, the date on which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

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 is consistent with the Act. Comments may be submitted by any of the following methods:

[5] Many dealers use service bureaus for various trade processing functions, including the maintenance of securities master files. Securities master file update procedures for service bureaus are the same as those described for dealers.

[6] In the new issue market, information vendors seek to collect information on each issue and deliver it to customers in time for trade reporting in the new issue. There are several challenges for vendors and dealers to meet the reporting deadlines. For example, there are approximately 15,000 new municipal issues that must be set up in databases each month. Another problem for the industry is the fact that approximately 85 different information fields for each issue must be successfully gathered, which in large part depends on the timely cooperation of the underwriters.

[7] In addition to providing an improved mechanism for disseminating the new issue information necessary for trade processing, the system also would use the information for purposes of establishing depository eligibility for new issues. DTCC plans to require use of the New Underwriting System ("NUWS"), of which NIIDS is a component, beginning in April 2008.

[8] *See* File Number SR–MSRB–2007–08.

[9] 15 U.S.C. 78o–4(b)(2)(C).

[10] *See* letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA to Harold Johnson, Deputy General Counsel, and Justin Pica, Uniform Practice Policy Advisor, MSRB dated October 16, 2007.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *See* Section 19(b)(3)(C) of the Act, 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–MSRB–2007–07 on the subject line.

Paper comments:

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2007–07. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2007–07 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57004; File No. SR–MSRB–2007–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to an Amendment to the Municipal Securities Information Library® System To Establish a Pilot System for Consolidated Dissemination of Disclosure Documents and Related Information Through an Internet-Based Public Access Portal

December 20, 2007.

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 November 15, 2007, the Municipal Securities Rulemaking Board ("MSRB" or "Board") 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 substantially prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change establishing a pilot system for the consolidated dissemination, through an Internet-based public access portal, of disclosure documents and related information received by the MSRB through its existing facilities (the "pilot portal"). The proposed rule change consists of an amendment to the MSRB's existing Official Statement and Advance Refunding Document (OS/ARD) system of the Municipal Securities Information Library® ("MSIL"®) system,[3] under which the pilot portal would be established and operated pending establishment of a permanent Internet-based public access system (the "permanent system"). The MSRB expects the pilot portal to become operational on the later of March 10, 2008 or 5 business days after SEC approval. The MSRB requests approval of the pilot portal for a period of one year from the date it becomes operational, subject to earlier termination upon completion of the transition to the permanent system. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Municipal Securities Information Library and MSIL are registered trademarks of the MSRB. The MSIL system's OS/ARD system was initially approved by the Commission in 1991 and amended in 2001 to establish the current optional electronic submission system. *See* Securities Exchange Act Release No. 29298 (June 13, 1991), 56 FR 28194 (June 19, 1991) (File No. SR–MSRB–1990–2); Securities Exchange Act Release No. 44458 (June 20, 2001), 66 FR 34495 (June 28, 2001) (File No. SR–MSRB–2001–03).

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 MSRB 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 MSRB 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

Rule G–36 requires that a broker, dealer or municipal securities dealer (a "dealer") that acts as managing or sole underwriter for most primary offerings of municipal securities send the official statement ("OS") and Form G–36(OS) to the MSIL system. In addition, if the offering is an advance refunding and an escrow deposit agreement or other advance refunding document ("ARD") has been prepared, the ARD and Form G–36(ARD) also must be sent to the MSIL system by the managing or sole underwriter. OSs and ARDs collected by the MSIL system currently are made available in paper form, subject to copying charges, at the MSRB's public access facility in Alexandria, Virginia, and electronically by paid subscription on a daily over-night basis and by purchase of annual back-log collections.

The proposed rule change will establish, on a pilot basis, an Internet-based public access portal (the "pilot portal") to provide free access to OSs and ARDs received by the MSRB under Rule G–36. Copies of all such OSs and ARDs received by the MSRB on or after implementation of the pilot portal will be made available to the public as portable document format (PDF) files for viewing, printing and downloading at the pilot portal promptly after

acceptance and processing, and will remain publicly available for the life of the municipal securities through the pilot portal or the permanent system. The pilot portal will provide on-line search functions utilizing the MSIL system computer index to ensure that users of the pilot portal are able to readily identify and access documents that relate to specific municipal securities based on a broad range of search parameters. The pilot portal will be designed to provide a user searching for a particular municipal security with a comprehensive display of relevant information concerning such security available from the MSRB's various information systems on a single screen or related set of screens. The pilot portal will provide basic identifying information for the security, direct access to the OS submitted by the underwriter to the MSIL system, price information from the MSRB's Real-Time Transaction Reporting System ("RTRS") for the most recent trades in such security (as well as historical price information), and, if the security has been advance refunded by a refunding issue, any ARDs submitted by the underwriter to the MSIL system in connection with such advance refunding.

The pilot portal will operate for a limited period of time as the MSRB transitions to a permanent integrated system for electronic submissions of all OSs and ARDs to the MSRB and free public access to such documents through a centralized Internet-based portal to be implemented in conjunction with the expected adoption by the MSRB of an "access equals delivery" standard for OS dissemination under Rule G–32, on disclosures in connection with new issues.[4] The functions of the pilot portal, along with other key features of the current MSIL system and additional functional improvements (including but not limited to establishment of real-time subscriptions to the complete document collections processed through the permanent system for re-dissemination or other use by subscribers), will be incorporated into the permanent system. The permanent system is expected to replace the MSIL system once this transition is completed and all critical functions and information stores (including but not limited to the complete OS/ARD back-log collection) of the MSIL system have been transferred to the new permanent system or are able to be handled by other Board processes.

Although the MSRB currently operates CDINet, a service of the MSIL system designed to process and disseminate continuing disclosure information and notices of material events submitted to the MSRB under Exchange Act Rule 15c2–12, the MSRB does not anticipate including information received through CDINet in the pilot portal due to the very limited level of submissions of disclosure information received by CDINet from issuers and their agents.[5] The MSRB believes that making the limited collection of secondary market information available in CDINet accessible to the public through the pilot portal would represent a piecemeal approach that would not be beneficial to the public and could potentially be misleading under certain circumstances. In particular, investors would be required to search through various other sources to find secondary market information for the bulk of the outstanding issues for which information is not available through CDINet and, even if some secondary market information for a particular security is available through CDINet, investors would still need to search through the various other sources to ensure that no additional secondary market information about that security has been submitted elsewhere.

The MSRB recognizes the substantial benefits to the marketplace that would be realized should the Commission determine to modify the existing secondary market disclosure system under Exchange Act Rule 15c2–12 to provide for a centralized electronic submission and dissemination model. The MSRB stands ready to expand its planned electronic submission system under the permanent system to also serve as the central electronic submission system for free filings of all secondary market disclosure under an amended Rule 15c2–12 and to integrate this complete collection of secondary market disclosure information with the MSRB's OS/ARD collection and RTRS data to provide a free comprehensive centralized public access portal for primary market disclosure information, secondary market disclosure information and transaction price information.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[6] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because the pilot facility will serve as a necessary transitional step toward establishing a permanent system for free and timely public access to OSs and ARDs. Together, the pilot facility and permanent system will remove impediments to and help perfect the mechanisms of a free and open market in municipal securities, assist in preventing fraudulent and manipulative acts and practices, and will in general promote investor protection and the public interest by ensuring equal access for all market participants to the critical disclosure information needed by investors in the municipal securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 because documents and information provided

[4] Under current Rule G–32, a dealer selling a new issue municipal security to a customer during the period ending 25 days after bond closing must deliver the official statement to the customer on or prior to trade settlement. Under an "access equals delivery" standard, dealers selling most new issue municipal securities would be deemed to have satisfied this basic requirement for delivering OSs to customers by trade settlement since such OSs would be publicly available through the permanent system. The MSRB expects to propose amendments to Rules G–32 and G–36 to adopt an "access equals delivery" standard at a future date through a separate filing with the SEC.

[5] Exchange Act Rule 15c2–12 currently requires underwriters for most primary offerings of municipal securities to obtain an undertaking by the issuer or obligated person to provide certain types of continuing disclosure information to the marketplace, consisting of material event notices and annual filings of financial information. Annual filings are to be sent to all existing nationally recognized municipal securities information repositories ("NRMSIRs") and any state information depositories ("SIDs"), while material event notices may be sent either to all existing NRMSIRs or to the MSRB, as well as to any SIDs. The level of submissions of material event notices to the MSRB's CDINet has diminished dramatically since this provision was adopted such that CDINet receives only a small percentage of material event notices currently provided to the marketplace. The Commission has published proposed amendments to Exchange Act Rule 15c2–12 to eliminate the MSRB's limited role in the current secondary market disclosure system due in large measure to the low volume of usage as well as the need for significant upgrades to keep the CDINet operational. *See* Securities Exchange Act Release No. 54863 (December 4, 2006), 71 FR 71109 (December 8, 2006).

[6] 15 U.S.C. 78o–4(b)(2)(C).

through the pilot portal and the permanent system will be available to all persons on an equal basis. The MSRB will continue to make the OS/ARD collection available by subscription on an equal basis without imposing restrictions on subscribers from re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber. The MSRB believes that any incidental impact of the proposed rule change on commercial enterprises would not create an unequal burden among such enterprises and would be substantially outweighed by the benefits provided by the proposed rule change in removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities, assisting in the prevention of fraudulent and manipulative acts and practices, and generally promoting investor protection and the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Concept Release

In a concept release published on July 27, 2006, the MSRB sought comment on whether the establishment of an "access equals delivery" model in the municipal securities market would be appropriate and on the general parameters relating to such a model (the "Concept Release").[7] The Concept Release described two critical factors that would need to be put into place: all OSs must be available electronically, and such electronic OSs must be easily and freely available to the public. The Concept Release described in general terms certain modifications that could be made to existing MSRB rules to implement the "access equals delivery" model.

With regard to public access to OSs under an "access equals delivery" standard for municipal securities, the Concept Release stated that electronic OSs would need to be made readily available to the investing public, at no cost, for the duration of the applicable new issue disclosure period, at a minimum. The MSRB expressed the belief that investors would be best served if such OSs were made available at a centralized Internet website, although other parties could of course make all or portions of such collection available at other websites or through other means as well. In the alternative, a central directory of such OSs could be maintained, with the actual hosting of the electronic OS occurring by multiple parties (such as issuers, financial advisors, underwriters, information vendors, printers, etc.) that have undertaken to maintain free ready access to such documents throughout the new issue disclosure period. However, the MSRB observed that this second alternative would provide fewer assurances that electronic access to the OSs will in fact be maintained in a uniform manner for the required duration and likely would require third-party monitoring of these decentralized sources. The MSRB also sought comment on whether it should undertake the central access function, or whether other market participants or vendors could undertake such function subject to appropriate supervision.

January 2007 Notice

In a subsequent notice published on January 25, 2007, the MSRB sought comment on draft amendments to Rules G–32 and G–36 to implement an electronic system for access to primary market disclosure in the municipal securities market (the "January 2007 Notice").[8] The electronic system would build on the MSIL system to provide through an Internet-based central access facility an assured source for free access to OSs and other related documents and information in connection with all new issue municipal securities to investors, other market participants and the public. Additional public access portals using the document collections from the MSIL system obtained through real-time subscriptions could be established by other entities as parallel sources for OSs and other documents and information.

The MSRB noted in the January 2007 Notice that it would operate a public access portal that would post OSs and other documents and information directly on its centralized website and would make posted information available for free for the life of the securities to investors, other market participants and the general public. The MSRB indicated that multiple entities subscribing to the MSIL system document collection—which will be designed to provide nearly real-time access to documents as they are submitted and processed—could establish separate public access portals designed to make available publicly the basic documents and information provided through such subscription, together with such other documents, information and utilities (*e.g.*, indicative data, transaction pricing data, secondary market information, analytic tools, etc.) as each such operator shall determine. These separate portals could provide these services on such commercial terms as they deem appropriate.

The January 2007 Notice also stated that the MSRB intends to continue offering subscriptions to the MSIL system collection on terms that promote the broad dissemination of disclosure information throughout the marketplace without creating a significant negative impact on the pricing of dissemination services by subscribers. The MSRB hoped that multiple public access portals would provide free continuous access to OSs and other documents throughout the new issue disclosure period and a reasonable limited period of time thereafter and also would provide continuing access beyond the expiration of this period on favorable terms, with due consideration for promoting access by infrequent users (*e.g.*, retail investors) for free or at greatly reduced rates. The MSRB's goal in promoting the establishment of parallel public access portals would be to provide all market participants with a realistic opportunity to access OSs and other documents and information throughout the life of the securities in a non-cost prohibitive manner while encouraging market-based approaches to meeting the needs of investors and other market participants.

SEC's "Access Equals Delivery" Rule

The Concept Release and January 2007 Notice noted that the new dissemination system for municipal securities disclosure would be modeled in part on the "access equals delivery" rule for prospectus delivery for registered securities offerings adopted by the SEC in 2005.[9] The MSRB observed that issuers in the registered securities market are required to file registration statements and prospectuses electronically through the SEC's EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system prior to an offering. The EDGAR system then makes electronic versions of filings available to the public at no charge on a "real-time" basis through the SEC's website. As a result, prospectuses for most registered offerings are available free of charge at a centralized site (as well as through other information services, in some

[7] MSRB Notice 2006–19 (July 27, 2006).

[8] MSRB Notice 2007–5 (January 25, 2007).

[9] *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005). The MSRB's draft amendments would incorporate (with modifications adapted to the specific characteristics of the municipal securities market) many of the key "access equals delivery" provisions in Securities Act Rule 172, on delivery of prospectus, Rule 173, on notice of registration, and Rule 174, on delivery of prospectus by dealers and exemptions under Section 4(3) of the Securities Act of 1933, as amended.

cases for a fee) throughout the selling process. The MSRB observed that the SEC's "access equals delivery" standard is premised on, among other things, this immediate free availability of prospectuses and other filings through the EDGAR system and other electronic sources.

Discussion of Comments

The MSRB received comments on the Concept Release from 29 commentators and on the January 2007 Notice from 12 commentators.[10] Commentators were nearly unanimous in their support of adoption of an "access equals delivery" standard and the establishment of a centralized Internet-based system for dissemination of municipal securities disclosure.[11] After reviewing these comments, the MSRB approved the proposed rule change for filing with the SEC. The comments relating to the dissemination system are discussed below.[12] Document Format. PDF was the preferred OS file format of most commentators responding to the Concept Release.[13] Some commentators suggested that other OS formats also should be accepted,[14] with Wells Fargo emphasizing that PDF is the licensed product of a single software vendor and, although popular, the municipal securities industry should not encourage a situation that may require firms to purchase essential technology from only one vendor. Other commentators stated that the system should have the flexibility to allow new formats that may in the future meet or exceed the current parameters for PDF.[15] RMOA stated that a single format should be prescribed, and other commentators believed that allowing multiple formats could prove problematic.[16] Zions stated that other electronic formats that may require specific formatting, such as hypertext markup language ("html") or ASCII (American Standard Code for Information Interchange), would be unacceptable. However, ADP noted that there may be benefits to market participants in permitting Extensible Business Reporting Language ("XBRL") and TRB suggested that PDF does not permit analysis and comparison between different investments. UBS observed that submissions using files that originate electronically yield smaller, better quality files than do scanned files, and that larger scanned files can sometimes cause technological difficulties, particularly for smaller retail customers. UBS suggested that the MSRB and industry remain cognizant of any emerging, widely utilized, non-proprietary, freely available format that would retain the desirable characteristics of PDF documents but create smaller scanned files.

The January 2007 Notice indicated that PDF would be the acceptable document format, although the system would retain flexibility to permit other appropriate file formats as they are developed and become available for general public use. SIFMA, AMS, DPC, Ipreo and NABL generally agreed with this approach. With regard to formats other than PDF that may be developed in the future, NABL suggested the following as basic parameters before permitting such format to be used for OSs: (i) software to read files should be free, user-friendly and readily available; (ii) software should protect the integrity of files; and (iii) consumers should be familiar with the format before adoption.[17]

In addition, the MSRB supports the SEC's Interactive Data and XBRL Initiatives for registered offerings. Although the MSRB will initially accept documents into the pilot portal solely as PDF files and will not be in a position to accept documents or data in XBRL format upon initial launch of the pilot portal or the permanent system, the MSRB will seek to explore with other industry participants the possibility of incorporating into the permanent system at a later date an option to make submissions using XBRL.

Duration of Availability of OSs On-Line and Impact on Commercial Vendors

Most commentators stated that OSs should remain publicly available for the life of the securities.[18] Some commentators noted that, although financial and operating information in OSs quickly becomes stale, many portions of the OS remain useful throughout the life of a bond issue.[19] BMA stated that the financial and operating information included in the OS serve as valuable points of reference when reviewing secondary market financial and operating information provided to NRMSIRs pursuant to Rule 15c2–12.[20] UBS suggested that appropriate disclaimers be used with respect to the potential staleness of information beyond the current new issue disclosure period. RMOA stated that OSs could be made available for free during the 25 day new issue disclosure period and a fee could be charged for access after that period.

Other commentators stated that making the OSs available solely for the current 25 day new issue disclosure

[10] The MSRB received comments on the Concept Release from the American Bar Association, Section of State and Local Government; American Government Financial Services Company ("AGFS"); Automated Data Process, Inc.; Bernardi Securities, Inc. ("Bernardi"); Bond Market Association ("BMA"); brokersXpress, LLC ("brokersXpress"); College Savings Plans Network ("CSPN"); Commerce Bancshares, Inc. ("Commerce"); Digital Assurance Certification LLC; DPC DATA Inc. ("DPC"); Edward D. Jones & Co., LP ("Edward Jones"); First Southwest Company ("First Southwest"); Griffin, Kubik, Stephens & Thompson, Inc. ("Griffin Kubik"); Investment Company Institute ("ICI"); J.J.B. Hilliard, W.L. Lyons, Inc. ("Hilliard Lyons"); Morgan Keegan & Company, Inc. ("Morgan Keegan"); Municipal Advisory Council of Texas ("Texas MAC"); National Association of Bond Lawyers ("NABL"); National Federation of Municipal Analysts ("NFMA"); Regional Municipal Operations Association ("RMOA"); Securities Industry Association ("SIA"); Standard & Poor's CUSIP Service Bureau ("S&PCUSIP"); Daniel E. Stone; TRB Associates; UBS Securities LLC ("UBS"); UMB Bank, N.A. ("UMB"); USAA Investment Management Company ("USAA"); Wells Fargo Institutional Brokerage & Sales ("Wells Fargo"); and Zions Bank Public Finance ("Zions"). The MSRB received comments on the January 2007 Notice from American Municipal Securities, Inc. ("AMS"); Bear, Stearns & Co., Inc. ("Bear Stearns"); Bernardi; CSPN; DPC; Griffin Kubik; Ipreo Holdings LLC ("Ipreo"); NABL; Securities Industry and Financial Markets Association ("SIFMA"); Merry Jane Tissier; UMB; and Wulff, Hansen & Co. ("Wulff").

[11] AGFS, AMS, Bear Stearns, Bernardi, BMA, brokersXpress, CSPN, Commerce, DPC, Edward Jones, First Southwest, Griffin Kubik, Hilliard Lyons, ICI, Ipreo, Morgan Keegan, Texas MAC, NABL, NFMA, RMOA, SIA, SIFMA, S&P CUSIP, UBS, UMB, USAA, Wells Fargo, Wulff, Zions. Although DPC supported the concept of electronic access to OSs, it expressed concerns regarding several basic concepts discussed in the January 2007 Notice, as discussed below. A number of these commentators (*e.g.*, ADP, AGFS, BMA, CSPN, Griffin Kubik, ICI, Hilliard Lyons, RMOA, SIA), as well as Mr. Stone and Ms. Tissier, made specific suggestions on details relating to the manner of implementing the "access equals delivery" standard. *See* footnote 12 *infra*. While supporting a central dissemination system for OSs, TRB stated that it was unclear whether the proposal would make any improvement on what it viewed as most important—the availability of current information on all municipal bonds on an ongoing basis.

[12] Comments relating to the draft amendments to Rules G–32 and G–36 that would institute an "access equals delivery" standard to replace the current physical delivery paradigm will be addressed in the MSRB's expected rule filing relating to such amendments.

[13] Bernardi, BMA, brokersXpress, CSPN, Commerce, DPC, Edward Jones, Griffin Kubik, Hilliard Lyons, Morgan Keegan, Texas MAC, NABL, SIA, UBS, UMB, Wells Fargo, Zions.

[14] Bernardi, Wells Fargo.

[15] BMA, Edward Jones, Griffin Kubik, SIA, Texas MAC, UBS, Zions.

[16] DPC, NABL, UBS, Zions.

[17] DPC suggested that required data elements accompanying documents be captured in formatted fields and that such data be parsed automatically into extensible markup language (XML) for distribution. The current electronic submission process in the MSIL system provides an option for XML uploads of such data and the MSRB expects to continue providing this or similar capabilities in the new system.

[18] Bernardi, BMA, Griffin Kubik, Morgan Keegan, NABL, NFMA, RMOA, SIA, Texas MAC, UBS, UMB, Wells Fargo, Zions.

[19] BMA, Griffin Kubik, NFMA, RMOA, SIA, Texas MAC, UBS.

[20] Griffin Kubik, SIA and UBS agreed.

period would be sufficient,[21] with DPC stating that maintaining public access beyond this 25-day period would impair the economic interests of information vendors that currently make OSs available on a commercial basis and would ultimately negatively impact the marketplace.[22] DPC stated that, although OSs may be made available for free to those accessing them through a public access portal, there will be a cost to the dealer community to subsidize the dissemination system's development and operation. DPC further noted that having the industry subsidize the cost "appears to be more biased and unfair than recovering the costs from the users of the system based on usage."

The MSRB agrees that there is significant value to maintaining OSs available for the life of the securities and therefore will make OSs available through the pilot portal and the permanent system until the maturity of the securities. The MSRB also agrees with the approach taken by the SEC in the registered securities market of providing such access to disclosure at no charge to the public. The MSRB believes that a free flow of basic disclosure information to all market participants on an equal basis is essential to pursuing one of the MSRB's congressionally mandated core functions of removing impediments to and perfecting a free and open market in municipal securities. By making these basic disclosure documents—most of which exist and are available to commercial enterprises solely by virtue of the mandates set forth by the SEC in its Rule 15c2–12—also available to the general public for free, the MSRB does not in any way inhibit the free market in value-added services based on such documents.

OS Amendments and POSs. BMA noted that investors should be informed of any amendments to an OS available on the system, and BMA and AGFS suggested the possibility of highlighting changes made in such amendments. BMA and DPC emphasized the importance of tracking and properly linking amendments and the original OSs to which they relate.

Some commentators suggested preliminary official statements ("POSs") should also be made available electronically through the system.[23] DPC suggested that the MSRB explore making the submission of all POSs mandatory, while SIFMA, AMS and NABL emphasized that POS submissions should not be made mandatory. SIFMA and DPC noted the importance of ensuring version control where both POSs and OSs are made available (as well as in handling "stickers" to OSs), suggesting that the MSRB include a mechanism for notification to the public when the final OS is posted in cases where a POS has previously been submitted. DPC suggested that POSs be deleted when final OSs are submitted, while NABL suggested that underwriters be permitted to request that the POS be removed from the system once the "timeliness of a POS has ended," noting that its continued availability may confuse investors. However, SIFMA opposed the removal of the POS.

The MSRB will continue to receive and will post all amendments to OSs, with such amendments properly linked to the original OS. The MSRB also intends to make POSs voluntarily submitted available on the permanent system, but POSs are not expected to be available on the pilot portal. Once POSs become part of the permanent system, the MSRB expects to provide a feature that would alert investors who have accessed an earlier version to be alerted of the posting of updated information, such as where an OS is posted after an initial posting of a POS or where a posted OS is subsequently stickered.

Secondary Market Disclosure. Some commentators stated that secondary market disclosures should be made available on the same platform as OSs.[24] ICI stated that the "access equals delivery" system should disseminate OSs to the NRMSIRs so that investors can view OSs and secondary market disclosures at a single source.

As noted above, the MSRB stands ready to expand its planned electronic submission system under the permanent system to also serve as the central electronic submission system for free filings of all secondary market disclosure under an amended Rule 15c2–12 and to integrate this complete collection of secondary market disclosure information with the MSRB's OS/ARD collection and RTRS data to provide a free comprehensive centralized public access portal for primary market disclosure information, secondary market disclosure information and transaction price information, should the SEC determine to pursue such option.

Basic Identifying Information and Search Function. Some commentators suggested that the information submitted on Form G–36(OS) should be made available to the public.[25] UBS noted that Form G–36 data should be used to develop a flexible indexing system, perhaps using XML, to allow for searches on a broad range of fields. NFMA also emphasized the importance of the search function. TRB stated that a cover sheet including primary information such as issuer, CUSIP numbers, security, maturity dates, ratings, callability, etc. is needed. TRB believed that the task of creating a data base from such information that is available to investors would be the most significant contribution that could be made by the MSRB to the municipal marketplace.

As noted above, the MSRB will use its MSIL indexing data to provide appropriate identifying information on the pilot portal and to develop a robust search function to facilitate quickly finding the appropriate document on the system.

Method of Posting Documents. Nearly all commentators stated that the central access facility should post OSs directly on a central website, rather than serving as a directory of links to OSs posted by underwriters, issuers, financial advisors, printers or others at other sites.[26] Some commentators noted that a decentralized system with a central hyperlinked directory could be problematic with regard to ensuring continuous access, uniformity of handling and ease of use.[27] Morgan Keegan stated that a decentralized model could be acceptable if access and data input requirements are uniformly applied to all vendors, but that long-term free access would be problematic. TRB stated that it would be more

[21] brokersXpress, Commerce, DPC, First Southwest.

[22] DPC argued that some aspects of the system's operations as proposed "could be construed as interfering with standard commercial processes of private businesses." DPC viewed the MSRB's proposal in the January 2007 Notice that customer notices provide a specific URL for the OS as "prejudicial to the economic interests of existing vendors whose delivery services required that the definitive PDF file be archived on their web sites for public access." DPC also did not approve of the proposal in the January 2007 Notice to the effect that a public access portal referred to in the customer notice would need to provide free OS access to customers for a limited period of time after issuance of the securities, although the January 2007 Notice made clear that private portal operators could provide value-added services, as well as access to OSs after the initial free period, on such commercial terms as they deem appropriate. Concerns regarding the potential impact on existing commercial interests of the amendments necessary to institute the "access equals delivery" standard will be addressed in the MSRB's expected rule filing relating to such amendments. *See* footnote 12 *supra*.

[23] AMS, Bear Stearns, DPC, Griffin Kubik, Ipreo, NABL, SIFMA, TRB, UMB, Zions.

[24] BMA, RMOA, Texas MAC, TRB, UBS.

[25] BMA, RMOA, TRB.

[26] Bernardi, BMA, brokersXpress, Commerce, DPC, First Southwest, Griffin Kubik, Hilliard Lyons, ICI, Morgan Keegan, NABL, NFMA, RMOA, SIA, Texas MAC, UBS, Wells Fargo, Zions.

[27] BMA, brokersXpress, DPC, Griffin Kubik, ICI, NFMA, SIA, UBS, Zions.

effective to link the MSRB website to the appropriate posting site for each OS, with the MSRB monitoring and/or restricting these posting sites, "just as it does for the NRMSIRs." CSPN noted that it viewed its own centralized web-based disclosure utility for the 529 college savings plan market as the appropriate central access facility for that market.

As noted above, the MSRB will post OSs and related items directly on its central access portal, rather than merely posting hyperlinks to other sources.

Operation of Public Access Sites. AMS and UMB generally supported a single central access portal, while SIFMA, DPC, Ipreo, and NABL prefered that OSs be made available from multiple sources. Many commentators felt that the MSRB could operate the central access facility,[28] with several indicating that the MSRB is their first choice to do so.[29] Many commentators suggested that the central access facility also could be operated by an outside contractor with oversight by the MSRB pursuant to contract.[30] Wells Fargo stated that the MSRB should investigate a centralization function that will not unequally empower a single data vendor.

Several private sector organizations expressed interest in their comment letters in participating in the proposed electronic dissemination system.[31] NABL stated that proposed approaches by market participants and others will need careful consideration to determine the optimal choice for the municipal securities market, and RMOA stated that vendors offering their services would need to insure the industry that they would accept oversight by established regulatory authorities and would be subject to penalties for non-performance. UBS stated that, if an entity other than the MSRB operates the central access facility, the MSIL system's existing OS/ARD library and full database would need to be made available to such entity. Several commentators emphasized that, in deciding which entity should operate the central access facility, cost should be an important factor, including which parties should bear such costs.[32]

[28] Bernardi, BMA, Commerce, First Southwest, Griffin Kubik, Hilliard Lyons Morgan Keegan, NFMA, RMOA, SIA, UBS, Zions.

[29] Bernardi, Commerce, Hilliard, Lyons, Morgan Keegan, RMOA, UBS, Zions. Morgan Keegan noted that the industry has already paid to establish the MSIL system and that the additional expense can be covered at the MSRB's discretion.

[30] BMA, First Southwest, Griffin Kubik, NMFA, RMOA, SIA, Texas MAC, UBS.

[31] ADP, DPC, S&P CUSIP and Texas MAC.

[32] BMA, Griffen Kubik, SIA, UBS.

Although the MSRB has determined to establish the pilot portal and expects to transition such pilot portal to the permanent system, the MSRB's public access portal need not operate as the sole public access facility. Rather, multiple entities that subscribe to the MSIL system document collection—which will be designed to provide nearly real-time access to documents—could establish separate access portals to make available publicly the basic documents and information provided through the MSIL system subscription, together with such other documents, information and utilities (*e.g.*, indicative data, transaction pricing data, secondary market information, analytic tools, etc.) as each operator determines. These separate public access portals could provide these services on commercial terms. The MSRB would hope that multiple public access portals would provide free continuous access to OSs for a defined period after initial issuance and continuing access beyond this period on favorable terms, with due consideration for promoting access by infrequent users (*e.g.*, retail investors) for free or at greatly reduced rates. The MSRB's goal in promoting the establishment of parallel public access portals is to provide market participants with an effective opportunity to access OSs throughout the life of the securities in a non-cost prohibitive manner while encouraging market-based approaches to meeting the needs of investors and other participants in the municipal securities market.

III. Date Of Effectiveness Of The Proposed Rule Change And Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation Of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2007–06 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2007–06. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2007–06 and should be submitted on or before January 18, 2008

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25186 Filed 12–27–07; 8:45 am]

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[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57000; File No. SR–NYSE–2007–101]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Amendment to NYSE Rule 104.21 ("Specialist Organizations—Additional Capital Requirements")

December 20, 2007.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Exchange Act"),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 2, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange LLC ("NYSE" or "Exchange") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NYSE Rule 104.21 ("Specialist Organizations—Additional Capital Requirements"), which would reduce the net liquid asset requirements for specialist member organizations. The text of the proposed rule change is set forth below. Proposed new language is italicized; brackets indicate deletions.

* * * * *

Rule 104. Dealings by Specialists

(a)–(b)—No Change.

* * *

Supplementary Material:

Functions of Specialists

.10 through .20—No Change.

.21 Specialist Organizations—Additional Capital Requirements.—

(1) Each specialist organization subject to Rule 104.21 must maintain minimum net liquid assets equal to:

(i) [$1,000,000] *$250,000* for each one tenth of one percent (.1%) of Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus $500,000 for each Exchange Traded Fund; and

* * *

Remainder of Rule—No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

Specialist member organizations must maintain net liquid assets as required by NYSE Rule 104, and in addition, must satisfy the net capital requirements prescribed in Rule 15c3–1,[4] promulgated under the Securities Exchange Act of 1934 (the "Exchange Act").[5] NYSE Rule 325 requires members and member organizations to comply with Exchange Act Rule 15c3–1 and also requires notification to the Exchange whenever tentative net capital has declined below defined levels. In addition, Rule 325 gives the Exchange the authority, at any time, to prescribe greater net capital or net worth requirements than those explicitly prescribed by the rule, or to require more stringent treatment of items when computing net capital, net worth and, by implication, net liquid assets. Further, the NYSE can restrict the business activities of specialist organizations consistent with good business practices and its obligation to maintain a fair and orderly market. Such restrictions may include prohibitions against business expansion and business reduction requirements.

The term "net liquid assets" refers to liquidity, in the form of cash and cash equivalents, that is immediately available (within twenty four hours) to a specialist organization for the continuing purchase and sale of securities in which a specialist is registered, in support of the specialist book, and market maintenance. It is a shorter-term form of liquidity that is meant to be available to the specialist organization to facilitate the performance of its affirmative duty to maintain a fair and orderly market on the Exchange. In addition, it is important for all specialist organizations and market participants to know that specialists have sufficient liquidity to support the specialist book and market maintenance activities.

Specialist member organizations' unique liquidity needs dictate the general form of the net liquid asset requirement. Therefore, a specialist organization's net liquid asset requirement functions to ensure that the specialist is able to continue operations; whereas a broker-dealer's net capital requirement functions to ensure that, if the broker-dealer were liquidated, the broker-dealer's obligations to its customers and creditors would be satisfied.

On July 25, 2006, the SEC approved amendments to NYSE Rule 104 ("Dealings by Specialists") to change the net liquid asset requirement for specialist member organizations.[6] The amendments restructured the net liquid asset requirement for specialist organizations from an approach based on valuation of classes of allocated securities ("concentration measures"), which included penalties for mergers among specialists, to an approach based on specialist market share that is measured by total dollar volume traded combined with market stress and volatility risk analysis.

Pursuant to the 2006 amendments, NYSE Rule 104.21 ("Specialist Organizations—Additional Capital Requirements") currently requires, in part, that each specialist organization subject to the provision maintain minimum net liquid assets equal to $1,000,000 for each one tenth of one percent (.1%) of the Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus $500,000 for each Exchange Traded Fund, in addition to the market risk add-on under Rule 104.21(2). Additionally, the filing noted that, as a result of the changes to the structure of the marketplace, NYSE would be assessing market risks annually to determine the continuing adequacy of the net liquid asset requirements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78(a) et seq.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.15c3–1.

[5] 15 U.S.C. 78a *et seq.*

[6] *See* Release No. 34–54205 (July 25, 2006); 71 FR 43260 (July 31, 2006) File No. SR–NYSE–2005–38) (approving amendments to NYSE Rules 104 and 123E ("Specialist Combination Review Policy") which change the capital requirements of specialist organizations). *See* also NYSE Information Memo 06–56 (August 2, 2006).

Proposed Rule Change

The proposed rule change would reduce the total base capital requirement that must be maintained as net liquid assets for all specialists from $1 billion to $250 million. NYSE believes this amount will adequately protect specialist organizations during periods of market stress. Further, each of the specialist organizations have sources of funding that will provide necessary liquidity during a period of market stress. It is no longer necessary for this liquidity to be maintained as capital, as specialist positions and the likelihood of losses have been reduced dramatically due to changes in the structure of the market.

Analysis

The role of specialists has changed significantly as increased electronic trading and the Exchange's "Hybrid Market" [7] have contributed to lower participation by, and therefore less risk being assumed by, specialist organizations. In light of the reduced participation, NYSE is proposing a reduction in the minimum net liquid asset requirement under Rule 104.21(1) for specialist organizations.

The proposed net liquid asset reduction for specialist organizations is consistent with the current dealer position levels, the profitability results during the volatile periods of July and August 2007, as well as specialist participation statistics. FINRA, on behalf of the Exchange, undertook an assessment for the periods of: (1) July 2, 2007 through August 17, 2007, selected due to the volatility in the marketplace during this period; and (2) February 27, 2007, when the Dow Jones Industrial Averages, DJIA, declined by 416.02 points to test levels of specialist trading on the Exchange. The assessment focused on position levels, daily dealer account profit and loss, and market volatility. In addition, FINRA compared participation by equity specialists in trading on the Exchange pre and post Hybrid Market.

- Generally, during periods of volatility there were no material net losses by specialists. Also, there were no material drops in specialist Net Liquid Assets during these periods.
- The participation by specialist firms in trading on the Exchange has declined along with the proliferation of electronic trading and the significant change in the Exchange's trading system introduced by the Hybrid Market. The increased efficiency with which others can access the Exchange's market has increased liquidity and decreased the market's reliance on the specialist to provide the contra side in our continuous auction. While the NYSE considers specialist participation to still be an important feature of its Hybrid Market, that participation can be and is at a significantly lower level. For example, specialists participated in 15.1% of all shares bought and sold on the Exchange in August 2002, but consistent with the evolution of trading styles and our market model, the participation rate dropped to 8.5% in November 2005, and to approximately 3.9% today.
- Pro-forma daily net liquid asset positions with the proposed requirement for the week ending September 14, 2007 were prepared using actual computations submitted by each of the seven equity specialist firms.[8] The first summary of calculations reflects the $1 billion requirement, whereas, the second set of calculations reflects the proposed $250 million requirement. Each of the calculations includes a market risk add on amounting to three times the average of the twenty prior business days securities haircuts on its specialist dealer positions computed pursuant to SEA Rule 15c3–1(c)(2)(vi) exclusive of paragraph (N) or three times VaR, if approved to calculate under this methodology:

AGGREGATE SPECIALIST DATA CURRENT REQUIREMENT: $1 BILLION PLUS MARKET RISK ADD-ONS

[000 Omitted]

Trade date	LMV	SMV	NLA	NLA required	Excess NLA
9/10/2007>	$183,841	$49,955	$1,380,063	$1,117,106	$262,957
9/11/2007>	122,939	128,276	1,381,871	1,112,180	269,692
9/12/2007>	162,047	121,583	1,379,123	1,109,360	269,763
9/13/2007>	148,012	181,734	1,378,222	1,108,381	269,841
9/14/2007>	135,832	164,699	1,378,537	1,106,220	272,317

AGGREGATE SPECIALIST DATA PRO-FORMA REQUIREMENT: $250 MILLION PLUS MARKET RISK ADD-ONS

[000 Omitted]

Trade date	LMV	SMV	NLA	Proposed NLA required	Proposed excess NLA
9/10/2007>	$183,841	$49,955	$1,380,063	$367,106	$1,012,957
9/11/2007>	122,939	128,276	1,381,871	362,180	1,019,692
9/12/2007>	162,047	121,583	1,379,123	359,360	1,019,763
9/13/2007>	148,012	181,734	1,378,222	358,381	1,019,841
9/14/2007>	135,832	164,699	1,378,537	356,220	1,022,317

[7] *See* Release No. 34–53539 (March 22, 2006); 71 FR 16353 (March 31, 2006) File No. SR–NYSE–2004–05) (approving amendments to NYSE Rules (approving the proposed rule change to establish the NYSE Hybrid Market). The rule change created a "Hybrid Market" by, among other things, increasing the availability of automatic executions in its existing automatic execution facility, NYSE Direct+, and providing a means for participation in the expanded automated market by its floor members. The change altered the way NYSE's market operates by allowing more orders to be executed directly in Direct+, which in essence moves NYSE from a floor-based auction market with limited automation order interaction to a more automated market with limited floor-based auction market availability.

[8] Effective at the close of business on November 30, 2007, one equity specialist firm resigned from the NYSE and its stocks will be reassigned to one of the six remaining firms. Further consolidation and/or reallocation of specialist books is possible in the future.

Based on the foregoing assessment, the proposed amendments would require a specialist organization to meet, with its own assets, a net liquid asset requirement equal to $250,000 for each one tenth of one percent (.1%) of the Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus $500,000 for each Exchange Traded Fund, in addition to the market risk add-on under Rule 104.21(2), amounting to three times the average of the prior twenty business days securities haircut on its specialist dealer positions computed pursuant to SEA Rule 15c3–1(2)(vi) exclusive of paragraph (N) or three times VaR, if approved to calculate under this methodology.

Finally, the proposal takes into consideration the circuit breakers in effect to prevent a market freefall included in NYSE Rule 80B. NYSE Rule 80B provides for trading halts that are triggered when the DJIA declines below its closing value on the previous trading day by: 10% (level 1), 20% (level 2), and 30% (level 3). At level 3, trading shall halt and not resume for the rest of the day. The intent of the halts is to allow buyers and sellers an opportunity to regroup and objectively assess the marketplace.

FINRA, on behalf of NYSE, will continue to assess the specialists' net liquid asset requirements in relationship to the Hybrid Market and monitor their net liquid assets on a daily basis. NYSE and FINRA require notification for all withdrawals of capital, and approval for any withdrawal being made on less than six months advance notice to the Exchange.

(2) Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Exchange Act [9] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest. The Exchange believes that the proposed rule change will reduce the burden on specialist member organizations to maintain net liquidity while still ensuring adequate protection of specialist organizations during periods of market stress. Each of the specialist organizations have sources of funding that will provide necessary liquidity during a period of market stress and thus, it is no longer necessary for this liquidity to be maintained as capital, as specialist positions and the likelihood of losses have been reduced dramatically due to changes in the structure of the market.

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 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. 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 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–NYSE–2007–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–101. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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–2007–101 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25183 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57003; File No. SR–NYSE–2007–112]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 15 (ITS and Pre-Opening Applications)

December 20, 2007.

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 December 14, 2007, the New York Stock Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

LLC ("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 substantially by NYSE. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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 Exchange proposes to amend NYSE Rule 15 (Intermarket Trading System Plan and Pre-Opening Applications) to create the procedures for publishing pre-opening price information. The text of the proposed rule change is available at *http://www.nyse.com*, the Exchange, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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. NYSE 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 proposes to amend Rule 15 to create procedures for the dissemination of pre-opening price information in view of the elimination of the requirement to publish the same pursuant to the Intermarket Trading System ("ITS") Plan.

From 1978 until its elimination in March 2007, the Exchange routed orders (as commitments to trade) to other market centers and received them through ITS. ITS facilitated trades between members located in different markets. Through ITS, a member in any participating market could send orders, as commitments to trade, at the bid or offer on any other participating market. The ITS Plan was administered by the participating markets, and was filed with and approved by the Commission.

In 2006, the Commission approved a national market system plan ("Linkage Plan"), which became effective on October 1, 2006.[5] The purpose of the Linkage Plan was to enable the plan participants to act jointly in planning, developing, operating and regulating the NMS Linkage System that was to electronically link the Participant Markets to one another. The Linkage Plan ran concurrently with the ITS Plan until March 5, 2007, at which time the ITS Plan terminated and SEC Rule 611 (the Order Protection Rule) of Regulation National Market System ("Reg. NMS"),[6] became operative. The Linkage Plan terminated on June 30, 2007.

The ITS Plan required each market center to have procedures that governed the dissemination of pre-opening price information and also provided a model rule. The model rule is encompassed in Rule 15 (the "Pre-Opening Application"). According to Rule 15, there are two instances where the Pre-Opening Application applies: (a) "whenever a market maker in any Participant Market, in arranging an opening transaction in his market in a System security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price at more than the 'applicable price change'"; and, (b) "whenever an 'indication of interest' (i.e., an anticipated opening price range) is sent to the CTA Plan Processor as required or permitted by the CTA Plan or a Participant market's rules prior to the opening of trading in a System security or prior to the reopening of trading in a System security prior to the reopening of trading in a security following a Trading Halt."

The Linkage Plan Pre-Opening provision suspended the operation of the relevant ITS Plan requirements and much of NYSE's Rule 15. While the specialist was still required to send out an indication when he would open a specialty security at a price that represented a change from the previous days consolidated closing price of more than the "applicable price change," he or she was no longer required to adhere to any other relevant requirements of the ITS Plan or Rule 15. For example, in contrast to the ITS Plan, the Linkage Plan contained no prohibition against the specialist disseminating a pre-opening price range that straddled the previous day's consolidated closing price. Further, the ITS Plan and Rule 15 required the specialist, after disseminating a pre-opening notification, to delay the opening of the subject security until at least three minutes had passed from the time of the pre-opening notification. The Linkage Plan did not provide a defined time standard by which a specialist must delay the opening after issuance of a pre-opening notification. The Linkage Plan did not require a specialist to disseminate subsequent pre-opening information. With the elimination of the ITS Plan and the Linkage Plan, specialists were no longer required to disseminate ITS pre-opening indications at all.

The specialists continue to provide this type of information orally to market participants as a part of the performance of their affirmative obligations which require that they provide accurate and timely market information to all inquiring market participants on the Floor upon request. However, customers and market participants informed Exchange management that they found the information the specialists provided pursuant to their obligations under the ITS Plan and the Linkage Plan useful.

In response to customer and market participant requests, the Exchange proposes to amend Rule 15 to re-establish procedures for the publication of pre-opening price information, according to the framework established by the Linkage Plan requirement. This proposed rule change requires no modification of the specialists' proprietary systems. With the re-institution of these procedures, the specialists will now resume using the pre-opening indication template on the NYSE Display Book® to disseminate pre-opening price information to all market participants through Exchange systems.

The proposed rule text states that the specialist shall publish a pre-opening price indication whenever the specialist, in arranging the opening transaction in a subject security, anticipates that the price of the opening transaction will be at a price which is different from the previous day's consolidated closing price by more than the "applicable price change." The pre-opening price indication will include the security and the price range within which the specialist anticipates the opening transaction will occur. Rule 15 as amended will be entitled "Pre-Opening Indications."

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006).

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

The price change parameters under the proposed rule have been broadened to more accurately address the current volatility of today's markets. The "applicable price change" will be $0.50 where the consolidated closing price of a subject security on the Exchange is under $100 and $1.00 where the consolidated closing price of a subject security on the Exchange is equal to or greater than $100.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

Normally, a proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii) under the Act.[12] The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits the Exchange to implement without further delay a proposal that re-establishes procedures for the publication of pre-opening price information, according to the framework established by the Linkage Plan requirement; furthermore, the proposed rule change requires no modification of the specialists' proprietary systems. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.[13]

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–NYSE–2007–112 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–112. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2007–112 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25185 Filed 12–27–07; 8:45 am]

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that NYSE has satisfied the five-day pre-filing notice requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57006; File No. SR–NYSE–2007–116]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange LLC Relating to NYSE Rule 300 (Trading Licenses)

December 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on December 18, 2007, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which items have been substantially prepared by the NYSE. NYSE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19b(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) 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 Exchange is proposing to: (i) amend NYSE Rule 300 (Trading Licenses) to charge an annualized rate of $40,000 per trading license purchased during the annual offering; and (ii) reinstate the fee related to the approval of a pre-qualified substitute employee.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 NYSE 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

Through this filing, the Exchange seeks to amend section (b) of NYSE Rule 300 to charge a fixed price of $40,000 for each trading license purchased in the annual offering for the following calendar year and make conforming changes to section (d) of the rule which pertains to trading licenses purchased after the annual offering. The Exchange further proposes to create subsection (b)(i) to NYSE Rule 300 to provide that a member organization that wishes to maintain for the following calendar year the same number of trading licenses that they currently hold will be charged the fixed price of $40,000 per trading license by the Exchange. Additionally, the Exchange proposes to reinstate the fee related to the approval of a pre-qualified substitute employee.

Currently, section (b) of NYSE Rule 300 provides that in each annual offering, up to 1366 trading licenses for the following calendar year are to be sold at the fixed price of $50,000 per trading license. Section (d) of the rule governs the sale of trading licenses any time after the annual offering. It provides that the Exchange will sell additional trading licenses expiring at the end of the calendar year at a price of $55,000, prorated for the time remaining in the year. The price of $55,000 encompasses a premium of $5,000 or 10% above the fixed price of $50,000. No additional trading licenses will be sold by the Exchange if such sale would cause the number of trading licenses to exceed 1366.

The Exchange proposes to amend section (b) of the rule to reduce the fixed price from $50,000 to $40,000. Proposed section (b) of the rule will now provide that in each annual offering, up to 1366 trading licenses for the following calendar year will be sold annually at a price of $40,000 per trading license. The Exchange also proposes to create a new subsection (b)(i) to state that a member organization that holds a number of trading licenses in the current calendar year and wishes to maintain that same number of trading licenses in the following calendar year shall be presumed to have applied for the same number of trading licenses that it currently holds and will be charged by the Exchange the fixed price of $40,000 per trading license pursuant to section (b) and subject to the provisions of section (c) of the rule.[5] Thus, a member organization that holds 5 trading licenses in the calendar year 2007 and wishes to maintain 5 trading licenses in calendar year 2008 will be charged $40,000 per trading license for the 5 trading licenses.[6] Should the member organization subsequently decide to purchase additional trading licenses, section (d) of the rule as proposed will apply.

The Exchange further seeks to make a conforming amendment to section (d) to adjust the fixed price and then calculate the appropriate premium accordingly. Proposed section (d) of the rule will therefore be amended to state that after the annual offering and anytime thereafter during the following calendar year, the Exchange shall sell additional trading licenses at a price of $44,000. The $44,000 reflects a premium $4,000 which is 10% above the fixed price of $40,000 per trading license, pro-rated to reflect the portion of the year during which the trading license will be outstanding. The Exchange will not sell additional licenses if such sale would cause the number of licenses to exceed 1366.

On or about October 2007,[7] the Exchange filed with the Securities and Exchange Commission ("Commission") an amendment to the Exchange's 2007 Price List to waive for the remainder of 2007, effective retroactively on September 1, 2007, the $5,000 fee with respect to the approval of a pre-qualified substitute employee.[8]

Prior to the waiver of this fee in September 2007, the $5,000 fee was billed to the member organization who was the new employer of (i) any new member or pre-qualified substitute not transferring from another member organization, (ii) any approved member who changes employment and continues as a member with that member organization, or (iii) any pre-qualified substitute who changes employment and continues as a pre-qualified substitute with that member organization. This fee reflects the costs to the Exchange of processing such new memberships or transfers including checking that the member organization has a license for its new employee or approving the purchase of a license, ensuring that the member is not subject to any regulatory restriction, checking that the member's new employer has put in place the required financial guarantee, and issuing or resetting the member's badge and handheld.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Section (c) of the rule describes the allocation process of trading licenses among member organizations during the annual offering.

[6] The Exchange has filed separately to amend NYSE Rule 325 to eliminate the requirement of section (e) which requires any member organization that employs individuals to execute orders on the Exchange Floor provide evidence of financial responsibility in the amount of $100,000 for each such individual. See SR–NYSE–2007–108.

[7] *See* Securities Exchange Act Release No. 56607 (October 3, 2007), 72 FR 57624 (October 10, 2007) (SR-NYSE–2007–91).

[8] According to SR–NYSE–2007–91, a pre-qualified substitute employee is an employee of a member organization who has been approved to work on the Exchange trading floor and can be assigned to work on the trading floor at anytime that the member organization has a trading license available for use.

The Exchange proposes through this filing to re-instate this fee in its entirety starting in the calendar year 2008. Although this proposed rule change is immediately effective, the re-instatement of this fee will not be implemented until January 1, 2008. The price and the terms of the $5,000 fee will remain the same.

2. Statutory Basis

The Exchange believes that the basis for the proposed rule change is the requirement under Section 6(b)(4) of the Act [9] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [10] of the Act and subparagraph (f)(2) [11] thereunder because it establishes or changes a due, fee, or other charge. 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–NYSE–2007–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–116. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office 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–NYSE–2007–116 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25188 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57009; File No. SR–NYSE–2007–108]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Exchange Rule 325 Relating to Financial Responsibility Requirements of Member Organizations

December 20, 2007.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 30, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as one that is concerned solely with the administration of the self-regulatory organization pursuant to section 19(b)(3)(A)(iii) [4] of the Act and Rule 19b–4(f)(3) [5] thereunder, which renders the proposed rule change 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 Exchange is proposing to amend Exchange Rule 325 to eliminate the requirement under subparagraph (e) that any member organization that employs individuals to execute orders on the Floor of the Exchange must provide evidence of financial responsibility in the amount of $100,000 for each such individual. The Exchange is further seeking to make technical amendments to the text of Exchange Rule 700. The amended text of these Rules is attached as Exhibit 1.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(3).

The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

Through this filing, the NYSE seeks to amend Exchange Rule 325 to eliminate the requirement under subparagraph (e) that any member organization that employs individuals to execute orders on the Floor of the Exchange must provide evidence of financial responsibility in the amount of $100,000 for each such individual.

Current Exchange Rule 325 (Capital Requirements, Member Organizations, General Provisions)

Currently, Exchange Rule 325 provides that member organizations must comply with the net capital requirements prescribed by Rule 15c3–1 of the Act.[6] Exchange Rule 325 prescribes additional financial requirements beyond Rule 15c3–1, including, pursuant to subparagraph (e), the requirement that member organizations that employ individuals to execute orders on the Floor of the Exchange must provide evidence of financial responsibility in the amount of $100,000 for each such individual. In accordance with Rule 325(e), evidence of financial responsibility may be provided by any of the following: A guarantee by a clearing organization, an escrow account, a letter of credit, or pledged securities. Rule 325(e) further provides that the Exchange will consider alternate methods of compliance with this financial responsibility requirement.

Background

Subparagraph (e) of Exchange Rule 325, which prescribes financial responsibility requirements for members, was initially approved on April 11, 1978.[7] It was adopted in response to the creation of two new classes of members, i.e. lessees and physical access members, whereby for the first time there were individuals trading on the Floor who did not own actual memberships on the Exchange.[8] In adopting Rule 325(e), the Exchange felt that it was important to its reputation for integrity and fairness that all members were able to demonstrate the ability to cover (1) any liabilities to other members incurred in the ordinary course of business on the Floor of the Exchange or (2) any amounts due the Exchange.[9]

The Rule was subsequently amended several times to raise the dollar amounts in response to increased levels of market activity, volatility and order size.[10] It was also amended to provide for alternate methods of proof of financial responsibility, including permitting members to pledge their seats or to use surety bonds to satisfy the requirement.[11] On February 27, 2006, the Rule was amended to hold member organizations, rather than individual members, responsible for presenting evidence of financial responsibility for each individual the member organization employs.[12] This amendment was made to reflect the changes in the nature of membership incident to the Exchange's merger with Archipelago Holdings, Inc.[13]

Proposed Amendments to Exchange Rule 325

The Exchange proposes to amend the financial responsibility requirements of Exchange Rule 325 by deleting subparagraph (e). The NYSE believes that the requirements of Exchange Rule 325(e) essentially function as additional capital requirements for those member organizations that employ individuals to execute orders on the Floor. Given the robust net capital requirements already in place for member organizations pursuant to both SEC Rule 15c3–1 and Exchange Rule 325, the financial responsibility requirement under subparagraph (e) is unnecessary. In addition, when compared with the levels and volumes of trading member organizations currently engage in, the modest extra capital required by Rule 325(e) no longer effectively advances the purpose of ensuring financial responsibility. As such, the Exchange seeks to delete subparagraph (e) of Exchange Rule 325 in its entirety.

Technical Amendments to Rule 700

The Exchange also proposes to make technical changes to Exchange Rule 700. Subparagraph (a) of Exchange Rule 700 provides, in part, that "Except as may be specifically provided in the Rules in this series, (i) Rules 6, 45 through 298 and Rule 440B shall not apply to option transactions and (ii) Rule 325(e) shall not apply to members whose transactions on the Exchange are in options solely."

The Exchange seeks to delete subparagraph (a)(ii) of Rule 700, as Rule 325(e) will no longer exist. In addition, the Exchange proposes to delete the designation "(i)" in this clause since there will no longer be subsection (ii).

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under section 6(b)(5)[14], which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of section 11A(a)(1)[15] of the Act in that it seeks to ensure economically efficient execution of securities transactions, to make it practicable for brokers to execute investors' orders in the best market, and to provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[6] 15 U.S.C. 78a, *et seq.*

[7] *See* Securities Exchange Act Release No. 14652 (April 11, 1978), 43 FR 16581 (SR–NYSE–78–6).

[8] *See* Securities Exchange Act Release No. 25015 (October 9, 1987), 52 FR 39321 (October 21, 1987) (SR–NYSE–87–27).

[9] *See* Securities Exchange Act Release No. 25015 (October 9, 1987), 52 FR 39321 (October 21, 1987) (SR–NYSE–87–27). *See also* NYSE Information Memorandum 1987–04 (January 21, 1987).

[10] *See* Securities Exchange Act Release No. 17206 (October 9, 1980), 45 FR 69082 (SR–NYSE–80–23); Securities Exchange Act Release No. 26176 (October 13, 1988), 53 FR 41009 (October 18, 1988) (SR–NYSE–87–27); Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–05–77).

[11] *See* Securities Exchange Act Release No. 17206 (October 9, 1980), 45 FR 69082 (SR–NYSE–80–23); Securities Exchange Act Release No. 26176 (October 13, 1988), 53 FR 41009 (October 18, 1988) (SR–NYSE–87–27); Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–05–77).

While the Rule provides (and has provided) for several different methods of proof of financial responsibility, in practice many members pledged their seats or used surety bonds to satisfy the Rule.

[12] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–05–77). *See also* NYSE Information Memorandum 2005–99 (December 15, 2005).

[13] As a result, there are no longer transferable memberships and seats on the Exchange that may be used to meet the requirement of the Rule.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, which is concerned solely with the administration of the self-regulatory organization, has become effective as of November 30, 2007 pursuant to section 19(b)(3)(A)(iii) [16] of the Act and Rule 19b–4(f)(3) thereunder.[17] 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, 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–2007–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–108. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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–2007–108 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

Deletions [bracketed]

Capital Requirements Member Organizations General Provisions

Rule 325. (a) Each member organization shall comply with the net capital requirements prescribed by Rule 15c3–1 under the Securities Exchange Act of 1934 (the "Exchange Act") and with the additional requirements of this Rule 325.

[(e) In addition to the net capital requirement prescribed in Rule 15c3–1 promulgated under the Securities Exchange Act of 1934, each member organization which employs individuals to execute orders on the floor of the Exchange, must present evidence of financial responsibility in the amount of $100,000 for each such employee by one of the following methods;

(1) A written guarantee by a member organization which is a member of a qualified clearing agency and has excess net capital of not less than $100,000 for each member for whom such guarantee has been extended, or

(2) $100,000 held by an independent agent in escrow, or

(3) a letter of credit issued by a bank or other party acceptable to the Exchange in the amount of $100,000, or

(4) marketable securities with a total value of at least $100,000 (after appropriate haircuts, to be determined in the same manner as haircuts are determined for capital requirements) on deposit with an organization acceptable to the Exchange and readily available, or

Such written guarantee, escrow account, letter of credit or marketable securities shall be available solely for sums due the Exchange and such sums as the Board of Directors shall determine are due by such member to member organizations as the result of losses arising directly from the closing out under the Rules, of contracts entered into, in the ordinary course of business in the market on the floor of the Exchange for the purchase, sale, borrowing or loaning of securities.

The Exchange will consider alternate methods of compliance with the financial responsibility standard.]

Applicability, Definitions and References

Rule 700. (a) The Rules in this 700 series (Rules 700 through 794) shall be applicable to (i) the trading on the Exchange of option contracts issued by The Options Clearing Corporation, (ii) the terms and conditions, and the exercise and settlement, of option contracts so traded, and (iii) the handling of orders, and the conduct of accounts and other matters, relating to option contracts dealt in by any member or member organization.

Except as may be specifically provided in the Rules in this series, [(i)] Rules 6, 45 through 298 and Rule 440B shall not apply to option transactions [and (ii) Rule 325(e) shall not apply to members whose transactions on the Exchange are in options solely].

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57017; File No. SR–NYSEArca–2007–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto to Trade Shares of 11 Funds of the ProShares Trust Pursuant to Unlisted Trading Privileges

December 20, 2007.

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 October 17, 2007, NYSE Arca, Inc. ("Exchange"), through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(3).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On December 20, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to trade pursuant to unlisted trading privileges ("UTP") shares ("Shares") of 11 funds ("Funds") of the ProShares Trust ("Trust") based on a domestic stock index and several fixed income indexes. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 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

The Exchange proposes to trade pursuant to UTP under NYSE Arca Equities Rule 5.2(j)(3), Shares of ten Funds of the Trust that are designated as Short Funds and UltraShort Funds, and one Fund designated as an Ultra Fund.[3] The Commission has approved the original listing and trading of the Shares on the American Stock Exchange LLC ("Amex").[4]

The Funds to be traded are as follows:

Short ProShares

(1) Short Lehman Brothers 7–10 Year U.S. Treasury ProShares
(2) Short Lehman Brothers 20+ Year U.S. Treasury ProShares
(3) Short iBoxx $ Liquid Investment Grade ProShares
(4) Short iBoxx $ Liquid High Yield ProShares
(5) Short Dow Jones U.S. Select Telecommunications ProShares

UltraShort ProShares

(1) UltraShort Lehman Brothers 7–10 Year U.S. Treasury ProShares
(2) UltraShort Lehman Brothers 20+ Year U.S. Treasury ProShares
(3) UltraShort iBoxx $ Liquid Investment Grade ProShares
(4) UltraShort iBoxx $ Liquid High Yield ProShares
(5) UltraShort Dow Jones U.S. Select Telecommunications ProShares

Ultra ProShares

(1) Ultra Dow Jones U.S. Select Telecommunications ProShares

Each of the Funds will have a distinct investment objective. The Funds will attempt, on a daily basis, to achieve their investment objective by corresponding to a specified multiple of the performance, the inverse performance, or an inverse multiple of the performance of a particular fixed income or equity securities index, as briefly described below. The Funds will be based on the following benchmark indexes: (1) Lehman Brothers 7–10 Year U.S. Treasury Index, (2) Lehman Brothers 20+ Year U.S. Treasury Index, (3) iBoxx $ Liquid Investment Grade Index, (4) iBoxx $ Liquid High Yield Index, and (5) the Dow Jones Select Telecommunications Index (the "Underlying Indexes").

Certain Funds seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the Underlying Indexes (the "Short Funds"). If such a Fund is successful in meeting its objective, the net asset value (the "NAV") of the Fund's shares should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when the prices of the securities in the index rise on a given day, before fees and expenses.

Certain Funds seek daily investment results, before fees and expenses that correspond to twice the inverse or opposite of the daily performance (−200%) of the Underlying Indexes (the "UltraShort Funds"). If such a Fund is successful in meeting its objective, the NAV the Fund's shares should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the index rise on a given day, before fees and expenses. The Short Funds and UltraShort Funds each have investment objectives that seek investment results corresponding to an inverse performance of the Underlying Indexes and are collectively referred to as the "Bearish Funds."

One Fund, the Ultra Dow Jones Select Telecommunications ProShares Fund, seeks daily investment results, before fees and expenses, that corresponds to twice the daily performance (200%) of the Underlying Index (the "Ultra Fund" or the "Bullish Fund"). This Fund, if successful in meeting its investment objective, should gain, on a percentage basis, approximately twice as much as the Fund's Underlying Index when the price of the securities in such Index increase on a given day, and should lose approximately twice as much when such prices decline on a given day.

The financial instruments to be held by any of the Funds may include stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars, and floors as well as swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (the "Financial Instruments"). Money market instruments include U.S. government securities and repurchase agreements.

The Underlying Indexes

The Lehman Brothers 7–10 Year U.S. Treasury Index is market-capitalization-weighted and includes all publicly issued, U.S. Treasury securities that have a remaining maturity of between seven and ten years and have more than $250 million par outstanding. The index value is calculated and published daily by 10 p.m. Eastern Time ("E.T.").

The Lehman Brothers 20+ Year U.S. Treasury Index is market-capitalization-weighted and includes all publicly issued, U.S. Treasury Securities that have a remaining maturity greater than

[3] The Commission has previously approved the trading of certain Ultra Funds, Short Funds, and UltraShort Funds of the ProShares Trust on the Exchange pursuant to UTP under NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR–NYSEArca–2006–87).

[4] *See* Securities Exchange Act Release No. 59998 (December 19, 2007) (SR–Amex–2007–104) ("Amex Proposal").

20 years and have more than $150 million par outstanding. The index value is calculated and published daily by 10 p.m. E.T.

The iBoxx $ Liquid Investment Grade Index is a rules-based index consisting of up to 100 highly liquid, investment-grade, U.S.-dollar-denominated corporate bonds with a minimum amount outstanding of $500 million that seeks to maximize liquidity while maintaining representation of the broader investment-grade corporate bond market. The index consists of issuers domiciled in the U.S., Bermuda, Cayman Islands, Canada, Japan or Western Europe. The index is equally priced weighted and is re-balanced monthly. The index value is calculated and published daily by 4:30 p.m. E.T.

The iBoxx $ Liquid High Yield Index is a rules-based index consisting of up to 50 of the most liquid, high-yield, U.S.-dollar-denominated corporate bonds with a minimum amount outstanding of $200 million that seeks to maximize liquidity while maintaining representation of the broader high-yield corporate bond market. The index consists of issuers domiciled in the United States, Bermuda, Cayman Islands, Canada, Japan, or Western Europe. The index is equally priced weighted and is re-balanced monthly. The index value is calculated and published daily by 4:30 p.m. E.T.

The Dow Jones U.S. Select Telecommunications Index is a float-adjusted market-capitalization-weighted index designed to measure the performance of the telecommunications economic sector of the U.S. equity market. Component companies include fixed line and mobile telecommunications companies. Component weights are capped for diversification. The index includes all common stocks of companies in the Dow Jones U.S. Select Telecommunications Index that are categorized as belonging to the telecommunications sector, based on Industry Classification Benchmark (ICB) definitions. The company at the 90% cumulative market capitalization of the index must have a float-adjusted market capitalization of at least $75 million. The Index value is calculated and distributed every 15 seconds during Amex's trading hours.

Additional information regarding the Underlying Indexes and the Funds is included in the Amex Proposal.

Availability of Information About the Shares and the Underlying Indexes

The Trust's Web site, which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (1) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and/or product description; and (4) other quantitative information such as daily trading volume. The prospectus and/or product description for each Fund will inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.

According to the Amex Proposal, Amex will disseminate for each Fund on a daily basis every 15 seconds by means of Consolidated Tape Association ("CTA") and CQ High Speed Lines information with respect to an Indicative Intra-Day Value ("IIV"), the recent NAV, the number of shares outstanding, the estimated cash amount, and the total cash amount per Creation Unit. Amex will make available on its Web site daily trading volume, the closing price, the NAV, and the final dividend amounts to be paid for each Fund.

Each Fund's total portfolio composition will be disclosed on the Trust's Web site (*www.proshares.com*) or another relevant Web site as determined by the Trust and/or Amex. According to the Amex Proposal, the Trust will provide Web site disclosure of portfolio holdings daily, which will include, as applicable, the names and number of shares held of each equity security (if applicable), the specific types of Financial Instruments and characteristics of such instruments, cash equivalents, and the amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by the Advisor of the "IIV File" (described below) and the "PCF File", when applicable (described below). Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site, as well as in the IIV File and PCF File (when applicable) provided to "Authorized Participants."[5] The format of the public Web site disclosure and the IIV File and PCF File (when applicable) will differ because the public Web site will list all portfolio holdings while the IIV File and PCF File (when applicable) will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation Unit.[6] Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust's Web site, at *www.proshares.com*, and/or at the Amex's Web site at *www.amex.com*.

Amex has represented in the Amex Proposal that it will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per share for each Fund will be calculated daily and made available to all market participants at the same time.[7]

Beneficial owners of Shares ("Beneficial Owners") will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099–DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, *e.g.*, *www.bloomberg.com*. Data regarding each Underlying Index is also available from the respective index provider to subscribers. The value of the Dow Jones U.S. Select Telecommunications Index will be updated intra-day on a real-time basis as its individual component securities change in price. This intra-day value of this index will be disseminated at least every 15 seconds throughout Amex's trading day by Amex or another organization authorized by the relevant Underlying Index provider.

Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the ProShare Advisors LLC, the investment advisor to each Fund (the "Advisor"), has developed an "IIV File,' which it

[5] An Authorized Participant is either (1) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation ("NSCC") or (2) a DTC participant, and which has entered into a participant agreement with the Distributor.

[6] The composition will be used to calculate the NAV later that day.

[7] If the Amex halts trading in the Shares of the Funds because the NAV is not being disseminated to all market participants at the same time, then the Exchange would do so as well.

will use to disclose the Funds'' holdings of Financial Instruments.[8] The IIV File will contain, for the Bullish Fund (to the extent that it holds Financial Instruments) and Bearish Funds, information sufficient by itself or in connection with the PCF File and other available information for market participants to calculate a Fund's IIV and effectively arbitrage the Fund.

Dissemination of Intra-Day Indicative Value (IIV)

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex will disseminate through the facilities of the CTA: (1) Continuously throughout the Amex's trading day, the market value of a Share; and (2) at least every 15 seconds throughout the Amex's trading day, a calculation of the IIV of each Fund as calculated by the Amex (the ''IIV Calculator''). Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator will calculate an IIV for each Fund in the manner discussed below. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV does not necessarily reflect the precise composition of the current portfolio held by each Fund at a particular point in time. Therefore, the IIV on a per Share basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by Amex is expected to be close to the most recently calculated Fund NAV on a per Share basis, it is possible that the value of the portfolio held by a Fund may diverge from the IIV during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

Trading Halts

The Exchange represents that it will cease trading the Shares of the Fund if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12. UTP trading in the Shares is also governed by the trading halts provisions of NYSE Arca Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index.

The Exchange may also consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares could be halted pursuant to the Exchange's ''circuit breaker'' rule[9] or by the halt or suspension of trading of the underlying securities.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions).[10] The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[11]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; [12] (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the registration statements for the Funds.

The Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from Section 11(d)(1) of the Act [13] and certain rules under the Act, including Rule

[8] The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on each business day, and all Authorized Participants and the Amex will have access to a password and the Web site containing the IIV File. However, the Fund will disclose each business day to the public identical information, but in a format appropriate to public investors, at the same time the Fund discloses the IIV and PCF files, as applicable, to industry participants.

[9] *See* NYSE Arca Equities Rule 7.12.

[10] Because NSCC does not disseminate the new basket amount to market participants until approximately 6 p.m. to 7 p.m. E.T., an updated IIV cannot be calculated during the Exchange's late trading session (from 4:15 p.m. to 8 p.m. E.T.). Official index sponsors for the Underlying Indexes currently do not calculate updated index values during the Exchange's late trading session; however, if the index sponsors do so in the future, the Exchange would not trade this product unless such official index value is widely disseminated.

[11] A list of the current members and affiliate members of ISG is available at *www.isgportal.com*.

[12] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that it believes would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

[13] 15 U.S.C. 78k(d)(1).

10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act.

The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. 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–NYSEArca–2007–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–108. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office 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–NYSEArca–2007–108 and should be submitted on or before January 18, 2008.

IV Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be 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 a national market system, and, in general, to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[18] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[19] The Commission notes that it previously approved the listing and trading of the Shares on Amex.[20] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[21] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. In addition, from 9:30 a.m. to 4:15 p.m. E.T., Amex will disseminate via the facilities of the CTA and CQ High Speed lines the IIV at least every 15 seconds, the market value of a Share for each Fund, the most recent NAV for each Fund, the number of Shares outstanding for each Fund, and the estimated cash amount and total cash amount per Creation Unit. Amex will also make available on its Web site daily trading volume, the closing prices, the NAV, and the final dividend amounts to be paid for each Fund. The Trust's Web site will contain a variety of other quantitative information for the Shares of each Fund. Finally, each Fund's total

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78*l*(f).

[19] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[20] *See supra* note 4.

[21] 17 CFR 240.12f–5.

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

portfolio composition will be disclosed on the Web site of the Trust or another relevant Web site.

Furthermore, the Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. Trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which provides that, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange also would halt trading. The Exchange also may halt trading in the Shares of a Fund when trading is not occurring in the securities comprising an Underlying Index and/or the Financial Instruments of a Fund.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. In particular, the Information Bulletin would discuss the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated.

3. The Information Bulletin also would discuss the requirement that an ETP Holder deliver a prospectus to an investor purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register.** As noted previously, the Commission previously found the listing and trading of the Shares on Amex be consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSEArca–2007–108), as amended, be and it hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25207 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11139]

Oklahoma Disaster #OK–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of OKLAHOMA (FEMA–1735–DR), dated 12/18/2007.

Incident: Severe Winter Storms.

Incident Period: 12/08/2007 and continuing.

EFFECTIVE DATE: 12/18/2007.

Physical Loan Application Deadline Date: 02/18/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/18/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Cleveland, Lincoln, Mayes, Oklahoma, Pottawatomie, Tulsa, Wagoner.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 11139.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–25252 Filed 12–27–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11137]

Oregon Disaster # OR–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of OREGON (FEMA—1733—DR), dated 12/08/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/01/2007 and continuing.

EFFECTIVE DATE: 12/08/2007.

Physical Loan Application Deadline Date: 02/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/08/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clatsop, Columbia, Lincoln, Polk. Tillamook, Washington, Yamhill,

The Interest Rates are:

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
The number assigned to this disaster for physical damage is 11137.	

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–25247 Filed 12–27–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11138]

Washington Disaster # WA–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA—1734—DR), dated 12/08/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/01/2007 and continuing.

EFFECTIVE DATE: 12/08/2007.

Physical Loan Application Deadline Date: 02/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/08/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Grays Harbor, Kitsap, Lewis, Mason. Pacific, Thurston,

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000
The number assigned to this disaster for physical damage is 11138.	

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–25246 Filed 12–27–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.750 (4 ¾) percent for the January–March quarter of FY 2008.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Walter C. Intlekofer,

Acting Director, Office of Financial Assistance.

[FR Doc. E7–25232 Filed 12–27–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for all other miscellaneous electrical equipment and component manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing. According to the request, no small business manufacturers supply these classes of products to the Federal government. If granted, the waiver would allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; servicedisabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: Comments and source information must be submitted January 14, 2008.

ADDRESSES: You may submit comments and source information to Pamela M. McClam, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Pamela M. McClam, Program Analyst, by telephone at (202) 205–7408; by FAX at (202) 481–4783; or by e-mail at *Pamela.McClam@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months.

The SBA defines "class of products" based on six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA is currently processing a request to waive the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing. North American Industry Classification System (NAICS) code 335999 product number (6250).

The public is invited to comment or provide source information to SBA on the proposed waivers of the Nonmanufacturer Rule for this class of NAICS code within 15 days after date of publication in the **Federal Register**.

Arthur E. Collins, Jr.,

Director for Government Contracting.

[FR Doc. E7–25245 Filed 12–27–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6043]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State's Advisory Committee on International Communications and Information Policy (ACICIP) will hold a public meeting on January 24, 2008, from 10 a.m. to 12 p.m., in the Loy Henderson Auditorium of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Richard E. Wiley of Wiley Rein LLP. and Ambassador David A. Gross, Deputy Assistant Secretary and U.S. Coordinator for International Communications and Information Policy.

The meeting's agenda will include discussions pertaining to various upcoming international telecommunications meetings and conferences, including a conference that will be led by the President's Digital Freedom Initiative (a public-private partnership) that is expected to be held in May 2008 and will focus on promoting broadband access in West Africa. Additionally, there will be reports and discussion concerning recent bilateral meetings between the U.S. and the European Union as well as between the U.S. and India. There will also be discussion about the Internet Governance Forum (IGF) that took place in Brazil this past November, and the upcoming IGF that will take place in India in December 2008. Lastly, there will be discussion about additional upcoming major events and issues for 2008, including the APEC Telecommunications Ministerial and the OECD Ministerial on the Future of the Internet Economy.

Members of the public may submit suggestions and comments to the ACICIP. Submissions regarding an event, consultation, meeting, etc. listed in the agenda above should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of that listed event. All comments must be submitted in written form and should not exceed one page for each country (for comments on consultations) or for each subject area (for other comments). Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5:00 p.m. on Monday, January 21, 2008 (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. STATE THAT YOU ARE REQUESTING PRE-CLEARANCE TO A MEETING

II. PROVIDE THE FOLLOWING INFORMATION:

1. Name of meeting and its date and time.
2. Visitor's full name.
3. Company/Agency/Organization.
4. Title at Company/Agency/Organization.
5. Date of birth.
6. Citizenship.
7. Acceptable forms of identification for entry into the U.S. Department of State include:
   - U.S. driver's license with photo.
   - Passport.
   - U.S. government agency ID.
8. ID number on the ID visitor will show upon entry.

Send the above information to Emily Yee by fax (202) 647–5957 or e-mail *YeeE@state.gov*.

Privacy Act Statement: The above information is sought pursuant to 5 U.S.C. § 301 and 22 U.S.C. 2651a, 4802(a). The principal purpose for collecting the information is to assure protection of U.S. Department of State facilities. The information provided also may be released to Federal, State or local agencies for law enforcement, counter-terrorism or homeland security purposes, or to other federal agencies for certain personnel and records management matters. Providing this information is voluntary but failure to do so may result in denial of access to U.S. Department of State facilities.

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Emily Yee, Executive Secretary of the Committee, at (202) 647–5205 or *YeeE@state.gov*.

General information about ACICIP and the mission of International Communications and Information Policy is available at: *http://www.state.gov/e/eeb/adcom/c667.htm*.

Dated: December 19, 2007.

Emily Yee,

ACICIP Executive Secretary, Department of State.

[FR Doc. E7–25265 Filed 12–27–07; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance; Detroit Metropolitan Wayne County Airport; Detroit, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the Detroit Metropolitan Wayne County Airport (DTW) from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of the sale of vacant, unimproved land owned by the Wayne County Airport Authority (WCAA) and Wayne County (County).

The WCAA has requested from FAA a "Release from Federal agreement obligated land covenants" to sell one (1)

parcel of property acquired by the County without Federal funding.

There are no impacts to the airport by allowing the WCAA to dispose of the vacant property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 28, 2008.

ADDRESSES: Mr. David J. Welhouse, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Welhouse, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734) 229–2952/Fax number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at the Detroit Metropolitan Wayne County Airport, Detroit, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Romulus, Wayne County, Michigan, and described as follows:

Description of Parcel Being Released (1.318 Acres)

Part of the southwest ¼ of section 24, T.3S., R.9E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the south ¼ corner of section 24, T.3S., R.9E., City of Romulus, Wayne County, Michigan and running thence north 00 degrees 23 minutes 10 seconds west, along the north-south ¼ line of said section 24, said line being also the centerline of Harrison Road (86 feet wide), a distance of 460.00 feet to a point; thence north 89 degrees 14 minutes 52 seconds west a distance of 43.01 feet to a point the west line of said Harrison Road, said point being the Point of Beginning of the parcel of land herein being described; proceeding thence from said Point of Beginning, north 89 degrees 14 minutes 52 seconds west, along a line parallel with the south line of said Section 24, a measured distance of 211.21 feet (described 211.22 feet) to a point; thence north 00 degrees 23 minutes 10 seconds west, along a line parallel with the north-south ¼ line of said section 24, a distance of 280.90 feet to a point on the centerline of the Frank and Poet Drain; thence south 84 degrees 21 minutes 32 seconds east, along the centerline of said Frank and Poet Drain, a distance of 212.34 feet to a point on the west line of said Harrison Road; thence south 00 degrees 23 minutes 10 seconds east, along the west line of said Harrison Road, said line being 43.00 feet west of, as measured at right angles to and parallel with the north-south ¼ line of said section 24, a distance of 262.80 feet to the Point of Beginning, containing 57,406 square feet or 1.318 acres, more or less, of land in area.

Issued in Romulus, Michigan, on October 31, 2007.

Matthew J. Thys,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 07–6192 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; St. Louis Regional Airport, East Alton, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal for the sale of a portion of the airport (2 acres, a portion of Parcel 19–2–08–13–03–303–006 and Parcel 19–2–08–13–03–303–007, located along the west side of East Airline Drive and east of Skyway Ct., presently open unused airport land) that is not needed for aeronautical use, as shown on the Airport Layout Plan. The revenue from this proposed sale will be used for the acquisition of property that will provide access to the airport property from Illinois Route 140 to the airport's northeast quadrant and/or other airport development. Parcel 19–2–08–13–03–303–006 and Parcel 19–2–08–13–03–303–007 are parts of the original parcel 19–2–08–13–03–303–004 that was purchased fee simple by the airport on May 8, 1977, with no Federal participation.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The release of this portion of Parcel 19 will facilitate the acquisition of property adjacent to Illinois Route 140 and will provide access to the airport property from Illinois Route 140 to the airport's northeast quadrant, thereby allowing further airport development in the northeast quadrant.

DATES: Comments must be received on or before January 28, 2008.

ADDRESSES: Al Richardson, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number 847–294–7436/Fax Number 847–294–7046.

FOR FURTHER INFORMATION CONTACT: Al Richardson, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number 847–294–7436/Fax Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location or at St. Louis Regional Airport, East Alton, Illinois.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at St. Louis Regional Airport, East Alton, Illinois. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Des Plaines, Illinois, on November 20, 2007.

Jack Delaney,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 07–6191 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–50]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before January 17, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–0353 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, D.C. 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to http://www.regulations.gov, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 21, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2007–0353.
Petitioner: Michelin North America.
Section of 14 CFR Affected: 14 CFR § 91.609(c).
Description of Relief Sought: To allow Michelin to operate an aircraft with 10 passengers, excluding any pilot seats, without a flight data recorder.

[FR Doc. E7–25260 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–48]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before January 17, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–0383 using any of the following methods:

- *Government-wide rulemaking Web site*: Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.
- *Mail*: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, D.C. 20590.
- *Fax*: Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery*: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to http://www.regulations.gov, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 21, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2007–0383.

Petitioner: Ameriflight, LLC.

Section of 14 CFR Affected:

14 CFR 61.51(f)(2).

Description of Relief Sought:

To permit Ameriflight pilots to log second in command (SIC) flight time only for that flight time during which that person holds the appropriate category, class and instrument rating for the aircraft being flown, and more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted.

[FR Doc. E7–25263 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty-Third Meeting, RTCA Special Committee 186: Automatic Dependent Surveillance-Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS–B) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS–B).

DATES: The meeting will be held January 15–18, 2008, at 9 a.m. (Unless Otherwise noted).

ADDRESSES: The meeting will be held at Hilton Melbourne Beach Oceanfront Hotel, Melbourne, FL.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat (Hal Moses), 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* (2) Hosted by: Rockwell Collins.

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 186 meeting. The agenda will include:

- January 15:
- All Day, ASSAP Subgroup.
- All Day; CDTI Subgroup.
- January 16:
- All Day, WG1/ATSA SURF IA Subgroup.
- All Day, ASSAP Subgroup.
- All Day, CDTI Subgroup.
- January 17:
- All Day, WG1/ASTA SURF IA Subgroup.
- All Day, ASSAP Subgroup.
- All Day, CDTI Subgroup.
- January 18:
- Open Plenary (Chairman's Introductory Remarks, Review Meeting Agenda, Review/Approval of the Forty-Second Meeting Summary, RTCA Paper No. 286–07/SC186–255, Date, Place, and Time of Next Meeting).
- FAA Surveillance and Broadcast Services (SBS) Program—Status.
- Final Report of Ad-hoc Committee on Applications Standardization Process.
- Working Group Reports.
- WG–1—Operations and Implementation.
- WG–2—TIS–B MASPS.
- WG–3—1090 MHz MOPS.
- WG–4—Applications Technical Requirements.
- WG–5—UAT MOPS.
- RFG—Requirements Focus Group.
- Closing Plenary Session (New/Other Business, Review Actions Items/Work Program, Adjourn).
- NOTE:
- AD—Application Development.
- ASAS—Aircraft Surveillance Applications System.
- ASSAP—Airborne Surveillance & Separation Assurance Processing.
- CDTI—Cockpit Display of Traffic Information.
- MASPS—Minimum Aviation System Performance Standards.
- MOPS—Minimum Operational Performance Standards.
- NRA—Non-Radar Airspace.
- RFG—Requirements Focus Group.
- STP—Surveillance Transmit Processing.

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 December 12, 2007.

Robert L. Bostiga,

RTCA Advisory Committee (Acting).

[FR Doc. 07–6189 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventy-Fifth Meeting, RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTC Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held January 22–25, 2007, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, 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 159 meeting. The plenary agenda will include:

- January 21:
- Holiday—RTCA Closed.
- January 22:
- All Day, Working Group 2, Wide Area Augmentation System (GPS/WAAS), Colson Board Room.
- Morning (9–12 p.m.), Working Group 2C, GPS Inertial, MacIntosh-NBAA Room & Hilton-ATA Room.
- Afternoon (1 p.m.–4:30 p.m.), Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton-ATA Room.
- January 23:
- All Day, Working Group 2, Wide Area Augmentation System (GPS/WAAS), Colson Board Room.
- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton-ATA Room.
- January 24:
- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton-ATA Room.
- Morning (9–12 p.m.), Working Group 6, GPS Interference, Colson Board Room.
- Afternoon (1–5 p.m.), Working Group 7, GPS/Antennas, Colson Board.
- January 25
- Open Plenary (Chairman's Introductory Remarks, Approval of Summary of the Seventy-Second Meeting held December 7, 2007, RTCA Paper No. 319–07/SC159–960).
- Review Working Group (WG) Progress and Identify Issues for Resolution.
- GPS/3rd Civil Frequency (WG–1).
- GPS/WAAS (WG–2).
- GPS/GLONASS (WG–2A).
- GPS/Inertial (WG–2C).
- GPS/Precision Landing Guidance and (WG–4).
- GPS/Airport Surface Surveillance (WG–5).
- GPS/Interference (WG–6).
- GPS/Antennas (WG–7).
- GPS/GRAS (WG–8).
- Review of EUROCAE activities.
- Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting).

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 December 14, 2007.

Robert L. Bostiga,

RTCA Advisory Committee (Acting).

[FR Doc. 07–6190 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–0030]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of an extension of a currently approved information collection. We published a **Federal Register.** Notice with a 60-day public comment period on this information collection on August 17, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 28, 2008.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC, 20503, or e-mail at *oira_submission@omb.eop.gov*, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–0030.

FOR FURTHER INFORMATION CONTACT: For information regarding Emergency Relief Funding Applications, contact Greg Wolf, 202–366–4655, Office of Program Administration, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Emergency Relief Funding Applications.

Background: Section 125 of Title 23 United States Code requires States to submit applications to the FHWA for emergency relief (ER) funds. The ER funds are established for the repair or reconstruction of Federal-aid highways and Federally-owned roads, which have suffered serious damage from natural disasters over a wide area or a catastrophic failure from an external cause. The information is needed by the FHWA to fulfill its statutory obligations regarding funding determinations for emergency work to repair damaged highway facilities. The requirements covering the FHWA ER program are contained in 23 CFR Part 668.

Respondents: 50 State Transportation Departments, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of Guam, the Virgin Islands and American Samoa.

Frequency: As required.

Estimated Average Burden per Response: The estimated burden to complete the application is 250 hours.

Estimated Total Annual Burden Hours: Approximately 7,500 hours annually.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 20, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–25131 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–0031]

Agency Information Collection Activities: Notice of Request for Extension and Change of Title of a Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension and change of title of a currently approved information collection. —

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of an extension and change of title of a currently approved information collection. We published a **Federal Register**

Notice with a 60-day public comment period on this information collection on August 31, 2007.

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. As part of FHWA's ongoing effort to reduce the overall burden on the public, four information collections associated with the accommodation or relocation of utility facilities in the right-of-way of highway facilities are being combined into a single collection (2125–0519) with a new title of Utility Adjustments, Agreements, Eligibility Statements, and Accommodation Policies. The four affected information collections are: 2125–0514: Develop and Submit Utility Accommodation Policies; 2125–0515: Eligibility Statement for Utility Adjustments; 2125–0519: Developing and Recording Costs for Utility Adjustments; and 2125–0522: Utility Use and Occupancy Agreements.

DATES: Please submit comments by January 28, 2008.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC, 20503, or e-mail at *oira_submission@omb.eop.gov*, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be

minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–0031.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Obenberger, 202–366–2221, Office of Infrastructure, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Utility Adjustments, Agreements, Eligibility Statements, and Accommodation Policies; formerly titled "Developing and Recording Costs for Utility Adjustments."

Background: Federal laws dealing with the relocation and accommodation of utility facilities associated with the right-of-way of highway facilities are contained in the United States Code (U.S.C.) 23, Sections 123 and 109(I)(1). Regulations dealing with the utility facility accommodation and relocation are based upon the laws contained in 23 U.S.C. and are found in the Code of Federal Regulations (CFR), Title 23, Chapter I, Subchapter G, Part 645, subparts A and B.

The FHWA requires (23 CFR 645 subpart A—Utility Relocations, Adjustments, and Reimbursement) developing and recording costs for utility adjustments, as the basis for reimbursing State Departments of Transportation (SDOTs) and local agency transportation departments, when they have paid the costs of utility facilities relocations that were required by the construction of Federal-aid highway projects. The FHWA requires the utility companies to document the costs or expenses for adjusting their facilities. These utility companies must have a system for recording labor, materials, supplies and equipment costs incurred when undertaking adjustments to accommodate the highway projects. This record of costs forms the basis for payment by the SDOT or local transportation department to the utility company. In turn the FHWA reimburses the SDOT or local transportation department for its payment to the utility company. The utility company is required to maintain these records of costs for 3 years after final payment is received.

The SDOT and/or local agency transportation departments are responsible for maintaining the highway rights-of-way, including the control of its use by the utility companies. In managing the use of the highway rights-of-way, the SDOT and/or local agency transportation department is required (23 CFR 645.205 and 23 CFR 645.213) to document the terms under which utility facilities are allowed to cross or otherwise occupy the highway rights-of-way, in the form of utility use and occupancy agreements (formerly OMB Control #: 2125–0522) with each utility company. This documentation, consisting of a use and occupancy agreement (permit), must be in writing and must be maintained in the SDOT and/or local agency transportation department. Each SDOTs is required (23 CFR 615.215) to submit to the FHWA a utility adjustment eligibility statement (formerly OMB Control #: 2125–0515) that establishes the SDOT's legal authority and policies it employs for accommodating utilities within highway rights-of-way or obligation to pay for utility adjustments. FHWA has previously reviewed and approved these eligibility statements for each State DOT. The statements are used as a basis for Federal-aid reimbursement in utility relocation costs under the provisions of 23 U.S.C. 123. Updated statements may be submitted for review at the States discretion where circumstances have modified (for example, a change in State statute) the extent to which utility adjustments are eligible for reimbursement by the State or those instances where a local SDOT's legal basis for payment of utility adjustments differs from that of the State.

Each SDOT is also required (23 CFR 645.215) to develop and submit to FHWA their utility accommodation policies (formerly OMB Control #: 2125–0514) that will be used to regulate and manage the utility facilities within the rights-of-way of Federal-aid highway projects. The agencies utility accommodation policies need to address the basis for utility facilities to use and occupy highway rights-of-way; the State's authority to regulate such use; and the policies and/or procedures employed for managing and accommodating utilities within the rights-of-way of Federal-aid highway projects. Upon FHWA's approval of the policy statement, the SDOT may take any action required in accordance with the approved policy statement without a case-by-case review by the FHWA. In addition, the utility accommodation policy statements that have been approved previously by the FHWA are periodically reviewed by the SDOTs to determine if updating is necessary to reflect policy changes.

Respondents: 52 SDOTs, including the District of Columbia and Puerto Rico, local agency transportation departments, and utility companies.

Frequency: The SDOTs and local agency transportation departments are each involved in an average of 15 utility use and occupancy agreements (or permits) per year for an annual frequency of 46,000. SDOTs are allowed to submit their eligibility statement for utility adjustments and their utility accommodation policies when warranted by changes or when updates occur, or at the SDOT's discretion. It is estimated 10 SDOTs will update either their eligibility statement for utility agreements or utility accommodation policies per year.

Estimated Average Burden per Response: The estimated average amount of time required to develop and record the costs for each utility adjustment is 8 hours. The estimated amount of time required by the SDOTs and local agency transportation departments to process each utility use and occupancy agreement (permit) is 8 hours. The estimated amount of time for each update to the SDOT's eligibility statement for utility adjustments has an average burden of 18 hours. The estimated amount of time for each update and submittal of a SDOT's utility accommodation policy has an average burden of 280 hours.

Estimated Total Annual Burden Hours: The annual burden associated with developing and recording the costs for adjusting utility facilities is 72,000 hours based on an estimate of 9,000 adjustments that utility companies perform annually that may be eligible for Federal-aid highway funding allowing SDOTs or local agency transportation departments to request reimbursement from FHWA. The annual burden associated with preparing, submitting and approving utility use and occupancy agreements (permits) is 552,000 burden-hours. The annual burden associated with developing and approving updates to a SDOT's eligibility statement for utility adjustments is 90 hours. The annual burden associated with developing and approving updates to SDOTs' utility accommodation policies is 1,400 hours. The accumulated burden for the combined information collection is 625,490.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 20, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–25205 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian Pacific Railway

[Waiver Petition Docket Number FRA–2007–0008]

The Canadian Pacific Railway (CP) seeks a waiver from the requirements of 49 CFR 240.117(e)(1) through (4), 240.305, and 240.307, in connection with implementation of a Close Call Reporting System (C3RS) Demonstration Pilot Project (Pilot Project) sponsored by FRA's Office of Research and Development. These sections of the regulation relate to punitive actions that are required to be taken against locomotive engineers for the violation of certain railroad operating rules. Refer to Part 240 for a detailed listing of these sections.

CP and the employees of CP's Chicago Service Area, represented by the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU), desire to participate in the Pilot Project, which is one of the action items included in FRA's Action Plan for Addressing Critical Railroad Safety Issues (Action Plan) announced on January 25, 2006.

As noted in the Action Plan, in other industries such as aviation and mining, as well as in the European railway industry, implementation of "close call" reporting systems that shield the reporting employee from discipline (and the employer from punitive sanctions levied by the regulation) have contributed to major reductions in accidents. In March of 2005, FRA completed an overarching memorandum of understanding with railroad labor organizations and management to develop pilot programs to document close calls, i.e., unsafe events that do not result in a reportable accident but very well could have. Participating railroads will be expected to develop corrective actions to address the problems that may be revealed. The aggregate data may prove useful in FRA's decision-making concerning regulatory and other options to address human factor-caused accidents.

CP, BLET, and UTU have developed and signed an implementing memorandum of understanding (IMOU), based on the FRA's overarching memorandum of understanding, as a first step in commencing the demonstration pilot project. The project would involve approximately 350 yard and road service employees operating between Newport, Minnesota, (Mile Post (MP) 402.5C, River Subdivision) and Tower A–20 (MP 20.5, C&M Subdivision), and all track between those mileposts, including track on the following subdivisions: River, Tomah, Watertown, M&P, the CN Valley, and C&M. This IMOU was sent to FRA for consideration and acceptance on October 8, 2007. As referenced in the IMOU, certain "close calls" may be properly reported by the employee(s) involved and later discovered by CP, for example, through subsequent retrospective analysis of locomotive event recorder data, etc. In order to encourage employee reporting of close calls, the IMOU contains provisions to shield the reporting employee from CP discipline. CP, BLET, and UTU also desire to shield the reporting employee(s) and CP from punitive sanctions that would otherwise arise as provided in selected sections of Part 240 for properly reported close call events as defined in the C3RS IMOU.

The waiver petition is requested for the duration of the C3RS Pilot Project (5 years from implementation or until the Pilot Project is completed or parties to the IMOU withdraw as described in the IMOU, whichever comes first).

Note: According to Article 7.2 of the IMOU, "Conditions under which a reporting employee is not protected from CP discipline and/or decertification and from FRA enforcement," CP employees included in this C3RS/IMOU receive no protection from discipline and/or decertification or from FRA enforcement action when one or more of the following conditions occur:

- The employee's action or lack of action was intended to damage CP or another entity's operations or equipment, or to injure other individuals or purposely place others in danger (e.g., sabotage);
- The employee's action or lack of action involved a criminal offense;
- The employee's behavior involved substance abuse or inappropriate use of controlled substances;
- The report is rejected by the Bureau of Transportation Statistics Peer Review Team;
- The event resulted in a railroad accident/incident that qualifies as reportable under § 225.11;
- The event resulted in an identifiable release of a hazardous material; or
- The event was observed in real-time and reported to CP management (such as a train dispatcher or operator observing a signal violation) or was observed as part of proficiency testing.

Proficiency testing (e.g., operating rule efficiency testing, signal compliance testing) generally consists of real-time observations and do not qualify for exemption. Similarly, an employee is not exempt from discipline and/or decertification for a violation that CP or FRA identifies contemporaneously (e.g., a block circuit is occupied by a train without authority, and the train dispatcher notices it before the train backs off the circuit) before the employee files a close call report. In such situations, CP or FRA may use event recorder information to support discipline and/or decertification and/or enforcement. For example, a CP official who observes a train operate past a signal that requires a stop may use any relevant data recorded by the locomotive's event recorder in pursuing disciplinary action against the train crew, regardless of whether a member of the crew timely files a close call report.

In its petition, CP indicated that the parties signatory to the IMOU, dated August 21, 2007, believe the data from these properly reported close call incidents, as defined in the IMOU, will be invaluable in the analysis and development of effective corrective actions. CP expressed the view that without the requested waiver the employee(s) involved in incidents such as those described above will not file reports of the incidents and that the incident(s) will likely go undetected, resulting in no opportunity for analysis, data trending, or appropriate corrective actions. Noting the success of close call reporting systems in other industries (e.g., aviation and maritime), CP further indicated that all parties signatory to the IMOU and participating in the Pilot Project believe that the Pilot Project and requested regulatory relief is in the public interest and consistent with railroad safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they

should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–0008) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC, on December 19, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–25141 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Durbin & Greenbrier Valley Railroad

[Waiver Petition Docket Number FRA–2007–27868]

The Durbin & Greenbrier Valley Railroad, Inc. (DGVR), a Class III railroad, seeks a waiver of compliance from the requirements of CFR § 223.11 *Requirements for existing locomotives* for Locomotive Number 82. Specifically, DGVR petitioned FRA for a waiver for a 1,500 horsepower diesel electric locomotive, model BL–2, built by the Electro Motive Division of General Motors in 1948. This locomotive is on loan from the State of West Virginia (WV) Rail Authority. The locomotive is stored in Belington, WV, and operated by a subsidiary division of DGVR, the West Virginia Central.

Locomotive Number 82 is used on a limited basis for freight and excursion passenger service from a station in Hi Falls, WV (Milepost (MP) 51) to Tygart Junction, WV (MP 0.02), approximately 50 miles. There are 21 highway/rail crossings at grade, and two overpasses. One is located in Elkins, WV, and the other approximately 10 miles east of Elkins. The railroad operates through rural and relatively unpopulated areas, and there have been no reports of glazing vandalism along this right-of-way.

The petitioner believes that this locomotive can be safely operated throughout the rural area with the current non-compliant safety-type glazing. The cost to DGVR for installation of all new window frames and compliant FRA Types I & II glazing is significant, with only a marginal increase in safety due to the low speed.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–27868) and may be submitted by any of the following methods:

Web site: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC, on December 19, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–25069 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Informational Filing

In accordance with § 236.913 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received an informational filing from the Ohio Central Railroad System (OCRS) to permit field testing of the railroad's processor-based train control system. The informational filing is described below, including the requisite docket number where the informational filing and any related information may be found. The document is also available for public inspection;

however, FRA is not accepting public comments.

Ohio Central Railroad System

[Docket Number FRA–2006–26177]

OCRS has submitted an informational filing to FRA to permit field testing of the railroad's processor-based train control system identified as OCRS Positive Train Control (OCRS PTC). The informational filing addresses the requirements under 49 CFR 236.913(j)(1).

Specifically, the informational filing contains a description of the OCRS PTC product and an operational concepts document, pursuant to 49 CFR 236.913(j)(1). The OCRS PTC system is designed to prevent authority limit and over-speed violations in non-signaled Track Warrant Control (TWC) territory, and to prevent equipped trains from entering the limits, without authorization, of on-track authority granted to employees.

OCRS desires to commence field testing in the fourth quarter of 2007, or as soon as practicable thereafter, contingent upon FRA's acceptance and approval of their informational filing.

Interested parties are invited to review the informational filing and associated documents at the DOT Docket Management facility during regular business hours (9 a.m.—5 p.m.) at 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the internet at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications received into any of our dockets by name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT(s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on December 19, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–25142 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2007–0049]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on a previously approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for Part 565, Parts 567 and Part 541 for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 26, 2008.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2007–0049] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments. Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* or *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register.**

Docket: For access to the docket to read background documents or comments received, go to the street address listed above. The internet access to the docket will be at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Deborah Mazyck, NHTSA, 1200 New Jersey Avenue, SE., West Building, Room W43–443, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139 and email address is *Deborah.Mazyck@dot.gov*. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following previously approved collection of information:

Title: Consolidated Labeling Requirements for 49 CFR 541, 565 and 567.

OMB Control Number: 2127–0510.

Form Number: None.

Affected Public: Vehicle manufacturers.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: For Parts 565, 541 and 567.

Parts 565 and 567

NHTSA's statute at 15 U.S.C. 1392,1397,1401,1407, and 1412 of the National Traffic and Motor Vehicle Safety Act of 1966 authorizes the issuance of Federal Motor Vehicle Safety Standard (FMVSS) and the collection of data which support their implementation. The agency, in prescribing an FMVSS, is to consider available relevant motor vehicle safety data and to consult with other agencies as it deems appropriate. Further, the Act mandates, that in issuing any FMVSS, the agency should consider whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 115, Vehicle Identification Number, specifying requirements for vehicle identification numbers to aid the agency in achieving many of its safety goals.

The standard was amended in August 1978 by extending its applicability to additional classes of motor vehicles and by specifying the use of a 30-year, 17-character Vehicle Identification Number (VIN) for worldwide use. The standard was amended in May 1983 by deleting portions of FMVSS No. 115 and reissuing those portions as a general agency regulation, Part 565. Subsequently, the standard was amended again in June 1996 transferring the text of the FMVSS No. 115 to Part 565, without making any substantive changes to the VIN requirements as a result of the proposed consolidation. The provision of the Part 565 (amended) regulation requires vehicle manufacturers to assign a unique VIN to each new vehicle and to inform NHTSA of the code used in forming the VIN. These regulations apply to all vehicles: passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, and motorcycles.

NHTSA has proposed amendments to Part 565 to revise certain sections in order to extend the existing VIN system for another thirty years, and to ensure a sufficient supply of unique available VINs and manufacturer identifiers for that time period (72 FR 56027, October 2, 2007). The agency may require information to be provided in a slightly different way (e.g., vehicle make being transferred from the first to the second section of the VIN), the scope of the overall reporting requirement of Part 565 will not change. The agency does not anticipate an increase or decrease in the collection of information requirements if these proposals are adopted.

Part 567 specifies the content and location of, and other requirements for, the certification label or tag to be affixed to motor vehicles and motor vehicle equipment. Specifically, the VIN is required to appear on the certification label. Additionally, this certificate will provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards are applicable to the vehicle or equipment, and its date of manufacture.

NHTSA estimates the vehicle manufacturers will incur a decrease in total annual hour burden of 423,333. The recordkeeping hour burden for Part 565 and 567 represents a decrease in hour burden because of a decrease in the number of respondents.

NHTSA estimates an increase in cost burden of $3,400.00. Due to the fluctuation of the U.S. economy, there was an increase in cost to comply with the reporting requirements. The change in cost burden reflects the 2007 Consumer Price Index as compared to that of 1987.

Part 541

The Motor Vehicle Information and Cost Savings Act was amended by the Anti-Car Theft Act of 1992 (Pub. L. 102–519). The enacted Theft Act requires specified parts of high-theft vehicle to be marked with vehicle identification numbers. In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. Each major component part must be either labeled or affixed with the VIN and its replacement component part must be marked with the DOT symbol, the letter (R) and the manufacturers' logo. The final rule became effective September 1, 2006. Due to expansion of the Federal Motor Vehicle Theft Prevention Standard (Part 541), all passenger cars, and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles, are required them to be parts marked. This creates a program change for this collection.

Part 541 shows an increase in recordkeeping costs because there will be a greater number of vehicles required to be parts marked resulting in an additional cost of affixing labels or stamping the VIN on motor vehicles and startup costs for the manufacturers. NHTSA estimates the vehicle manufacturers will incur a total cost burden of $87,550,100 million. NHTSA estimates a decrease in reporting and recordkeeping hours because there is a more accurate count of the number of vehicles in compliance with the FMVTPS. However, there is an increase in the number of target area submissions required by the vehicle manufacturers. NHTSA estimates the vehicle manufacturers will incur a net decrease for a total annual hour burden of 502,519.

Estimated Annual Burden: The overall total estimated annual hour burden for this collection is 925,852. The overall total estimated cost burden for this collection is $87,553,500 million.

Number of Respondents: The total number of respondents for this collection (Part 541, 565 and Part 567) is 4,000.

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

Issued on: December 20, 2007.

Julie Abraham,

Director, International Policy Fuel Economy and Consumer Programs.

[FR Doc. E7–25209 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2007–0055]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 26, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. David Sparks, Office of Odometer Fraud Investigation, 1200 New Jersey Avenue, SE., Room W55–318, Washington, D.C. 20590–0001. Telephone: (202) 366–5953

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g. permitting electronic submission of responses).

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: 49 CFR Part 580 Odometer Disclosure Statement.

OMB Number: 2127—0047.

Affected Public: Households, Business, other for-profit and not-for-profit institutions, Federal Government, and State, Local, or Tribal Government.

Abstract: The Federal Odometer Law, 49 U.S.C. Chapter 327, and implementing regulations, 49 CFR Part 580 require each transferor of a motor vehicle to provide the transferee with a written disclosure of the vehicle's mileage. This disclosure is to be made on the vehicle's title, or in the case of a vehicle that has never been titled, on a separate form. If the title is lost or is held by a lien holder, and where permitted by state law, the disclosure can be made on a state-issued, secure power of attorney.

Estimated Annual Burden: 2,034,910.

Estimated Number of Respondents: 162,808,900.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *DOT Internet site: http://dms.dot.gov* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* U.S. DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided.

To receive confirmation that your comments were received, enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

To Read Comments submitted to the Docket: visit the Docket Management System at the address and times given above.

To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page "*http://www.regulations.gov*"

(2) At that site, click on "search for dockets."

(3) Select (*http://www.regulations.gov/fdmspublic/component/main*)

(4) From the drop-down menu in the Agency field, select "National Highway Traffic Safety Administration"

(4) Enter number "2127–0047" (the Docket ID).

(5) Click on "submit."

(6) The response should contain the docket summary information for this docket.

(7) Click on the comments you wish to see.

(8) You may download the comments. These files are imaged documents (i.e. Adobe Acrobat pdf files) and can be "word searched" using a suitable software application.

Please note that it is recommended to search the Docket periodically, as new material is added as it becomes available.

Issued on: December 20, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7–25210 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition (Defect Petition DP06–005) submitted by Public Citizen to NHTSA's Office of Defects Investigation (ODI) pursuant to 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with regard to engine stalling in Model Year (MY) 2003–2005 Ford Taurus/Mercury Sable Flex Fuel Vehicles that operate using E85, an alternative fuel.

After reviewing all available information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issue raised by the petition is not warranted. The agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Ajit Alkondon, Safety Defects Engineer, Defects Assessment Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue, SE., Washington DC 20590. Telephone 202–366–3565.

SUPPLEMENTARY INFORMATION: On October 11, 2006, Public Citizen sent a letter to NHTSA regarding MY 2003–2005 Ford Taurus and Mercury Sable Flex Fuel Vehicles (FFV). The Ford Motor Company (Ford) produced 228,000 of these vehicles in those model years. In the letter, Public Citizen petitioned NHTSA to investigate and determine whether the alleged stalling of these vehicles while operating on E85 constitutes a safety defect under the vehicle safety laws (49 U.S.C. Chapter 301).

E85, an "alternative fuel" within the meaning of 49 U.S.C. 32901(a)(1)(D), is an alcohol/fuel mixture consisting of 85% denatured ethanol and 15% gasoline or diesel fuel. Flex fuel vehicles (FFVs, also known as "dual fueled automobiles") are vehicles "capable of operating on alternative fuel and on gasoline or diesel fuel." 49 U.S.C. 32901(a)(8)(A). An FFV is identical to its non-FFV counterpart, except that, because of the corrosive nature of the alternative fuel (in this case, the ethyl alcohol in E85), exposed metallic and rubber surfaces within the FFV fuel system have been replaced with materials more capable of resisting the corrosive effects of the alternative fuel to prevent excessive wear of these surfaces from exposure to E85.

Public Citizen's Petition

In addition to seeking a defect investigation, the petition also asks NHTSA to reclaim credits claimed by Ford for these vehicles due to their dual fuel status under the Corporate Average Fuel Economy (CAFE) program. See 49 U.S.C. 32905–32906. Although that issue is not addressed in this notice, the petition focuses primarily on this CAFE credit issue and the availability of E85. The great majority of the allegations in the petition concern difficulty in starting the vehicles and make no reference to safety issues. The petition mentions one instance in which, after the owner experienced difficulty starting the vehicle and drove the car out of his garage, the vehicle "began to stall." The petition does not allege any crashes, injuries, or (with the possible exception of the one alleged stalling incident), any unsafe events involving these vehicles.

NHTSA's Review of the Allegations Made in the Petition

With little to go on based on the petition itself, ODI looked at various sources of information to determine whether or not there was any basis for a safety investigation of these vehicles with regard to alleged engine stalling. ODI reviewed complaints submitted by owners of these vehicles to NHTSA and to Ford (including a complaint concerning the one instance of possible stalling cited in the petition), the experience of state-owned fleets of these vehicles, Early Warning Reporting (EWR) data, actions taken by Ford, and certain information submitted by Ford.

In any investigation involving allegations of stalling, ODI examines a number of factors, including: The rate at which stalling occurs in the whole population of subject vehicles (often expressed as the number of vehicles that have experienced the phenomenon per hundred thousand), the speeds at which stalling occurs, the type of operation during which stalling occurs (*e.g.*, when starting, accelerating, decelerating, or cruising), whether the vehicle can quickly be restarted after stalling, whether the stalling affects steering functions, whether the stalling affects braking functions, and any crashes or other unsafe events that may have resulted from the stalling. In deciding whether or not alleged stalling merits a full investigation, ODI also considers those criteria.

Ford's Actions Concerning These Vehicles

In response to customer complaints about the operation of these vehicles, Ford released two Technical Service Bulletins (TSBs): TSB 05–11–13 and TSB 06–05–05. TSB 05–11–13, issued on June 13, 2005, pertains to both FFV and non-FFV Ford Taurus/Mercury Sable vehicles for MY 2004 and 2005. The TSB addresses the following issues: lack of power at highway speeds, RPM dip after cold start, malfunction indicator lamp (MIL) on with diagnostic trouble code (DTC) P0316, intermediate clutch failure due to low transmission oil pressure, misfire at low load/low RPM, or load surge at low speeds, hard start and rough idle, and inaccurate display of fuel economy in message center. Ford explained that TSB 05–11–13 was created to address specific drivability symptoms associated with the 3.0L engine in MY 2004 through 2005 model Taurus/Sable vehicles, independent of the type of fuel used. The repair procedure for this TSB includes reprogramming the Powertrain Control Module (PCM) with updated software.

TSB 06–05–05, published on March, 20, 2006, pertains to Ford Taurus/Mercury Sable FFVs for MY 2004–2006. This TSB addresses a long crank/hard start condition when the vehicles operate on E85 fuel. Similar to TSB 05–11–13, the repair procedure for this TSB requires reprogramming the PCM with an updated software release.

While the letter from Public Citizen concerns subject vehicles in MY 2003 through 2005, the two TSBs issued by Ford cover MY 2004 through 2005 and 2004 through 2006, respectively. Ford explained that the model years 2001 through 2003 Taurus/Sable vehicles have a different PCM than the MY 2004 through 2006 Taurus/Sable vehicles. Further, the issues brought up in the Public Citizen letter—long crank/hard start and low speed stalls—are predominantly confined to the 2004 to 2006 model year vehicles.

As stated above, Ford issued TSB 06–05–05 to address the long crank/hard start problems associated with MY 2004 through 2006 Ford Taurus/Mercury Sable vehicles. Ford also initiated Extended Coverage Program (ECP) 06N07 to address this condition. Ford did not extend ECP 06N07 to MY 2003 vehicles since these vehicles have a

different PCM and are covered under a separate ECP.

A search of Ford's Analytical Warranty System database revealed that of the 649 vehicles receiving the TSB 06–05–05 repair, only 12, or 1.8%, of the vehicles required service for similar issues after the repair. Of these 12, only one vehicle complained of a stall while driving. (As explained below, this stall was apparently not related to use of E85.) This suggests a high TSB effectiveness.

The Complaint Cited in the Petition

ODI interviewed the complainant named in the Public Citizen letter and inquired concerning his experiences with the subject vehicle and its performance when operated on either gasoline or E85. The consumer stated that he had purchased a new 2005 Ford Taurus FFV and that, when operating the vehicle on gasoline alone, he had experienced no driving problems. However, when the consumer operated the vehicle on E85, he experienced hard starting and low speed stalls while the engine was cold. The consumer had the adjustments called for by TSB 05–11–13 performed on his vehicle three times, but the problems persisted. He then sold the vehicle back to the Ford dealership after driving only 980 miles. TSB 06–05–05 was never performed on the vehicle.

Other Complaints

In addition to the vehicle owned by the complainant discussed above, ODI confirmed only three other vehicles that had experienced instances of stalling from a population of 228,000 vehicles. One, a 2004 Ford Taurus FFV, was the subject of a Vehicle Owner Questionnaire (VOQ) submitted to NHTSA. ODI contacted this consumer and learned that the consumer's main concern was difficulty starting the vehicle. The consumer stated that he brought the vehicle into a repair shop for service and had TSB 06–05–05 performed on his vehicle. Eventually, the work Ford did on the car reduced the hard starting problem and apparently eliminated the stalling problem.

The second vehicle that experienced stalling, a 2005 Ford Taurus FFV, was the subject of a complaint received by Ford and recorded in its complaint database. ODI has contacted this consumer and learned that the consumer experienced both engine stalling and hard starting problems. The consumer did not have TSB06–05–05 performed on his vehicle, and sold the vehicle shortly after his vehicle exhibited these symptoms.

The third vehicle that experienced stalling, a 2004 Ford Taurus FFV, was the vehicle returned for repair after application of TSB 06–05–05, mentioned above. This particular complaint suggested a single stalling event while driving, after which the vehicle restarted with no additional problems. Ultimately, this vehicle was repaired by performing technical service unrelated to the repair methods for engine stalling due to E85 usage. Therefore, the stalling problem was apparently unrelated to E–85 usage, and this vehicle is not considered as one that experienced E85-related stalling.

In total, ODI was able to confirm that just three FFV vehicles (one 2004 Taurus and two 2005 Tauruses) experienced stalls related to E85 operation. ODI was not able to confirm any stalls in the population of 2003 Ford Taurus/Mercury vehicles.

Fleet Experience

To assess E85 performance in vehicles most likely to use it frequently, ODI obtained a list of fleets operating the subject vehicles. ODI contacted six of the fleets-the State of Minnesota; the Iowa, Illinois, Nebraska, and Wisconsin Departments of Transportation; and the Minnesota Department of Natural Resources. In total, these fleets operate approximately 500 of the subject vehicles. Five out of the six fleets reported incidents of long crank/hard start in the subject vehicles. However, none of the six fleets reported stalling issues. Fleet customers report that they have taken advantage of the TSBs issued by Ford that address this long crank/hard start issue, and that there have been significant improvements in the subject vehicle performance while using E85 subsequent to the repairs.

Conclusions

Nearly all of the allegations concerning the operation of these vehicles involve long crank/hard starting, not stalling. Based on ODI's inquiry, only three of the subject vehicles (out of a population of 228,000 vehicles) have experienced engine stalling in connection with their operation using E85. This indicates a very low rate of stalling that is nearly identical to the rate of stalling in non-FFV Taurus and Sable vehicles and very low when compared to the rates experienced by non-FFV that ODI has reviewed. The stalling that has occurred has apparently not resulted in any crashes, loss of steering or braking control, or high risk events. The stalling seems to occur either at start-up or at low speeds. Moreover, at least with regard to the one vehicle that experienced stalling apparently related to E85 use and later received the repair procedure called for by Ford's TSB 06–05–05, this procedure seemed to cure the problem.

Due to the very low incidence of vehicle stalling resulting from the use of E85 within the subject vehicles and the extremely low likelihood of an unsafe occurrence arising from the type of stalls that have occurred, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety defect in this matter. NHTSA notes that the issues consumers primarily complain of—namely long crank/hard start and stall while driving—are adequately addressed by the TSBs issued by Ford in response to consumer complaints. Because we believe the petition does not provide a technical basis on which to proceed, and in view of the need to allocate NHTSA's limited resources so as to accomplish the agency's safety priorities, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

Authority: 49 U.S.C. 30162(d); delegation of authority at CFR 1.50 and 501.8.

Issued on: December 13, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7–25096 Filed 12–27–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–97–2995]

Pipeline Safety: Random Drug Testing Rate

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 25 percent during calendar year 2008.

DATES: Effective January 1, 2008, through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Stanley Kastanas, Director, Drug and Alcohol Policy and Investigations, PHMSA, U.S. Department of Transportation, telephone (202) 550–0629 or e-mail *Stanley.kastanas@dot.gov.*

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must select and test a percentage of covered employees for random drug testing.

Pursuant to 49 CFR 199.105(c)(2), (3), and (4), the PHMSA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the pipeline industry. The data considered by the Administrator comes from operators' annual submissions of Management Information System (MIS) reports required by 49 CFR199.119(a). If the reported random drug test positive rate is less than one percent, the Administrator may continue the minimum random drug testing rate at 25 percent. In 2006, the random drug test positive rate was less than one percent. Therefore, the minimum random drug testing rate will remain at 25 percent for calendar year 2008.

In reference to the notice published in 70 FR 20800, PHMSA intends to publish an Advisory Bulletin specifying the methodology for reporting calendar year 2007 MIS contractor data to PHMSA. Therefore, operators must ensure records on contract employees continue to be maintained in calendar year 2008.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC on December 19, 2007.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E7–25136 Filed 12–27–07; 8:45 am]

BILLING CODE 4920–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from GATX Rail (WB512–13—10/4/07), for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25152 Filed 12–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB463–10—9/13/07) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25154 Filed 12–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Mayer Brown on behalf of The BNSF Railway Company (BNSF) (WB461–14—9/20/07) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25155 Filed 12–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Michael Behe representing FRN, LLC (WB604–5—8/20/07) for permission to use certain data from the Board's 2006 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25159 Filed 12–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Saul Ewing on behalf of Trinity Industries, Inc. (WB605–3—8/8/07) for permission to use certain data from the Board's Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25160 Filed 12–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Mitsui Rail Capital (WB992–1—10/15/07), for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25161 Filed 12–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Allocation Availability (NOAA) Inviting Applications for the CY 2008 Allocation Round of the New Markets Tax Credit Program

Announcement Type: Initial announcement of tax credit allocation availability.

DATES: Electronic applications must be received by 5 p.m. ET on March 5, 2008. Applications sent by mail, facsimile or other form will not be accepted. The Community Development Financial Institutions Fund (the Fund) will not accept applications in paper form, other than the assigned signature page and certain paper attachments (see section IV.D. of this NOAA for more details). Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. Allocation applicants that are not yet certified as Community Development Entities (CDEs) must submit an application for certification as a CDE that is postmarked on or before February 6, 2008 (see section III of this NOAA for more details).

Executive Summary: This NOAA is issued in connection with the calendar year 2008 tax credit allocation round of the New Markets Tax Credit (NMTC) Program, as authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub. L. 108–357), section 101 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 108–357), and Division A, section 102 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432) (the Act). Through the NMTC Program, the Fund provides authority to CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the Fund announces the availability of $3.5 billion of NMTC authority authorized by the Act.

In this NOAA, the Fund addresses specifically how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC Allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

I. Allocation Availability Description

A. Programmatic Changes

1. *Non-Metropolitan Counties.* As provided by section 102(b)of the Act, the Fund shall ensure that non-metropolitan counties receive a proportional allocation of Qualified Equity Investments (QEIs) under the NMTC Program.

To guide the Fund in implementing this requirement, on May 22, 2007, the Fund published in the **Federal Register** a Request for Public Comments (72 FR 28766). Commentators were asked to consider a number of issues:

(a) What outcome should be achieved? Commentators were asked to consider, for example, whether a proportionate allocation of QEIs should be provided: (i) To investors that reside in non-metropolitan counties; (ii) to Allocatees that are headquartered in non-metropolitan counties; (iii) to Allocatees that principally serve non-metropolitan counties; or (iv) to finance Qualifying Low Income Community Investments (QLICIs) in non-metropolitan counties.

(b) How to measure "proportionality"? Should proportionality be based upon, for example: (i) The total proportion of the U.S. population residing in non-metropolitan counties; (ii) the total proportion of NMTC-eligible census tracts that are located in non-metropolitan areas; or (iii) the total proportion of applicants in a given round that are principally serving, and/or headquartered in, non-metropolitan counties? Also, to the extent that proportionality is based upon QLICIs, should the Fund consider the total number of QLICIs made, or the total dollar amount of those QLICIs?

(c) Should the Fund implement changes to its application review process to achieve desired outcomes, including providing a new set of priority points and/or re-ranking certain applicants?

(d) What compliance mechanisms are needed to ensure that desired outcomes are achieved?

Commentators were nearly unanimous in the opinion that: (i) The Fund should focus its efforts on ensuring that a proportional allocation of QLICIs are made in non-metropolitan areas, and that the location of the investor is not pertinent; (ii) the proportionality test should be based upon the total dollar amount of QLICIs made, rather than the total number of QLICIs made; and (iii) applicants should be required to specify the percentage of investments they intend to make in non-metropolitan areas, and then be held to achieving this benchmark through their Allocation Agreements. The Fund has adopted all three of these positions.

Commentators were divided with respect to the appropriate benchmark for ensuring a proportional allocation of QLICIs in non-metropolitan areas. Some suggested 17.4 percent, which is the proportion of the U.S. population living in non-metropolitan counties according to the Department of Agriculture's "Beale Codes." Some commentators suggested 21 percent, which is the proportion of the U.S. population living in non-metropolitan counties according to the Department of Agriculture's Economic Research Service. Some commentators suggested 25 percent, which is the percentage of NMTC eligible low-income census tracts located in non-metropolitan counties. Some commentators suggested 35 percent, as a means to make up for perceived "under-funding" in prior NMTC Program allocation rounds.

The Fund has selected 20 percent as the appropriate benchmark for ensuring a proportional allocation of QLICIs in non-metropolitan areas, which approximates the percentage of the U.S. population that Fund data indicates resides in non-metropolitan counties. To correct information stated in the Request for Comments, the Fund currently relies upon the 1999 OMB definition of Non-Metropolitan counties [OMB Bulletin 99–04], applied to the 2000 Census data, to determine NMTC Program eligibility. This data is publicly available through the Fund's Mapping System (CIMS). According to this data, 19.6 percent of the U.S. population resides in non-metropolitan counties. The Fund believes that it is in the best interest of the Fund, the Internal Revenue Service (IRS) and NMTC Program users to set its benchmark based on this data, since this is the data that currently feeds into Fund's compliance and monitoring systems, as well as the data that NMTC Program users can readily access to determine which counties qualify as non-metropolitan counties.

Commentators generally did not suggest that any special preference or consideration should be given to a CDE solely because it is headquartered in a non-metropolitan area. The Fund concurs with this position.

Commentators were generally of the opinion that the Fund should give special consideration (most notably, priority points) to CDEs that demonstrate a track record of principally serving non-metropolitan areas, and/or those that make a significant forward-looking commitment to serving non-metropolitan areas. In addition, commentators generally did not object to re-ranking lower scoring applicants, if necessary to ensure that the proportional allocation is achieved.

While the Fund does not concur that priority points are the preferred solution (since priority points alone may not guarantee the desired outcome), the Fund has determined that special consideration should be given to "Rural CDEs"—those applicants that over the past five years have dedicated at least 50 percent of their activities to Non-Metropolitan counties and have committed that at least 50 percent of their NMTC activities will be conducted in such areas should they receive an allocation award. The Fund will ensure that the percentage of allocatees that are Rural CDEs is not less than the percentage of applicants deemed eligible for Phase 2 of the review process that are Rural CDEs.

With respect to compliance, commentators generally agreed that Allocatees should be held to their application commitments to invest in non-metropolitan counties as a condition of their Allocation Agreements. The Fund concurs. The Fund will ask each applicant to indicate both a minimum and maximum percentage of its requested allocation that it would commit to deploying in non-metropolitan counties. Applicants will be held to a designated percentage (no less than the stated minimum and no greater than the stated maximum) through their Allocation Agreements.

In summary, and as further discussed in section V.C. of this document, the Fund will ensure that the proportion of allocatees that are Rural CDEs is, at a minimum, equal to the proportion of applicants in the Phase 2 review pool that are Rural CDEs; and ensure that at least 20 percent of the QLICIs made using QEI proceeds are invested in Non-Metropolitan counties.

2. *Allocation Amounts.* As described in section IIA, the Fund anticipates that it will not provide an allocation award of more than $125 million per applicant. This limitation was set at $150 million last year, but was reduced this year due, in part, to the lower allocation authority available for distribution in this round.

B. *Program guidance and regulations*: This NOAA provides guidance for the application and allocation of NMTCs for the sixth round of the NMTC Program and should be read in conjunction with: (i) Guidance published by the Fund on how an entity may apply to become certified as a CDE (66 FR 65806, December 20, 2001); (ii) the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published on December 28, 2004) and related guidance, notices and other publications; and (iii) the application and related materials for this sixth NMTC Program allocation round. All such materials may be found on the Fund's Web site at *http://www.cdfifund.gov*. The Fund encourages applicants to review these documents. Capitalized terms used but not defined in this NOAA shall have the respective meanings assigned to them in the allocation application, IRC 45D or the IRS regulations.

II. Allocation Information

A. *Allocation amounts:* Pursuant to the Act, the Fund expects that it may allocate to CDEs the authority to issue to their investors up to the aggregate amount of $3.5 billion in equity as to which NMTCs may be claimed, as permitted under IRC 45D(f)(1)(D). The Fund anticipates that, under this NOAA, it will not issue more than $125 million in tax credit allocation authority per applicant. The Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount if the Fund deems it appropriate. In order to receive an allocation in excess of the $125 million cap, an applicant will likely need to demonstrate, for example, that: (i) No part of its strategy can be successfully implemented without an allocation in excess of the applicable cap; or (ii) its strategy will produce extraordinary community impact. The Fund reserves the right to allocate tax credit authority to any, all or none of the entities that submit an application in response to this NOAA, and in any amount it deems appropriate.

B. *Types of awards:* NMTC Program awards are made in the form of tax credit authority.

C. *Notice of Allocation and Allocation Agreement:* Each Allocatee under this NOAA must sign a Notice of Allocation and an Allocation Agreement before the NMTC Allocation is effective. The Notice of Allocation and the Allocation Agreement contain the terms and conditions of the allocation. For further information, see section VI of this NOAA.

III. Eligibility

A. *Eligible applicants:* IRC 45D specifies certain eligibility requirements that each applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for the $3.5 billion in general NMTC allocation authority.

1. *CDE certification:* For purposes of this NOAA, the Fund will not consider an application for an allocation of NMTCs unless: (a) The applicant is certified as a CDE at the time the Fund receives its NMTC Program allocation application; or (b) the applicant submits an application for certification as a CDE that is postmarked on or before February 6, 2008. Applicants for certification may obtain a CDE certification application through the Fund's Web site at *http://www.cdfifund.gov*. Applications for CDE certification must be submitted as instructed in the application form. An applicant that is a community development financial institution (CDFI) or a specialized small business investment company (SSBIC) does not need to submit a CDE certification application, but must register as a CDE on the Fund's website on or before 5 p.m. ET on February 6, 2008. The Fund will not provide allocations of NMTCs to applicants that are not certified as

CDEs. See section IV.D.1.(c) of this NOAA for further requirements relating to postmarks.

If an applicant that has already been certified as a CDE wishes to change its designated CDE service area, it must submit its request for such a change to the Fund; and said request must be received by the Fund by 5 p.m. ET on March 5, 2008. The CDE service area change request must be sent from the applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from Low-Income Communities in the revised service area. The service area change request must be sent by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754.

2. *Prior awardees or Allocatees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOAA. Prior awardees of any component of the Fund's Community Development Financial Institutions (CDFI) Program, Bank Enterprise Award (BEA) Program, the Native Initiatives, or any other Fund program and prior Allocatees under the NMTC Program are eligible to apply under this NOAA, except as follows:

(a) *Prior Allocatees and Qualified Equity Investment (QEI) issuance requirements*: The following describes the QEI issuance requirements applicable to prior Allocatees, including those Allocatees that received allocations pursuant to special allocation authority under the Gulf Opportunity Zone Act of 2005 ("GO Zone Allocatees"). A prior Allocatee in the first round of the NMTC Program (CY 2001–2002) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on June 13, 2008, it has: (i) Issued and received funds in-hand (the term "funds in-hand" does not include committed funding) from its investors for 100 percent of its QEIs relating to its CY 2001–2002 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 75 percent of its QEIs and that 100 percent of its total CY 2001–2002 Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. A prior Allocatee in the second round of the NMTC Program (CY 2003–2004) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on June 13, 2008, it has: (i) Issued and received funds in-hand from its investors for at least 80 percent of its QEIs relating to its CY 2003–2004 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 60 percent of its QEIs and that 100 percent of its total CY 2003–2004 NMTC Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. A prior Allocatee in the third round of the NMTC Program (CY 2005) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on June 13, 2008, it has: (i) Issued and received funds in-hand from its investors for at least 60 percent of its QEIs relating to its CY 2005 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 50 percent of its QEIs and that at least 80 percent of its total CY 2005 NMTC Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. A prior Allocatee (with the exception of a GO Zone Allocatee) in the fourth round of the NMTC Program (CY 2006) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on June 13, 2008, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its QEIs relating to its CY 2006 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 40 percent of its QEIs and that at least 80 percent of its total CY 2006 NMTC Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. A prior GO Zone Allocatee in the fourth round is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on June 13, 2008, it has issued and received funds in-hand from its investors for at least 20 percent of its QEIs relating to its CY 2006 NMTC Allocation. A prior Allocatee (with the exception of a GO Zone Allocatee) in the fifth round of the NMTC Program (CY 2007) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on June 13, 2008, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its QEIs relating to its CY 2006 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 20 percent of its QEIs and that at least 60 percent of its total CY 2007 NMTC Allocation has been exchanged for funds in-hand from, or has been committed by, its investors. A prior GO Zone Allocatee in the fifth round is not required to meet the above QEI issuance and commitment thresholds with regard to the GO Zone NMTCs. Further, an entity is not eligible to receive a NMTC Allocation pursuant to this NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Allocatee and has not met the requirements for the issuance and/or commitment of QEIs as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program.

Notwithstanding the above, if an applicant has received an allocation in multiple allocation rounds of the NMTC Program, the applicant shall be deemed to be eligible to apply for a NMTC Allocation pursuant to this NOAA if the applicant can demonstrate that, as of 11:59 p.m. ET on June 13, 2008, it has issued and received funds in-hand from its investors for at least 70 percent of its QEIs relating to its cumulative allocation amounts from prior NMTC Program rounds (CY 2001–2007), exclusive of: (i) GO Zone allocations received by Allocatees under the CY 2007 allocation round; and (ii) GO Zone allocations received by Allocatees under the CY 2006 round, provided that the Allocatee has issued and received funds in-hand from its investors for at least 20 percent of its QEIs relating to its CY 2006 GO Zone allocation.

For purposes of this section of the NOAA, the Fund will only count as "issued" those QEIs that have been finalized in the Fund's Allocation Tracking System (ATS) by the deadlines specified above. Allocatees and their Subsidiary transferees, if any, are advised to access ATS to record each QEI that they issue to an investor in exchange for funds in-hand. For purposes of this section of the NOAA, "committed" QEIs are only those Equity Investments that are evidenced by a written, signed document in which an investor: (i) Commits to make an investment in the Allocatee in a specified amount and on specified terms; (ii) has made an initial disbursement of the investment proceeds to the Allocatee, and such initial disbursement has been recorded in ATS as a QEI; (iii) commits to disburse the remaining investment proceeds to the Allocatee based on specified amounts and payment dates; and (iv) commits to make the final disbursement to the Allocatee no later than June 13, 2010. The applicant will be required, upon notification from the Fund, to submit adequate documentation to substantiate the required issuances of and commitments for QEIs.

Prior Allocatees that require any action by the Fund (*e.g.*, certifying a subsidiary entity as a CDE; adding a subsidiary CDE to an Allocation Agreement; etc.) in order to meet the QEI issuance requirements above must submit their requests by no later than March 28, 2008 in order to guarantee that the Fund completes all necessary approvals prior to June 13, 2008. Applicants for certification may obtain a CDE certification application through the Fund's Web site at *http://www.cdfifund.gov*. Applications for CDE certification must be submitted as instructed in the application form.

(b) *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an applicant if the applicant, or an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the application deadline of this NOAA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

(c) *Pending resolution of noncompliance:* If an applicant is a prior awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund will consider the applicant's application under this NOAA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund will consider the applicant's application under this NOAA pending full resolution, in the sole determination of the Fund, of the noncompliance.

(d) *Default status:* The Fund will not consider an application submitted by an applicant that is a prior Fund awardee or Allocatee under any Fund program if, as of the application deadline of this NOAA, the Fund has made a final determination that such applicant is in default of a previously executed assistance, allocation or award agreement(s) and the Fund has provided written notification of such determination to such applicant. Further, an entity is not eligible to apply for an allocation pursuant to this NOAA if, as of the application deadline of this NOAA, the Fund has made a final determination that another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund): (i) Is a prior Fund awardee or Allocatee under any Fund program; (ii) has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s); and (iii) has been provided written notification of such default determination by the Fund.

(e) *Termination in default:* The Fund will not consider an application submitted by an applicant that is a prior Fund awardee or Allocatee under any Fund program if: (i) Within the 12-month period prior to the application deadline of this NOAA, the Fund has made a final determination that such applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); (ii) the Fund has provided written notification of such determination to such applicant; and (iii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in such applicant's 2006 or 2007 fiscal year. Further, an entity is not eligible to apply for an allocation pursuant to this NOAA if: (i) Within the 12-month period prior to the application deadline of this NOAA, the Fund has made a final determination that another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); (ii) the Fund has provided written notification of such determination to the defaulting entity; and (iii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in the defaulting entity's 2006 or 2007 fiscal year.

(f) *Undisbursed award funds:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOAA. Further, an entity is not eligible to apply for an award pursuant to this NOAA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOAA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program and has a balance of undisbursed award funds under said prior award(s) as of the applicable application deadline of this NOAA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed award funds.

For purposes of the calculation of undisbursed award funds for the BEA Program, only awards made to the Applicant (and any entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant, as determined by the Fund) three to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included ("includable BEA awards"). Thus, for purposes of this NOAA, undisbursed BEA Program award funds are the amount of FYs 2003, 2004 and 2005 awards that remain undisbursed as of the application deadline of this NOAA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the Native Initiatives Funding Programs, only awards made to the Applicant (and any entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant, as determined by the Fund) two to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included ("includable CDFI/NI awards"). Thus, for purposes of this

NOAA, undisbursed CDFI Program and NI awards are the amount of FYs 2003, 2004, 2005 and 2006 awards that remain undisbursed as of the application deadline of this NOAA. To calculate total includable BEA/CDFI/NI awards: amounts that are undisbursed as of the application deadline of this NOAA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation in the 2008 Allocation Application Q&A document, available on the Fund's website.

The "undisbursed award funds" calculation does not include: (i) Tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee (or any entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) by the applicable application deadline of this NOAA; (iii) any award funds for an award that has been terminated in writing by the Fund or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of "undisbursed funds" from prior awards to provide the Fund with a complete disbursement request at least 30 business days prior to the application deadline of this NOAA. An Applicant that is unsure about the disbursement status of any prior award should contact the Fund's Financial Manager via e-mail at *CDFI.disburseinquiries@cdfi.treas.gov* for more information. Requests, submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

(g) *Contact the Fund*: Accordingly, applicants that are prior awardees and/or Allocatees under any other Fund program are advised to: (i) Comply with the requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports and compliance questions should be directed to the Compliance Manager by e-mail at *cme@cdfi.treas.gov* and all disbursement questions should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*. Both the Compliance Manager and the Grants Manager can be reached by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of publication of this NOAA through March 3, 2008 (2 days before the application deadline). The Fund will not respond to applicants' reporting, compliance or disbursement phone calls or e-mail inquiries that are received after 5 p.m. ET on March 3, 2008 until after the funding application deadline of March 5, 2008.

3. *Entities that propose to transfer NMTCs to Subsidiaries:* Both for-profit and non-profit CDEs may apply to the Fund for allocations of NMTCs, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for a NMTC Allocation must demonstrate, prior to entering into an Allocation Agreement with the Fund, that: (i) It controls one or more Subsidiaries that are for-profit entities; and (ii) it intends to transfer the full amount of any NMTC Allocation it receives to said Subsidiary. The non-profit applicant should submit a CDE certification application to the Fund on behalf of the Subsidiary within 30 days after the non-profit applicant receives a Notice of Allocation from the Fund; as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the Fund. The NMTC Allocation transfer must be pre-approved by the Fund, in its sole discretion, and will be a condition of the Allocation Agreement. A for-profit applicant that receives a NMTC Allocation may transfer such NMTC Allocation to its for-profit Subsidiary or Subsidiaries, provided that said Subsidiary transferees have been certified as CDEs and such transfer is pre-approved by the Fund, in its sole discretion. Any approved transfer will be included in the Allocation Agreement.

An applicant wishing to transfer all or a portion of its NMTC Allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the Fund. Rather, the Fund will require each applicant to indicate, in its NMTC allocation application, whether it intends to transfer all or a portion of its NMTC Allocation to a Subsidiary and its timeline for doing so. As stated above, in no circumstance will the Fund authorize such a transfer until the Fund has certified the Subsidiary transferee as a CDE.

4. *Entities that submit applications together with Affiliates; applications from common enterprises*: (a) As part of the allocation application review process, the Fund considers whether applicants are Affiliates, as such term is defined in the allocation application. If an applicant and its Affiliates wish to submit allocation applications, they must do so collectively, in one application; an applicant and its Affiliates may not submit separate allocation applications. If Affiliated entities submit multiple applications, the Fund reserves the right either to reject all such applications received or to select a single application as the only one that will be considered for an allocation.

For purposes of this NOAA, in addition to assessing whether applicants meet the definition of the term "Affiliate" found in the allocation application, the Fund will consider: (i) Whether the activities described in applications submitted by separate entities are, or will be, operated or managed as a common enterprise that, in fact or effect, could be viewed as a single entity; (ii) whether the applications submitted by separate entities contain significant narrative, textual or other similarities, and (iii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related that, in fact or effect, they could be viewed as substantially identical applications. In such cases, the Fund reserves the right either to reject all applications received from all such entities; to select a single application as the only one that will be considered for an allocation; and, in the event that an application is selected to receive an allocation award, to deem certain activities ineligible.

(b) Furthermore, an applicant that receives an allocation in this allocation round (or its Subsidiary transferee) may not become an Affiliate of or member of a common enterprise (as defined above) with another applicant that receives an allocation in this allocation round (or its Subsidiary transferee) at any time after the submission of an allocation application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly Controlled solely because of common ownership by QEI investors. This requirement will also be a term and condition of the Allocation Agreement (see section VI.B. of this NOAA and additional application guidance materials on the Fund's Web site at *http://www.cdfifund.gov* for more details).

5. *Entities created as a series of funds:* An applicant whose business structure consists of an entity with a series of funds may apply for CDE certification as a single entity, or as multiple entities. If such an applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it may submit a single CDE certification application on behalf of the entire series of funds, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an applicant may not transfer any NMTC Allocations it receives to one or more of its funds unless the transfer is pre-approved by the Fund, in its sole discretion, which will be a condition of the Allocation Agreement.

6. *Entities that are BEA Program awardees:* An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC Allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC Allocation for the same investment in a CDE.

IV. Application and Submission Information

A. *Address to request application package:* Applicants must submit applications electronically under this NOAA, through the Fund website. Shortly following the publication of this NOAA, the Fund will make available the electronic allocation application on its Web site at *http://www.cdfifund.gov*. Applications sent by mail, facsimile or other form will not be accepted. The Fund will not accept applications in paper form, other than the assigned signature page and certain paper attachments, as specified below and in the application.

B. *Application content requirements:* Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation. Electronic applications must be submitted solely by using the format made available at the Fund's website. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service and assigned to the applicant and, if applicable, it's Controlling Entity; electronic applications without a valid EIN are incomplete and cannot be transmitted to the Fund. For more information on obtaining an EIN, please contact the Internal Revenue Service at (800) 829–4933 or *http://www.irs.gov*. An applicant may not submit more than one application in response to this NOAA. In addition, as stated in section III.A.4 of this NOAA, an applicant and its Affiliates must collectively submit only one allocation application; an applicant and its Affiliates may not submit separate allocation applications. Once an application is submitted, an applicant will not be allowed to change any element of its application.

C. *Form of application submission:* Applicants may only submit applications under this NOAA electronically. Applications sent by facsimile or by e-mail will not be accepted. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the Fund in the implementation of electronic reporting requirements.

1. *Electronic applications:* Electronic applications must be submitted solely by using the Fund's website and must be sent in accordance with the submission instructions provided in the electronic application form. Applicants need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher, Windows 98 or higher (or other system compatible with the above Explorer and Netscape software) and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. The Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application.

D. *Application Submission Dates and Times:* 1. Application Deadlines: (a) Electronic applications must be received by 5 p.m. ET on March 5, 2008. Electronic applications cannot be transmitted or received after 5 p.m. ET on March 5, 2008. In addition, applicants that submit electronic applications must separately submit (by mail or other courier delivery service) an original signature page, and all other required paper attachments. The original signature page and additional documents must be postmarked on or before March 7, 2008. See application instructions, provided in the electronic application, for further detail. Applications and other required documents and other attachments postmarked or received after these dates and times will be rejected. If the original signature page is not postmarked by the deadlines specified above, the application will be rejected. See section IV.D.1.(c) of this NOAA for further requirements relating to postmarks. Additional deadlines (if any) relating to the submission of general supporting documentation will be further detailed in the electronic application. Please note that the document submission deadlines in this NOAA and/or the allocation application are strictly enforced.

(b) For purposes of this NOAA, the term "postmark" is defined by 26 CFR 301.7502–1. In general, the Fund will require that the postmarked document bear a postmark date that is on or before the applicable deadline. The document must be in an envelope or other appropriate wrapper, properly addressed as set forth in this NOAA and delivered by the United States Postal Service or any other private delivery service designated by the Secretary of the Treasury. For more information on designated delivery services, please see IRS Notice 2002–62, 2002–2 C.B. 574.

E. Intergovernmental Review: Not applicable.

F. *Funding Restrictions:* For allowable uses of investment proceeds related to a NMTC Allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published on December 28, 2004) and related guidance. Please see section I, above, for the Programmatic Improvements of this NOAA.

G. Other Submission Requirements: 1. *Addresses:* The signature page and attachments for electronic applications must be sent as directed in the application materials to the Bureau of Public Debt, the application intake coordinator for the Fund. The signature

page or attachments will not be accepted at the Fund's offices in Washington, DC. Signature pages or attachments received in the Fund's offices will be rejected. Except for the signature page and attachments, electronic applications must be submitted solely by using the Fund's website and must be sent in accordance with the submission instructions provided in the electronic application form.

V. Application Review Information

There are two parts to the substantive review process for each allocation application: Phase 1 and Phase 2. In Phase 1, the Fund will evaluate each application, assigning points and numeric scores with respect to the criteria described below. In Phase 2, the Fund will rank applicants in accordance with the procedures set forth below.

A. *Criteria:* 1. *Business Strategy* (25-point maximum). (a) In assessing an applicant's business strategy, reviewers will consider, among other things: the applicant's products, services and investment criteria; the prior performance of the applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of QEIs; the applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of the applicant's pipeline of potential investments; and the extent to which the applicant intends to make Qualified Low-Income Community Investments (QLICIs) in one or more businesses in which persons unrelated to the entity hold a majority equity interest.

Under the Business Strategy criterion, an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which: (i) Are designed to meet the needs of underserved markets; (ii) are flexible or non-traditional in form and on better terms than available in the marketplace; and (iii) focus on customers or partners that typically lack access to conventional sources of capital. An applicant will also score well to the extent that it: (i) Has a track record of successfully providing products and services similar to those it intends to use with the proceeds of QEIs; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing QEIs and making the related QLICIs in a time period that is significantly shorter than the 5-year period permitted under IRC§ 45D(b)(1); and (iv) in the case of an applicant proposing to purchase loans from CDEs, the applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities.

(b) *Priority Points:* In addition, as provided by IRC 45D(f)(2), the Fund will ascribe additional points to entities that meet either or both of the statutory priorities. First, the Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the Fund will give five (5) additional points to any applicant that intends to satisfy the requirement of IRC 45D(b)(1)(B) by making QLICIs in one or more businesses in which persons unrelated (within the meaning of IRC 267(b) or IRC 707(b)(1)) to an applicant (or the applicant's subsidiary CDEs) hold the majority equity interest. Applicants may earn points for either or both statutory priorities. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by its Controlling Entity (*e.g.*, where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC Allocation must meet the requirements of IRC 45D(b)(1)(B) by investing substantially all of the proceeds from its QEIs in unrelated businesses. The Fund will factor in an applicant's priority points when ranking applicants during Phase 2 of the review process, as described below.

2. *Community Impact* (25-point maximum). In assessing the impact on communities expected to result from the applicant's proposed investments, reviewers will consider, among other things, the degree to which the applicant is likely to achieve significant and measurable community development and economic impacts in its Low-Income Communities, and whether the applicant is working in particularly economically distressed markets and/or in concert with Federal, state or local government or community economic development initiatives (*e.g.*, Empowerment Zones, Enterprise Communities, and Renewal Communities). An applicant will generally score well under this section to the extent that: (a) It articulates how its strategy is likely to produce significant and measurable community development and economic impacts that would not be achieved without NMTCs; and (b) it is working in particularly economically distressed or otherwise underserved communities and/or in concert with other Federal, state or local government or community economic development initiatives.

3. *Management Capacity* (25-point maximum). In assessing an applicant's management capacity, reviewers will consider, among other things, the qualifications of the applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: Experience in deploying capital or technical assistance, including activities similar to those described in the applicant's business strategy; experience in raising capital; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the applicant's (or its Controlling Entity's) financial health. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements and the level of involvement of community representatives and other stakeholders in the design, implementation or monitoring of an applicant's business plan and strategy. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, as determined by the Fund) that has received a NMTC Allocation from the Fund under a prior allocation round, reviewers will consider the activities that have occurred to date with respect to the prior allocation(s).

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of QEIs; (b) raising capital, particularly from for-profit investors; (c) asset and risk management; and (d) fulfilling government compliance requirements, particularly tax program compliance. An applicant will also score well to the extent it has policies and systems in place to ensure ongoing compliance with NMTC Program requirements, and to the extent that Low-Income Community stakeholders play an active role in designing or implementing its

business plan. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, as determined by the Fund) that has received a NMTC Allocation from the Fund under a prior allocation round, the applicant will score well to the extent it can: (a) Demonstrate that substantial activities have occurred through its prior allocation(s); and (b) substantiate a need for additional allocation authority.

4. *Capitalization Strategy* (25-point maximum). In assessing an applicant's capitalization strategy, reviewers will consider, among other things: the extent to which the applicant has secured investments, commitments to invest, or indications of interest in investments from investors, commensurate with its requested amount of tax credit allocations; the applicant's strategy for identifying additional investors, if necessary, including the applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the extent to which the applicant identifies how existing investors will leverage their investments in Low-Income Communities or how new investors will be brought into such investments; the distribution of the economic benefits of the tax credit; the extent to which the applicant intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC 45D(b)(1)(B) and the IRS regulations, including the extent to which the applicant has identified the financial resources outside of the NMTC investments necessary to support its operations or finance its activities; and the applicant's timeline for utilizing an NMTC Allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of QEIs it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to end users; (d) it is likely to leverage other sources of funding in addition to NMTC investor dollars; and (e) it intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC 45D(b)(1)(B) and the IRS regulations. In the case of an applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the applicant or from affiliated entities, said applicant will score well to the extent that it will offer products with more favorable rates or terms than those currently offered by the investor and/or will target its activities to areas of greater economic distress than those currently targeted by the investor.

B. *Review and selection process*: All allocation applications will be reviewed for eligibility and completeness. The Fund may consult with the IRS on the eligibility requirements under IRC 45D. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected. Once the application has been determined to be eligible and complete, the Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the allocation application.

1. *Phase 1*: Fund reviewers will evaluate and score each application in the first part of the review process. An applicant must exceed a minimum overall aggregate base score threshold and exceed a minimum aggregate section score threshold in each of the four application sections (Business Strategy, Community Impact, Management Capacity, and Capitalization Strategy) in order to advance from the first part of the substantive review process. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the four application sections), varies significantly from the median of the reviewers' total base scores or section scores for such application, the Fund may, in its sole discretion, obtain the comments and recommendations of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

2. *Phase 2*: Once the Fund has determined which applicants have met the required minimum overall aggregate base score and aggregate section score thresholds, the Fund will rank applicants on the basis of their combined scores in the Business Strategy and Community Impact sections of the application and will make adjustments to each applicant's priority points so that these points maintain the same relative weight in the ranking of applicant scores in Phase 2 as in Phase 1. The Fund will award allocations in the order of this "Final Rank Score," subject to applicants" meeting all other eligibility requirements; provided, however, that the Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process. 3. *Outstanding Reports*. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, (as determined by the Fund) that has previously received an award or allocation from the Fund through any Fund program, the Fund will consider and will deduct points for the applicant's (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, as determined by the Fund) failure to meet the reporting deadlines set forth in any assistance, award or Allocation Agreement(s) with the Fund during the applicant's two complete fiscal years prior to the application deadline of this NOAA (generally FY 2006 and 2007).

C. *Allocations serving Non-Metropolitan counties.* As discussed in Part I, the Fund will ensure that the proportion of allocatees that are Rural CDEs is, at a minimum, equal to the proportion of applicants in the Phase 2 review pool that are Rural CDEs; and ensure that at least 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-Metropolitan counties. As stated earlier, a Rural CDE is one that has over the past five years dedicated at least 50 percent of its activities to Non-Metropolitan counties and has committed that at least 50 percent of its NMTC activities will be conducted in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 99–04 (Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions) and applied using 2000 census data. The Fund will not make changes with respect to the initial Phase 1 review and scoring process in order to achieve these outcomes. Rather, adjustments will be made during the Phase 2 review process, as needed.

Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with "preliminary" awards, in descending order of Final Rank Score, until the $3.5 billion in allocation authority is expended. Once these "preliminary" award amounts are determined, the Fund will then analyze the allocatee pool to determine whether the two Non-Metropolitan

proportionality objectives have been met.

The Fund will first examine the "preliminary" awards and allocatees to determine whether the percentage of allocatees that are Rural CDEs is, at a minimum, equal to the percentage of applicants in the Phase 2 review pool that are Rural CDEs. If this objective is not achieved, the Fund will provide awards to additional Rural CDEs from the Phase 2 pool, in descending order of their Final Rank Score, until the appropriate percentage balance is achieved. In order to accommodate the additional allocatees within the $3.5 billion allocation limitations, a formula reduction will be applied uniformly to the allocation amount for all allocatees in the pool.

The Fund will then ensure that the pool of allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The Fund will first apply the "minimum" percentage of QLICIs that allocatees indicated in their applications would be targeted to Non-Metropolitan areas to the total allocation award amount of each allocatee (less whatever percentage the allocatee indicated would be retained for non-QLICI activities), and total these figures for all allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the allocatees, then the pool is considered balanced and the Fund will proceed with the allocation process. If, however, the aggregate total is less than 20 percent of the QLICIs to be made by the allocatees, the Fund will consider requiring any or all of the Allocatees to direct up to the "maximum" percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties; taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties.

D. All outstanding reports or compliance questions should be directed to the Compliance Manager by e-mail at *cme@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOAA through March 3, 2008. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. ET on March 3, 2008 until after the funding application deadline of March 5, 2008.

E. The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund awardee, if such applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of any applicant, if an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the Fund.

The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings and markets served) set forth in the allocation application(s) related to such prior allocation(s). The Fund also reserves the right to reject any NMTC allocation application in the case of any applicant, if an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund Allocatee and has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy set forth in the allocation application(s) related to such prior allocation(s).

The Fund also reserves the right to reject a NMTC allocation application if information (including administrative errors) comes to the attention of the Fund that adversely affects an applicant's eligibility for an award, adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the Fund may permit reviewer(s) to make telephone calls to applicants for the sole purpose of obtaining, clarifying or confirming application information. In no event shall such contact be construed to permit an applicant to change any element of its application. Reviewers will not contact applicants without the prior approval of the Fund. At this point in the process, an applicant may be required to submit additional information about its application in order to assist the Fund with its final evaluation process. Such requests must be responded to within the time parameters set by the Fund. The selecting official(s) will make a final allocation determination based on an applicant's file, including without limitation, eligibility under IRC 45D, the reviewers' scores and the amount of allocation authority available. In the case of applicants (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, as determined by the Fund) that are regulated by the Federal government or a State agency (or comparable entity), the Fund's selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal or State banking and other regulatory agencies. In the case of applicants (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, as determined by the Fund) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the Fund reserves the right to consult with and take into consideration the views of the Small Business Administration.

The Fund reserves the right to conduct additional due diligence, as determined reasonable and appropriate by the Fund, in its sole discretion, related to the applicant and its officers, directors, owners, partners and key employees.

Each applicant will be informed of the Fund's award decision either through a Notice of Allocation if selected for an allocation (see section VI.A. of this NOAA) or a declination letter, if not selected for an allocation, which may be for reasons of application incompleteness, ineligibility or substantive issues. All applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to obtain feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate. If said changes

materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's website.

There is no right to appeal the Fund's allocation decisions. The Fund's allocation decisions are final.

VI. Award Administration Information

A. *Notice of Allocation:* The Fund will signify its selection of an applicant as an Allocatee by delivering a signed Notice of Allocation to the applicant. The Notice of Allocation will contain the general terms and conditions underlying the Fund's provision of an NMTC Allocation including, but not limited to, the requirement that an Allocatee and the Fund enter into an Allocation Agreement. The applicant must execute the Notice of Allocation and return it to the Fund. By executing a Notice of Allocation, the Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, information (including administrative errors) comes to the attention of the Fund that adversely affects the Allocatee's eligibility for an award, adversely affects the Fund's evaluation or scoring of the Allocatee's application, or indicates fraud or mismanagement on the part of the Allocatee, the Fund may, in its discretion and without advance notice to the Allocatee, terminate the Notice of Allocation or take such other actions as it deems appropriate. Moreover, by executing a Notice of Allocation, an Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, the Fund determines that the Allocatee is not in compliance with the terms of any prior assistance agreement, award agreement, and/or Allocation Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Allocatee, either terminate the Notice of Allocation or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind the allocation and the Notice of Allocation if the Allocatee fails to return the Notice of Allocation, signed by the authorized representative of the Allocatee, along with any other requested documentation, by the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Allocatee, or an entity that Controls the Allocatee, is Controlled by the Allocatee or shares common management officials with the Allocatee (as determined by the Fund) is a prior Fund awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Allocation or thereafter, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on an Allocatee's ability to issue QEIs to investors until said prior awardee or Allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior awardee or Allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

2. *Pending resolution of noncompliance:* If an applicant is a prior awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior awardee or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

3. *Default status:* If, at any time prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Allocatee that is a prior Fund awardee or Allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the Allocatee, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, until said prior awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that another entity that Controls the Allocatee, is Controlled by the applicant or shares common management officials with the Allocatee (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program, and is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, until said prior awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior awardee or Allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

4. *Termination in default:* If (i) within the 12-month period prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Allocatee that is a prior Fund awardee or Allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the Fund has provided written notification of such determination to such organization; and (iii) the final reporting period end date for the applicable terminated agreement falls in such organization's 2006 or 2007 fiscal year,

the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors. Further, if (i) within the 12-month period prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that another entity that Controls the Allocatee, is Controlled by the Allocatee or shares common management officials with the Allocatee (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the Fund has provided written notification of such determination to the defaulting entity; and (iii) the final reporting period end date for the applicable terminated agreement falls in such defaulting entity's 2006 or 2007 fiscal year, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors.

B. *Allocation Agreement*: Each applicant that is selected to receive a NMTC Allocation (including the applicant's Subsidiary transferees) must enter into an Allocation Agreement with the Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC Allocation which may include, but are not limited to, the following: (i) The amount of the awarded NMTC Allocation; (ii) the approved uses of the awarded NMTC Allocation (*e.g.*, loans to or equity investments in Qualified Active Low-Income Businesses or loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) the time period by which the applicant may obtain QEIs from investors; (v) reporting requirements for all applicants receiving NMTC Allocations; and (vi) a requirement to maintain certification as a CDE throughout the term of the Allocation Agreement. If an applicant has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the applicant hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said applicant agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the applicant hold a majority equity interest.

In addition to entering into an Allocation Agreement, each applicant selected to receive a NMTC Allocation must furnish to the Fund an opinion from its legal counsel, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an applicant (and its Subsidiary transferees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary transferees, the Fund reserves the right to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary transferees. The Fund reserves the right, in its sole discretion, to rescind its Notice of Allocation if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

C. *Fees:* The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC Allocations. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

D. *Reporting:* The Fund will collect information, on at least an annual basis, from all applicants that are awarded NMTC Allocations and/or are recipients of QLICIs, including such audited financial statements and opinions of counsel as the Fund deems necessary or desirable, in its sole discretion. The Fund will use such information to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The Fund may also provide such information to the IRS in a manner consistent with IRC 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each QEI raised through its NMTC Allocation to make QLICIs. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

VII. Agency Contacts

The Fund will provide programmatic and information technology support related to the allocation application between the hours of 9 a.m. and 5 p.m. ET through March 3, 2008. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on March 3, 2008 until after the allocation application deadline of March 5, 2008. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its website responses to questions of general applicability regarding the NMTC Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the Fund's website should call (202) 622–2455 for assistance. These are not toll-free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements of this NOAA, contact the Fund's NMTC Program Manager by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Administrative support:* If you have any questions regarding the administrative requirements of this NOAA, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

D. *IRS support:* For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by

facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue, NW., Attn: CC:PSI:5, Washington, DC 20224. These are not toll-free numbers.

E. *Legal counsel support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled "How to Request a Legal Review," found on the Fund's Web site at *http://www.cdfifund.gov.*

VIII. Information Sessions

In connection with this NOAA, the Fund intends to conduct multiple information sessions around the country at locations to be announced as well as an information session that will be produced in Washington, DC and broadcast over the internet via webcasting. For further information on these upcoming information sessions, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Dated: December 19, 2007.

Donna Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. E7–25145 Filed 12–27–07; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8609, 8609–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8609, Low-Income Housing Credit Allocation and Certification and 8609–A, Annual Statement of Low-Income Housing Credit.

DATES: Written comments should be received on or before February 26, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Allocation and Certification.

OMB Number: 1545–0988.

Form Number: Form 8609.

Title: Annual Statement for Low-Income Housing Credit.

OMB Number: 1545–0988.

Form Number: Form 8609–A.

Abstract: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 and 8609–A are used to obtain a housing credit allocation from the housing credit agency. The form(s) are used by the owner to certify necessary information required by the law.

Current Actions: There are no changes being made to the burden for Form 8609 or Form 8609–A at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations, individuals, and state, local or tribal governments.

Estimated Number of Respondents: 120,000.

Estimated Time Per Respondent: 29 hours., 11 minutes.

Estimated Total Annual Burden Hours: 3,329,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 19, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–25126 Filed 12–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held on January 31–February 1, 2008, in Room 630 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. On January 31, the session will begin at 8 a.m. and end at 4 p.m. and on February 1, the session will begin at 8 a.m. and end at 2:30 p.m. The meeting is open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with a continuing assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide advice on the most appropriate means of offering assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

The Committee will receive briefings from VA and other officials and begin final preparation of its upcoming annual report and recommendations to the Secretary.

Those wishing to attend the meeting should give prior notice by contacting Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 461–7401. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on

issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 20, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–6235 Filed 12–27–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on OIF/OEF Veterans and Families; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on OIF/OEF Veterans and Families will conduct a site visit in the San Antonio, Texas area on January 29–31, 2008. The site visit will include a town hall meeting, tours and briefings at various VA facilities and Brooke Army Medical Center.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the full spectrum of health care, benefits delivery and related family support issues that confront servicemembers during their transition from active duty to veteran status and during their post-service years. The Committee focuses on the concerns of all men and women with active military service in Operation Iraqi Freedom and/or Operation Enduring Freedom, but pays particular attention to severely disabled veterans and their families.

On January 29, the Committee will tour the Center for the Intrepid, Burn Center and Fisher Houses at Brooke Army Medical Center. In addition, the Committee will tour the Fort Sam Houston National Cemetery.

On January 30, the Committee will tour the Audie Murphy VA Medical Center and the San Antonio Vet Center, and will receive briefings by Veterans Health Administration and Veterans Benefits Administration personnel on issues of particular relevance to OIF/OEF veterans and their families. The Committee will conduct a two hour Town Hall meeting beginning at 6:00 p.m. in the Auditorium of the Audie Murphy VA Medical Center, 7400 Merton Minter Boulevard, San Antonio, Texas. The Town Hall meeting is open to the public.

On January 31, the Committee will hold a public session at the Hilton Palacio del Rio, 200 South Alamo Street, San Antonio, Texas. The session will begin at 9:00 a.m. and adjourn at 5:00 p.m. During the session the Committee will receive a briefing on veterans employment assistance activities and an update on various independent reports. The Committee will also engage in deliberations and plans for future work.

Public comments will be received by the Committee at the Town Hall meeting on January 30. Individuals wishing to make oral statements at that meeting should contact the Committee at *oifoef@va.gov*. Just prior to the Town Hall meeting, there will be a sign up sheet for people to register their interest in making public statements. Oral statements by the public will be limited to five minutes each.

Anyone seeking additional information should contact Laura O'Shea, Designated Federal Officer, at (202) 461–5765.

Dated: December 19, 2007.

By Direction of the Secretary

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–6236 Filed 12–27–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
December 28, 2007

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services
Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2007; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9042–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2007

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from July 2007 through September 2007, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations (NCDs) affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. This notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations and a list of Medicare-approved carotid stent facilities. Included in this notice is a list of the American College of Cardiology's National Cardiovascular Data registry sites, active CMS coverage-related guidance documents, and special one-time notices regarding national coverage provisions. Also included in this notice is a list of National Oncologic Positron Emissions Tomography Registry sites, a list of Medicare-approved ventricular assist device (destination therapy) facilities, a list of Medicare-approved lung volume reduction surgery facilities, a list of Medicare-approved clinical trials for fluorodeoxyglucose positron emissions tomogrogphy for dementia, and a list of Medicare-approved bariatric surgery facilities.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning CMS manual instructions in Addendum III may be addressed to Timothy Jennings, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2134.

Questions concerning regulation documents published in the **Federal Register** in Addendum IV may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

Questions concerning Medicare NCDs in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to John Manlove, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–13–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6877.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Melissa Musotto, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6962.

Questions concerning Medicare-approved carotid stent facilities in Addendum VIII may be addressed to Sarah J. McClain, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2994.

Questions concerning Medicare's recognition of the American College of Cardiology-National Cardiovascular Data Registry sites in Addendum IX may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare's active coverage-related guidance documents in Addendum X may be addressed to Janet Brock, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2700.

Questions concerning one-time notices regarding national coverage provisions in Addendum XI may be addressed to Ellie Lund, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2281.

Questions concerning National Oncologic Positron Emission Tomography Registry sites in Addendum XII may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning Medicare-approved ventricular assist device (destination therapy) facilities in Addendum XIII may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved lung volume reduction surgery facilities listed in Addendum XIV may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved bariatric surgery facilities listed in Addendum XV may be addressed to Kate Tillman, RN, MA, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–9252.

Questions concerning fluorodeoxyglucose positron emission

tomography for dementia trials listed in Addendum XVI may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, NCDs, and FDA-approved IDEs published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare NCD Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into 11 addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.
- Addendum VIII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients.
- Addendum IX includes a list of the American College of Cardiology's National Cardiovascular Data registry sites. We cover implantable cardioverter defibrillators (ICDs) for certain indications, as long as information about the procedures is reported to a central registry.
- Addendum X includes a list of active CMS guidance documents. As required by section 731 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003), we will begin listing the current versions of our guidance documents in each quarterly listings notice.
- Addendum XI includes a list of special one-time notices regarding national coverage provisions. We are publishing a list of issues that require public notification, such as a particular clinical trial or research study that qualifies for Medicare coverage.
- Addendum XII includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.
- Addendum XIII includes a listing of Medicare-approved facitilites that receive coverage for ventricular assist devices used as destination therapy. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.
- Addendum XIV includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial are also eligible to receive coverage.
- Addendum XV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities

must meet our standards in order to receive coverage for bariatric surgery procedures.

• Addendum XVI includes a listing of Medicare-approved clinical trials for fluorodeoxyglucose positron emission tomography (FDG–PET) for dementia and neurodegenerative diseases.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp*.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access*. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html*, by using local WAIS client software, or by telnet to *swais.gpoaccess.gov*, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings*.

D. CMS' Compact Disk—Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

• Titles XI, XVIII, and XIX of the Act.
• CMS-related regulations.
• CMS manuals and monthly revisions.
• CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 2005. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm*.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare Benefit Policy publication titled "Ultrasound Diagnostic Procedures," use CMS–Pub. 100–03, Transmittal No. 72.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: December 10, 2007.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

September 23, 2005 (70 FR 55863)
December 23, 2005 (70 FR 76290)
March 24, 2006 (71 FR 14903)
June 23, 2006 (71 FR 36101)
September 29, 2006 (71 FR 57604)
December 22, 2006 (71 FR 77202)
March 30, 2007 (72 FR 15282)
June 22, 2007 (72 FR 34508)
September 28, 2007 (72 FR 55282)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on

August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS JULY THROUGH SEPTEMBER 2007

Transmittal No.	Manual/Subject/Publication Number
	Medicare General Information (CMS-Pub. 100–01)
45	Cancellation of Data File Extract in CR 3801.
46	Implement New Contractor ID for Single Testing Contractor; Standard System Testing Requirements for Maintainers, Beta Testers, and Contractors.
47	Revision to Certification for Hospital Services Covered by the Supplementary Medical Insurance Program as it Pertains to Ambulance Services. Certification for Hospital Services Covered by the Supplementary Medical Insurance Program.
	Medicare Benefit Policy (CMS-Pub. 100–02)
75	Nurse Practitioner Services and Clinical Nurse Specialist Services Qualifications for NPs; Qualifications for CNSs.
76	This Transmittal is rescinded and replaced by Transmittal 77.
77	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
78	Unlabeled Use for Anti-Cancer Drugs: Medical Literature Used to Determine Medically Accepted Indications for Drugs and Biologicals Used in Anti-Cancer Treatment; Unlabeled Use for Anti-Cancer Drugs.
	Medicare National Coverage Determination (CMS-Pub. 100–03)
72	Ultrasound Diagnostic Procedures.
73	This Transmittal is rescinded and replaced by Transmittal 76.
74	Medicare Clinical Trial Policy; Routine Costs in Clinical Trials (Effective July 9, 2007).
75	Lumbar Artificial Disc Replacement.
76	Ultrasound Diagnostic Procedure.
77	Percutaneous Transluminal Angioplasty.
	Medicare Claims Processing (CMS-Pub. 100–04)
1281	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
1282	Medicare Contractors Use of the Coordination of Benefits Agreement Problem Inquiry Request Form To Identify and Send Coordination of Benefits Agreement Related Issues to the Coordination of Benefits Contractor Consolidation of the Claims Crossover Process.
1283	National Provider Identifier Required to Enroll in Electronic Data Interchange; Update of Telecommunication and Transmission Protocols for Electronic Data; Interchange and Deletion of Obsolete Reference to Medicaid Subrogation Claims; Electronic Data Interchange Enrollment; New Enrollments and Maintenance of Existing Enrollments; Telecommunication and Transmission Protocols.
1284	Chapter 24 Update and EFT Format Standardization Electronic Funds Transfer; Identification of Those Providers to be Reviewed.
1285	Renal Dialysis Facility Line Item Billing Requirement for Epoetin Alfa Submitted on End-Stage Renal Disease Claims; Required Information for In-Facility Claims Paid Under the Composite Rate; Epoetin Alfa Facility Billing Requirements; Payment Amount for Epoetin Alfa; Self Administered EPO Supply; Darbepoetin Alfa (Aranesp) Facility Billing Requirements.
1286	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1287	Instructions for Downloading the Medicare ZIP Code Files—January 2008.
1288	Update to the Place of Service Code Set To Add a Code for Prison/Correctional Facility—VMS Only.
1289	Additional Common Working File Editing for Skilled Nursing Facility Consolidated Billing; A/B Crossover Edits; Edit for Ambulance Services; Edit for Clinical Social Workers.
1290	Clarification of Skilled Nursing Facility Billing Requirements for Beneficiaries Enrolled in Medicare Advantage Plans; Medicare Billing Requirements for Beneficiaries Enrolled in Medicare Advantage Plans.
1291	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1292	Payment for Hospice Care Based on Location Where Care is Furnished.
1293	This Transmittal is rescinded and will not be replaced at this time.
1294	Revision of the Fiscal Intermediary Standard System to Forward Payment Ambulatory Payment Classification to the Common Working File.
1295	Laboratory and Radiology: Adjustment to Common Working File Duplicate Claim Edit for the Technical Component of Radiology and Pathology Laboratory Services Provided to Hospital Patients.
1296	Modifications to the National Coordination of Benefits Agreement Crossover Process; Consolidated Claims Crossover Process; Consolidation of the Claims Crossover Process; Coordination of Benefits Agreement Detailed Error Report Notification Process; Coordination of Benefits Agreement Full Claim File Repair Process.
1297	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
1298	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction 1299 Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction 1300 Healthcare Provider Taxonomy Codes Update October 2007
1301	Revised Information on Positron Emission Tomography Scan Coding; Appropriate CPT Codes Effective for Positron Emission Tomography Scans for Services Performed on or After January 28, 2005; Tracer Codes Required for Positron Emission Tomography Scans; Medicare Summary Notice; Remittance Advice Message.
1302	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1303	Modification of Part B Flat File for Electronic Remittance Advice—Transaction 835.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS JULY THROUGH SEPTEMBER 2007—Continued

Transmittal No.	Manual/Subject/Publication Number
1304	Reporting of Additional Data to Describe Services on Hospice Claims; Levels of Care; Data Required on Claim to Fiscal Intermediary.
1305	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1306	Medicare Part A Skilled Nursing Facility Prospective Payment System Pricer Update for FY 2008.
1307	Modification to the National Monitoring Policy for Erythropoietic Stimulating Agents for End-Stage Renal Disease Patients Treated in Renal Dialysis Facilities; Epoetin Alfa; Darbepoetin Alfa (Aranesp) for End-Stage Renal Disease patients.
1308	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
1309	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1310	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1311	Capturing Days on Which Medicare Beneficiaries are Entitled to Medicare; Advantage in the Medicare/Supplemental Security Income Fraction; Additional Payment Amounts for Hospitals with Disproportionate Share of Low-Income Patients; Low Income Patient Adjustment: The Supplemental Security; Income/Medicare Beneficiary Data for Inpatient Rehabilitation Facilities Paid Under the Prospective Payment System.
1312	Timeliness Standards for Processing Other-Than-Clean Claims.
1313	Response to Competitive Acquisition for Part B Drugs and Biologicals Claims When the Common Working File 69XD Error Code is Received; Submission of Claims With the Modifier JW, "Drug Amount Discarded/Not Administered to Any Patient".
1314	Claim Status Category Code and Claim Status Code Update.
1315	Clarification of Percutaneous Transluminal Angioplasty Billing Requirements Issued in CR 3811; Carotid Artery Stenting With Embolic Protection Coverage.
1316	This Transmittal is rescinded and replaced by Transmittal 1324.
1317	2008 Annual Update of Healthcare Common Procedure Coding System Codes for Skilled Nursing Facility; Consolidated Billing for the Common Working File Medicare Carriers and Fiscal Intermediaries.
1318	This Transmittal is rescinded and replaced by Transmittal 1333.
1319	Date of Service for Laboratory Specimens.
1320	2008 Annual Update for the Health Professional Shortage Area Bonus Payment.
1321	Sunset of the Physician Scarcity Bonus Payment; Billing and Payment in a Physician Scarcity Area; Zip Code Files; Physician Rendering Anesthesia in a Hospital Outpatient Setting; Billing and Payment in a Physician Scarcity Area.
1322	Indian Health Service Hospital Payment Rates for Calendar Year 2007.
1323	Inpatient Rehabilitation Facility Annual Update: Prospective Payment System Pricer Changes for FY 2008.
1324	Anesthesia Services Furnished by the Same Physician Providing the Medical and Surgical Service; General Payment for Anesthesiology Services.
1325	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
1326	Update to the 2007 Medicare Physician Fee Schedule Database.
1327	Schedule for Completing the Calendar Year (CY) 2008 Fee Schedule Updates and the Participating Physician Enrollment Process—(For Informational Purposes Only).
1328	Delete References to Reporting of the National Provider Identifier on or after May 23, 2007, and Revise References to a "When Required" Date Carrier Data Element Requirements; Conditional Data Element Requirements for Carriers and DMERCs; Carrier Specific Requirements for Certain Specialties/Services.
1329	Modification to the Timeliness Requirements for Contractors Forwarding Reconsideration Requests Submitted to the Wrong Contractor Filing a Request for a Reconsideration.
1330	Quarterly Update to Correct Coding Initiative Edits, Version 13.3, Effective October 1, 2007.
1331	Issued to a specific audience. Not posted to Internet/Intranet due to Confidentiality of Instruction.
1332	Transitioning the Mandatory Medigap ("Claim-Based") Crossover Process to the Coordination of Benefits Contractor; Claims Crossover Disposition Indicators; Coordination of Benefits Agreement (COBA) Medigap Claim-Based Crossover Process; Completion of the Claim Form; Form CMS–1500 (ANSI X12N 837 Coordination of Benefits (version 4010)).
1333	Ambulance: New Remark Code for Denying Separately Billed Services General Coverage and Payment Policies.
1334	October 2007 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files.
1335	Updating the Internet Only Manual to Include Language or National Provider; Identifier When Required; Payment Under Reciprocal Billing Arrangements—Claims Submitted to Carriers; Physicians Payment Under Locum Tenens Arrangements—Claims Submitted to Carriers; Billing Procedures for Entities Qualified To Receive Payment on Basis of Reassignment—for Carrier Processed Claims; Billing Procedures for Entities Qualified To Receive Payment on Basis of Reassignment—for Carrier Processed Claims; Carrier Participation and Billing Limitations.
1336	October 2007 Update of the Hospital Outpatient Prospective Payment System; Summary of Payment Policy Changes; Billing for Devices Eligible for Transitional Pass-Through Payments and Items Classified in "New Technology" APCs; Categories for Use in Coding Devices Eligible for Transitional Pass-Through Payments Under the Hospital OPPS; Roles of Hospitals, Manufacturers, and CMS in Billing for Transitional Pass-Through Items; Devices Eligible for Transitional Pass-Through Payments; General Coding and Billing Instructions and Explanations; Services Eligible for New Technology Ambulatory Payment Class Assignment and Payments.
1337	Revisions to 9-Digit ZIP Code List Provided in Change Request 5208.
1338	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
1339	Magnetic Resonance Imaging Procedures.
1340	Lumbar Artificial Disc Replacement; General; Carrier Billing Requirements; Fiscal Billing Requirements; Reasons for Denial and Medicare Summary Notice Claim Adjustment Reason; Code Messages and Remittance Advice Remark Code; Advanced Beneficiary Notice and Hospital Issued Notice of Noncoverage Information.
1341	New Web Site for Approved Transplant Centers; Billing Transplant Services; Kidney Transplants—General; Billing for Kidney Transplants and Acquisition Services; Heart Transplants; Liver Transplants; Billing for Liver Transplants and Acquisition Services; Pancreas Transplants Kidney Transplants; Pancreas Transplant Alone; Intestinal and Multi-Visceral Transplants; Renal Transplantation and Related Services.
1342	October 2007 Integrated Outpatient Code Editor (I/OCE) Specifications Version 8.3.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS JULY THROUGH SEPTEMBER 2007—Continued

Transmittal No.	Manual/Subject/Publication Number
1343	Stage 3 NPI Changes for Transaction 835 and Standard Paper Remittance; Advice; Background; Remittance Balancing; Medicare Standard Electronic PC Print Software for Institutional Providers; Part A (A/B Macs/FIs/RHHIs) SPR Format; Part B (A/B Mac/Carrier/DMERC/DME MAC) SPR Format; Part A (A/B MAC/FI/RHHI) SPR Crosswalk to the 835; 22/50/50.4/Part B (A/B Mac/Carrier/DMERC/DME MAC) SPR Crosswalk to the 835.
1344	Reasonable Charge Update for 2008 for Splints, Casts, Dialysis Supplies, Dialysis Equipment, and Certain Intraocular Lenses.
1345	Remittance Advice Remark Code and Claim Adjustment Reason Code Update.
1346	New Waived Tests.
1347	MSN Message: Revised 38.13; General Information; Sección De Información General.
	Medicare Secondary Payer (CMS-Pub. 100–05)
00	None.
	Medicare Financial Management (CMS-Pub. 100–06)
126	Manual Revision Re: Medicare Summary Notice Workload Reporting; Body of Report; Part C—Miscellaneous Claims Data.
127	Instructions for Documenting Scoping Decision of Provider's Internal Controls; Revisions to Continuing Education and Training and Revision Regarding Time Frame for Settling Cost Reports; Tests of Internal Control; Qualifications; Final Settlement of the Cost Report.
128	Revisions to Instructions On Chapter 1—Budget Preparation—Intermediaries and Carriers and Chapter 2—Budget Execution of the Medicare Financial Management (CMS Pub. 100–06); List of Acronyms; Budget Preparation Check List for Program Management and Medicare Integrity Program; Instructions for Using the System for Tracking Audit and Reimbursement Servicing Contractor; Transmittal and Due Dates; Exhibit of Variances Analysis; Variance Analysis; Transmittal and Due Dates; Budget Execution Checklist for Program Management and Medicare Integrity Program.
129	Notice of New Interest Rate for Medicare Overpayments and Underpayments—4th Quarter FY 2007.
130	Revisions of the CROWD Report; Monthly Statistical Report on Intermediary and Carrier Part A and Part B Appeals Activity Form (CMS–2592); General; Section I—Redeterminations; Section II—Qualified Independent Contractor Reconsiderations; Section III—Administrative Law Judge Results; Section IV—Medicare Appeals Council Effectuations; Clerical Error Reopenings; Validation of Reports.
131	Participating Physicians Report—Deletion of Requirement to Forward a Memorandum to CMS Detailing Adjustments to Form F Column 1 (PAR Prior) (from previous enrollment period).
	Medicare State Operations Manual (CMS-Pub. 100–07)
26	Revised Appendix P and Appendix PP—New Tag F373.
27	Revisions to Appendix PP—Guidance to Surveyors for Long Term Care Facilities.
28	Revisions to Appendix D—Guidance to Surveyors for Portable X-ray.
	Medicare Program Integrity (CMS-Pub. 100–08)
215	Implementation of Durable Medical Equipment Medicare Administrative Contractor Access to Viable Information Processing Systems Medicare Shared System; Medical Review Functions at DME MACs.
216	Implementation of New Compliance Standards for Independent Diagnostic Testing Facilities; Independent Diagnostic Testing Facility Attachment; Independent Diagnostic Testing Facility Standards; Multi-State Independent Diagnostic Testing Facility Entities; Interpreting Physician; Technicians; Supervising Physicians; Desk and Site Reviews; Special Procedures and Supplier Types.
217	Provider Enrollment Fraud Detection Program for High Risk Areas; Submission of Proposed Implementation Plan for High Risk Areas.
218	Provider Enrollment Manual Update; Introduction to Provider Enrollment; Definitions; CMS–855 Medicare Enrollment Applications; Timeframes for Initial Applications; Timeframes for Changes of Information; General Timeliness Principles; Returning the Application; Basic Information (Section 1 of the CMS–855); Employer Identification Numbers and Legal Business Names; Licenses and Certifications; Correspondence Address; Accreditation; Section 2 of the CMS–855A; Section 2 of the CMS–855B; Section 2 of the CMS–855I; Adverse Legal Actions/Convictions; Practice Location Information; Section 4 of the CMS–855A; Section 4 of the CMS–855B; Section 4 of the CMS–855I; Contact Person; Home Health Agencies; Provider Enrollment Inquiries.
219	Nurse Practitioner Services and Clinical Nurse Specialist Services.
220	Various Medical Review Clarifications; Annual MR Strategy; Verifying Potential Error and Setting Priorities; Overview of Prepayment and Postpayment Review for Medical Review Purposes; Documentation Specifications for Areas Selected for Prepayment or Postpayment Medical Review; Medical Review Denial Notices; Automated Prepayment Review;Postpayment Review of Claims for Medical Review Purposes; Provider Notification and Feedback; Provider Types and Subtypes; Medicare Integrity Program CERT (Activity Code 21901).
221	Administrative Appeals for Provider Enrollment Administrative Appeals.
222	Discontinuance of the Unique Physician Identification Number Registry.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS JULY THROUGH SEPTEMBER 2007—Continued

Transmittal No.	Manual/Subject/Publication Number
	Provider Notification and Feedback Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100–09)
20	Institute Of Medicine Pub. 100–09, Chapter 3—Provider Inquiries and Chapter 6—Provider Customer Service Program Updates; Availability of Telephone Services; Automated Services—Interactive Voice Response; Toll Free Network Services; Publication of Toll Free Numbers; Call Handling Requirements; Customer Service Assessment and Management System Reporting Requirements; CSR Qualifications; Staff Development and Training; Fraud and Abuse; Performance Improvements Provider Contact Center User Group; Performance Improvements; Contractor Guidelines for High Quality Responses to Telephone Inquiries; Quality Call Monitoring Program; Quality Call Monitoring Calibration; Quality Call Monitoring Performance Standards; Written Inquiries; Contractor Guidelines for High Quality Responses to Written Inquiries; Quality Written Correspondence Monitoring Program; Quality Written Correspondence Monitoring Calibration; Quality Written Correspondence Monitoring Performance Standards; Walk-In Inquiries; Guidelines for High Quality Walk-In Service; Surveys; Customer Service Operations Surveys; Provider Satisfaction Surveys; Contractor Activities Related to the Medicare Provider Satisfaction Survey; Provider Inquiry Reporting Standardization; Provider Transaction Access Number; Inquiry Types;Telephone Inquiries; Contractor Discretion Concerning Interactive Voice Response Information; Written Inquiries; Special Inquiry Topics; Overlapping Claims; Pending Claims; Requests for Information Available on the Interactive Voice Response; Requests for Information Available on the Remittance Advice Notice; Deceased Beneficiaries; Disclosure Desk Reference for Provider Contact Centers; Authentication of Provider Elements for Customer Service Representative Inquiries; Authentication of Provider Elements for Interactive Voice Response Inquiries; Authentication of Provider Elements for Written Inquiries; Authentication of Beneficiary Elements; POE Goals; Error Rate Reduction Data; Error Rate Reduction Plan; Refunds/Credits for Cancellation of Events; Availability Requirements; Quality Call Monitoring Program; Telephone Responses; Quality Written Correspondence Monitoring Program; Complex Beneficiary Inquiries; Interactive Voice Response System; Call Completion; Average Speed of Answer; Quality Call Monitoring Performance Standards; Quality Written Correspondence Monitoring Performance Standards; General Inquiries Timeliness; Customer Service Assessment and Management System Reporting Requirements; Provider Transaction Access Number; Inquiry Types; Telephone Inquiries; Contractor Discretion Concerning Interactive Voice Response Information; Written Inquiries; Special Inquiry Topics; Pending Claims; Requests for Information Available on the Interactive Voice Response; Requests for Information Available on the Remittance Advice Notice; Deceased Beneficiaries; Disclosure Desk Reference for Provider Contact Centers; Authentication of Provider Elements for Interactive Voice Response Inquiries; Authentication of Provider Elements for Written Inquiries; Authentication of Beneficiary Elements; Inquiry Standardized Categories.
	Medicare Managed Care (CMS-Pub. 100–16)
88	Revisions to Chapter 13, "Medicare Managed Care Beneficiary Grievances, Organization Determinations, and Appeals Applicable to Medicare Advantage Plans, Cost Plans, and Health Care Prepayment Plans (collectively referred to as Medicare Health Plans)"; Definition of Terms/Grievance; Responsibilities of the Medicare Health Plan; Procedures for Handling a Grievance; Organization Determinations; Written Notification by Medicare Health Plan of Its Own Decision; Representatives Filing Appeals for Enrollees; Authority of a Representative; Notice Delivery to Representatives; How the Medicare Health Plan Processes Requests for Expedited Reconsiderations; Forwarding Adverse Reconsiderations to the Independent Review Entity; QIO Expedited Reviews of Coverage Terminations in Certain Provider Settings (SNF, HHA, and CORF); Notice of Medicare Non-Coverage; Meaning of Valid Delivery; Authority of a QIO to Request Enrollee Records; Determination of Amount in Controversy; Judicial Review; Requesting Immediate Quality Improvement Organization Review of Inpatient Hospital Care; Data; Reporting Unit for Appeal and Grievance Data Collection Requirements; Data Collection and Reporting Periods; New Reporting Periods Start Every 6 Months; Maintaining Data; Appeal and Grievance Data Collection Requirements; Quality of Care Grievance Data; Beneficiary Appeals and Quality of Care Grievances Explanatory Data Report.
	Medicare Business Partners Systems Security (CMS-Pub. 100–17)
00	None.
	Demonstrations (CMS-Pub. 100–19)
00	None.
	One Time Notification (CMS-Pub. 100–20)
287	Fiscal Intermediary Standard System Recoupment and Claims Adjustment; Process Changes—Limitation of Recoupment—Analysis and Design.
288	Creating a New File Transaction Layout Utilizing Automated Response Units.
289	Present on Admission Indicator Systems Implementation.
290	New Contractor Number for Trispan Missouri Part A Workload.
291	Cessation of FI-to-FI Moves for Providers that are Members of Chains.
292	Issued to specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER JULY THROUGH SEPTEMBER 2007

Publication date	FR volume 72 page number	42 CFR parts affected	File code	Title of regulation
July 5, 2007	36710		CMS–5042–N2	Medicare Program; Solicitation for Proposals From Rural Hospitals to Participate in the Medicare Hospital Gainsharing Demonstration Program Under Section 5007 of the Deficit Reduction Act.
July 5, 2007	36613	412 and 413	CMS–1529–CN	Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes; Corrections.
July 5, 2007	36612	412 and 413	CMS–1529–N	Medicare Program; Hospital Direct and Indirect Graduate Medical Education Policy Changes; Notice.
July 12, 2007	38122	409, 410, 411, 413, 414, 415, 418, 423, 424, 484, 485, and 491.	CMS–1385–P	Medicare Program; Proposed Revisions to Payment Policies Under the Physician Fee Schedule, and Other Part B Payment Policies for CY 2008; Proposed Revisions to the Payment Policies of Ambulance Services Under the Ambulance Fee Schedule for CY 2008; and the Proposed Elimination of the E-Prescribing Exemption for Computer-Generated Facsimile Transmissions.
July 13, 2007	38662	435, 436, 440, 441, 457, and 483.	CMS–2257–F	Medicaid Program; Citizenship Documentation Requirements.
July 17, 2007	39142	447	CMS–2238–FC	Medicaid Program; Prescription Drugs.
July 20, 2007	39776	455	CMS–2264–P	Medicaid Integrity Program; Limitation on Contractor Liability.
July 20, 2007	39746	402	CMS–6146–F, CMS–6019–F	Medicare Program; Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures.
July 27, 2007	41333		CMS–1388–N	Medicare Program; Request for Nominations and Meeting of the Practicing Physicians Advisory Council, August 27, 2007.
July 27, 2007	41331		CMS–2272–PN	Medicare and Medicaid Programs; Application by the American Osteopathic Association (AOA) for Continued Deeming Authority for Critical Access Hospitals (CAHs).
July 27, 2007	41232	148	CMS–2260–IFC	High Risk Pools.
July 27, 2007	41230	146	CMS–4094–F5	Amendment to the Interim Final Regulation for Mental Health Parity.
August 1, 2007	42001	424	CMS–6006–P	Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).
August 2, 2007	42628	410, 411, 414, 416, 419, 482, and 485.	CMS–1392–P	Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2008 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2008 Payment Rates; Medicare and Medicaid Programs; Proposed Changes to Hospital Conditions of Participation; Proposed Changes Affecting Necessary Provider Designations of Critical Access Hospitals.
August 2, 2007	42470	410 and 416	CMS–1517–F	Medicare Program; Revised Payment System Policies and Services Furnished in Ambulatory Surgical Centers (ASCs) Beginning in CY 2008.
August 3, 2007	43412	409	CMS–1545–F	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008.
August 6, 2007	43581	409, 410, 411, 413, 414, 415, 418, 423, 424, 484, 485, and 491.	CMS–1385–CN	Medicare Program; Proposed Revisions to Payment Policies Under the Physician Fee Schedule, and Other Part B Payment Policies for CY 2008; Proposed Revisions to the Payment Policies of Ambulance Services Under the Ambulance Fee Schedule for CY 2008; and the Proposed Elimination of the E-Prescribing Exemption for Computer-Generated Facsimile Transmissions; Corrections.
August 7, 2007	44284	412	CMS–1551–F	Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2008.
August 7, 2007	44150		CMS–3188–NC	Medicare Program; Evaluation Criteria and Standards for Quality Improvement Program Organization Contracts.
August 13, 2007	45201	440 and 441	CMS–2261–P	Medicaid Program; Coverage for Rehabilitative Services.
August 17, 2007	46175	402	CMS–6146–CN2, CMS–6019–CN	Medicare Program; Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures; Correction.
August 22, 2007	47130	411,412, 413, and 489.	CMS–1533–FC	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates.
August 24, 2007	48870	400 and 421	CMS–6030–F	Medicare Program; Medicare Integrity Program, Fiscal Intermediary and Carrier Functions, and Conflict of Interest Requirements.
August 24, 2007	48654		CMS–7005–N	Medicare Program; Meeting of the Advisory Panel on Medicare Education, September 20, 2007.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER JULY THROUGH SEPTEMBER 2007—Continued

Publication date	FR volume 72 page number	42 CFR parts affected	File code	Title of regulation
August 24, 2007	48652		CMS–3184–N	Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee (MedCAC)—October 22, 2007.
August 24, 2007	48651		CMS–1481–N4	Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) Meeting—September 17–18, 2007.
August 24, 2007	48650		CMS–3193–N	Town Hall Meeting Regarding the Effect of Coverage and Payment on Clinical Research Study Participation and Retention, September 20, 2007.
August 24, 2007	48647		CMS–1542–N2	Medicare Program; Announcement of New Members to the Advisory Panel on Ambulatory Payment Classification (APC) Groups.
August 24, 2007	48604	440	CMS–2234–P	Medicaid Program; State Option To Establish Non-Emergency Medical Transportation Program.
August 24, 2007	48562	482	CMS–3014–IFC	Medicare and Medicaid Programs; Hospital Conditions of Participation: Laboratory Services.
August 29, 2007	49762	484	CMS–1541–FC	Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008.
August 31, 2007	50490	431 and 457	CMS–6026–F	Medicaid Program and State Children's Health Insurance Program (SCHIP); Payment Error Rate Measurement.
August 31, 2007	50470	416	CMS–3887–P	Medicare and Medicaid Programs; Ambulatory Surgical Centers, Conditions for Coverage.
August 31, 2007	50214	418	CMS–1539–F	Medicare Program; Hospice Wage Index for Fiscal Year 2008.
September 5, 2007	51012	411 and 424	CMS–1810–F	Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase III).
September 7, 2007	51397	431, 433, and 440	CMS–2287–P	Medicaid Program; Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School.
September 19, 2007.	53628	424, 488, and 489	CMS–2268–F	Establishment of Revisit User Fee Program for Medicare Survey and Certification Activities.
September 28, 2007.	55282		CMS–9041–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2007.
September 28, 2007.	55224		CMS–1378–N	Medicare Program; Medicare Provider Feedback Group Town Hall Meeting—October 16, 2007.
September 28, 2007.	55222		CMS–3186–PN	Medicare and Medicaid Programs; Application by the Indian Health Service (IHS) for Continued Recognition as a National Accreditation Organization for Accrediting American Indian and Alaska Native Entities To Furnish Outpatient Diabetes Self-Management Training.
September 28, 2007.	55219		CMS–2267–N	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Laboratories Licensed by the State of Washington.
September 28, 2007.	55158	440 and 447	CMS–2213–P	Medicaid Program; Clarification of Outpatient Clinic and Hospital Facility Services Definition and Upper Payment Limit.
September 28, 2007.	55152	406, 407, and 408	CMS–4129–P	Medicare Program; Special Enrollment Period and Medicare Premium Changes.
September 28, 2007.	55085	409	CMS–1545–CN	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Corrections.

Addendum V—National Coverage Determinations [July Through September 2007]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://cms.hhs.gov/coverage.*

NATIONAL COVERAGE DETERMINATIONS

[July through September 2007]

Title	NCDM section	TN number	Issue date	Effective date
Medicare Clinical Trial Policy	310.1	R74NCD	9/07/07	07/09/07
Lumbar Artificial Disc Replacement	150.10	R75NCD	09/11/07	08/14/07
Ultrasound Diagnostic Procedures	220.5	R76NCD	09/12/07	05/17/07
Percutaneous Transluminal Angioplasty	20.7	R77NCD	09/12/07	04/30/07

Addendum VI—FDA-Approved Category B IDEs [July Through September 2007]

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the third quarter, July through September 2007.

IDE	Category
BB13393	B
BB13423	B
BB13463	B
G060207	B
G070014	B
G070035	B
G070036	B
G070057	B
G070076	B
G070081	B
G070094	B
G070095	B
G070098	B
G070103	B
G070105	B
G070107	B
G070108	B
G070109	B
G070114	B
G070123	B
G070126	B
G070128	B
G070130	B
G070134	B
G070140	B
G070141	B
G070143	B
G070144	B
G070146	B
G070149	B
G070150	B
G070158	B

Addendum VII—Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB Control Numbers

Approved CFR Sections in Title 42, Title 45, and Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR,")

OMB Number	Approved CFR sections
0938–0008	Part 424, Subpart C
0938–0022	413.20, 413.24, 413.106
0938–0023	424.103
0938–0025	406.28, 407.27
0938–0027	486.100–486.110
0938–0033	405.807
0938–0034	405.821
0938–0035	407.40
0938–0037	413.20, 413.24
0938–0041	408.6, 408.202
0938–0042	410.40, 424.124
0938–0045	405.711
0938–0046	405.2133
0938–0050	413.20, 413.24
0938–0062	431.151, 435.151, 435.1009, 440.220, 440.250, 442.1, 442.10–442.16, 442.30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, 498.3–498.5
0938–0065	485.701–485.729
0938–0074	491.1–491.11
0938–0080	406.7, 406.13
0938–0086	420.200–420.206, 455.100–455.106
0938–0101	430.30
0938–0102	413.20, 413.24
0938–0107	413.20, 413.24
0938–0146	431.800–431.865
0938–0147	431.800–431.865
0938–0151	493.1–493.2001
0938–0155	405.2470
0938–0193	430.10–430.20, 440.167
0938–0202	413.17, 413.20
0938–0214	411.25, 489.2, 489.20
0938–0236	413.20, 413.24
0938–0242	416.44, 418.100, 482.41, 483.270, 483.470
0938–0245	407.10, 407.11
0938–0251	406.7
0938–0266	416.1–416.150
0938–0267	485.56, 485.58, 485.60, 485.64, 485.66
0938–0269	412.116, 412.632, 413.64, 413.350, 484.245
0938–0270	405.376
0938–0272	440.180, 441.300–441.305
0938–0273	485.701–485.729
0938–0279	424.5
0938–0287	447.31
0938–0296	413.170, 413.184
0938–0301	413.20, 413.24, 415.60
0938–0302	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938–0313	489.11, 489.20
0938–0328	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631
0938–0334	491.9, 491.10
0938–0338	486.104, 486.106, 486.110
0938–0354	441.50
0938–0355	442.30, 488.26
0938–0358	488.26
0938–0359	412.40–412.52
0938–0360	488.60
0938–0365	484.10, 484.12, 484.14, 484.16, 484.18, 484.36, 484.48, 484.52
0938–0372	414.330
0938–0378	482.60–482.62
0938–0379	442.30, 488.26
0938–0382	442.30, 488.26
0938–0386	405.2100–405.2171
0938–0391	488.18, 488.26, 488.28
0938–0426	480.104, 480.105, 480.116, 480.134
0938–0429	447.53
0938–0443	478.18, 478.34, 478.36, 478.42
0938–0444	1004.40, 1004.50, 1004.60, 1004.70
0938–0445	412.44, 412.46, 431.630, 476.71, 476.74, 476.78
0938–0447	405.2133
0938–0448	405.2133, 45 CFR 5, 5b; 20 CFR Parts 401, 422E
0938–0449	440.180, 441.300–441.310
0938–0454	424.20
0938–0456	412.105
0938–0463	413.20, 413.24, 413.106
0938–0467	431.17, 431.306, 435.910, 435.920, 435.940–435.960
0938–0469	417.126, 422.502, 422.516
0938–0470	417.143, 422.6
0938–0477	412.92
0938–0484	424.123
0938–0501	406.15
0938–0502	433.138
0938–0512	486.304, 486.306, 486.307
0938–0526	475.102, 475.103, 475.104, 475.105, 475.106
0938–0534	410.38, 424.5

OMB Number	Approved CFR sections
0938–0544	493.1–493.2001
0938–0564	411.32
0938–0565	411.20–411.206
0938–0566	411.404, 411.406, 411.408
0938–0573	412.256
0938–0578	447.534
0938–0581	493.1–493.2001
0938–0599	493.1–493.2001
0938–0600	405.371, 405.378, 413.20
0938–0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 483.10, 484.10, 489.102
0938–0612	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493,1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 493.1299
0938–0618	433.68, 433.74, 447.272
0938–0653	493.1771, 493.1773, 493.1777
0938–0657	405.2110, 405.2112
0938–0658	405.2110, 405.2112
0938–0667	482.12, 488.18, 489.20, 489.24
0938–0686	493.551–493.557
0938–0688	486.301–486.325
0938–0691	412.106
0938–0692	466.78, 489.20, 489.27
0938–0701	422.152
0938–0702	45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180
0938–0703	45 CFR 148.120, 148.122, 148.124, 148.126, 148.128
0938–0714	411.370–411.389
0938–0717	424.57
0938–0721	410.33
0938–0723	421.300–421.316
0938–0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938–0732	417.126, 417.470
0938–0734	45 CFR 5b
0938–0739	413.337, 413.343, 424.32, 483.20
0938–0749	424.57
0938–0753	422.000–422.700
0938–0754	441.151, 441.152
0938–0758	413.20, 413.24
0938–0760	484.55, 484.205, 484.245, 484.250
0938–0761	484.11, 484.20
0938–0763	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938–0770	410.2
0938–0778	422.111, 422.564
0938–0779	417.126, 417.470, 422.64, 422.210
0938–0781	411.404, 484.10
0938–0786	438.352, 438.360, 438.362, 438.364
0938–0790	460.12–460.210
0938–0792	491.8, 491.11
0938–0796	422.64
0938–0798	413.24, 413.65, 419.42
0938–0802	419.43
0938–0818	410.141–410.146, 414.63
0938–0829	422.568
0938–0832	Parts 489 and 491
0938–0833	483.350–483.376
0938–0841	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180
0938–0842	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64
0938–0846	411.352–411.361
0938–0857	Part 419
0938–0860	Part 419
0938–0866	45 CFR Part 162
0938–0872	413.337, 483.20,
0938–0873	422.152
0938–0874	45 CFR Parts 160 and 162
0938–0878	Part 422 Subparts F and G
0938–0887	45 CFR 148.316, 148.318, 148.320
0938–0897	412.22, 412.533
0938–0907	412.230, 412.304, 413.65
0938–0910	422.620, 422.624, 422.626
0938–0911	426.400, 426.500
0938–0915	421.120, 421.122
0938–0916	483.16
0938–0920	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410. 438.414, 438.416, 438.604, 438.710, 438.722, 438.724, 438.810
0938–0921	414.804
0938–0931	45 CFR 142.408, 162.408, and 162.406
0938–0933	438.50
0938–0935	422 Subparts F and K
0938–0936	423
0938–0939	405.502
0938–0944	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938–0950	405.910
0938–0951	423.48
0938–0953	405.1200 and 405.1202
0938–0954	414.906, 414.908, 414.910, 414.914, 414.916
0938–0957	Part 423 Subpart R
0938–0964	403.460, 411.47
0938–0969	421.405
0938–0975	423.562(a)
0938–0976	423.568
0938–0977	Part 423 Subpart R
0938–0978	423.464
0938–0982	422.310, 423.301, 423.322, 423.875, 423.888.
0938–0990	423.56
0938–0992	423.505, 423.514
0938–0993	1396
0938–0997	424.5
0938–1009	411.357(v), 411.357(w)
0938–1020	412.525(a)(4), 412.529(c)(3), 412.84(i)(2)
0938–1024	1396
0938–1026	447.52
0938–1013	423.56e
0938–1019	405.1206, 422.622
0938–1023	422.152a

Addendum VIII—Medicare-Approved Carotid Stent Facilities [July Through September 2007]

On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection

is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients.

APPROVED CAROTID ARTERY STENTING FACILITIES

[July through September 2007]

Facility name	Provider number	Effective date	State	Additional information
East Ohio Regional Hospital, 90 N. 4th Street, Martins Ferry, OH 43935	360080	07/05/2007	OH	N/A
NEA Medical Center, 3024 Stadium Boulevard, Jonesboro, AR 72401	040118	07/05/2007	AR	N/A
Hazelton General Hospital, 700 East Broad Street, Hazelton, PA 18201	390185	07/05/2007	PA	N/A
St. Lucie Medical Center, 1800 SE Tiffany Avenue, Port Lucie, FL 34952.	100260	07/18/2007	FL	N/A
Memorial Medical Center, 1700 Coffee Road, Modesto, CA 95355	050557	08/01/2007	CA	N/A
Hopedale Medical Complex, 107 Tremont Street, Hopedale, IL 61747	141330	08/20/2007	IL	N/A
Marquette General Health System, 580 W. College Avenue, Marquette, MI 49855.	230054	08/20/2007	MI	N/A
The Good Samaritan Hospital, Fourth and Walnut Streets, Lebanon, PA 17042–1281.	390066	08/20/2007	PA	PO Box 1281
MidState Medical Center, 435 Lewis Avenue, Meriden, CT 06451	070017	08/20/2007	CT	N/A
Mercy San Juan Medical Center, 6501 Coyle Avenue, Carmichael, CA 95680.	050516	08/20/2007	KS	PO Box 1478
Western Plains Medical Complex, 3001 Avenue A, Dodge City, KS 67801–1478.	170175	08/27/2007	KS	N/A
Conroe Regional Medical Center, 504 Medical Center Boulevard, Conrole, TX 77304.	450222	08/27/2007	TX	N/A
Frederick Memorial Hospital, 400 W. 7th Street, Frederick, MD 21701	210005	09/04/2007	MD	N/A
Doctors Hospital of Dallas, 9440 Poppy Drive, Dallas, TX 75218	450678	09/07/2007	TX	N/A
Middlesex Hospital, 28 Crescent Street, Middletown, CT 06457–3650	070020	09/07/2007	CT	N/A
Lewis Gale Medical Center, 1900 Electric Road, Salem, VA 24153	490048	09/07/2007	VA	N/A

Addendum IX—American College of Cardiology's National Cardiovascular Data Registry Sites [July Through September 2007]

In order to obtain reimbursement, Medicare national coverage policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. This policy became effective January 27, 2005. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare National Coverage Determination (NCD) Manual, which is on the Centers for Medicare & Medicaid Services (CMS) Web site at *http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961*.

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the American College of Cardiology's National Cardiovascular Data Registry (ACC–NCDR) ICD registry. Therefore, in order for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC–NCDR ICD registry.

We maintain a list of facilities that have been enrolled in this registry. Addendum IX includes the facilities that have been designated in the quarter covered by this notice.

Facility name	Address 1	Address 2	City	State	Zip
A. L. Lee Memorial Hospital	510 South Fulton Street		Fulton	NY	13069
Abbott Northwestern Hospital	800 East 28th Street (internal zip 33210).		Minneapolis	MN	55407
Abilene Regional Medical Center.	6250 Highway 83/84		Abilene	TX	97606
Abington Memorial Hospital	1200 York Road		Abington	PA	19446
Adena Regional Medical Center.	272 Hospital Road		Chillicothe	OH	45601
Advance Cath Imaging, L.P	609 Medical Center Drive		Decatur	TX	76234
Adventist Medical Center	10123 SE Market Street		Portland	OR	97216
Advocate Christ Medical Center.	4440 West 95th Street #127NOB.		Oak Lawn	IL	60453
Advocate Good Shepherd Hospital.	450 W. Highway 22		Barrington	IL	60010
Advocate Illinos Masonic Medical Center.	836 W. Wellington Avenue		Chicago	IL	60657
Advocate Lutheran General Hospital.	1775 Dempster Street		Park Ridge	IL	60068

Facility name	Address 1	Address 2	City	State	Zip
Advocate South Suburban Hospital.	17800 S. Kedzie Avenue		Hazel Crest	IL	60429
Aiken Regional Medical Center	302 University Parkway		Aiken	SC	29802
Akron City Hospital	525 East Market Street		Akron	OH	44309–2090
Akron General Medical Center	400 Wabash Avenue		Akron	OH	44307
Alaska Regional Hospital	2801 Debarr Road		Anchorage	AK	99508
Albany Medical Center Hospital	43 New Scotland Aveune		Albany	NY	12208
Albert Einstein Medical Center	5501 Old York Road		Philadelphia	PA	19141
Alegent Health Bergan Mercy Medical Center.	7500 Mercy Road		Omaha	NE	68124
Alegent Health Immanuel Medical Center.	6828 N. 72 Street		Omaha	NE	68122–1709
Alegent Health-Mercy Hospital	6901 N. 72 Street	Suite 3000 N	Omaha	NE	68122
Alexian Brothers Medical Center.	800 Biesterfield Road		Elk Grove Village.	IL	60007–3311
Allegheny General Hospital	320 East North Avenue		Pittsburgh	PA	15212
Allen Memorial Hospital	1825 Logan Avenue		Waterloo	IN	50703
Alliance Hospital	515 North Adams		Odessa	TX	79761
Alpena Regional Medical Center.	1501 W. Chisholm Street		Alpena	MI	49707
Alta Bates Medical Center	2450 Ashby Avenue		Berkeley	CA	94705
Alta Bates Summit Medical Center.	350 Hawthorne Avenue		Oakland	CA	94609
Alton Memorial Hospital	1 Memorial Drive		Alton	IL	62067
Altoona Hospital	620 Howard Avenue		Altoona	PA	16601
Altru Health System	1200 South Columbia Road		Grand Forks	ND	58206–6002
Alvarado Hospital	6645 Alvarado Road		San Diego	CA	92124
Anaheim Memorial Medical Center.	1111 W. La Palma Avenue		Anaheim	CA	92801
AnMed Health	800 Fant Street		Anderson	SC	29621
Anna Jaques Hospital	25 Highland Avenue		Newburyport	MA	01950
Anne Arundel Medical Center	2001 Medical Parkway		Annapolis	MD	21401
Appleton Medical Center/Theda Clark Medical Center.	1818 N. Meade Street/MOB–S/2nd Floor.	Diagnostic Center-2nd Floor	Appleton	WI	54911
Arizona Heart Hospital	1930 East Thomas Road	1930 East Thomas Road	Phoenix	AZ	85016
Arkansas Heart Hospital	1701 S. Shackelford Road		Little Rock	AR	72202
Arlington Memorial Hospital	800 W. Randol Mill Road		Arlington	TX	76012–2504
Arnot-Ogden Medical Center	600 Roe Avenue		Elmira	NY	14905
Aspirus Wausau Hospital	333 Pine Ridge Boulevard		Wausau	WI	54401
Athens Regional Medical Center.	1199 Prince Avenue		Athens	GA	30606
Atlanta Medical Center	303 Parkway Drive NE	Box 88	Atlanta	GA	30312
Atlanticare Regional Medical Center.	2500 English Creek Avenue		Egg Habour Township.	NJ	08234
Audrain Medical Center	620 East Monroe Street		Mexico	MO	65265
Aultman Hospital	2600 Sixth Street SW		Canton	OH	44710
Aurora Bay Care Medical Center.	2845 Greenbrier Road		Green Bay	WI	54308
Aurora Sinai Medical Center	2900 West Oklahoma Avenue		Milwaukee	WI	53215
Aventura Hospital and Medical Center.	20900 Biscayne Boulevard		Aventura	FL	33180
Avera Heart Hospital of South Dakota.	4500 West 69th Street		Sioux Falls	SD	57108
Avera Sacred Heart Hospital	501 Summit Street		Yankton	SD	57078
Bakersfield Heart Hospital	3001 Sillect Avenue		Bakersfield	CA	93308
Bakersfield Memorial Hospital	420 34th Street	PO Box 1888	Bakersfield	CA	93303–1888
Ball Memorial Hospital	2401 University Avenue		Muncie	IN	47303
Banner Desert Medical Center	Banner Desert Medical Center, Quality Management.	1400 S. Dobson Road	Mesa	AZ	85202
Banner Estrella Medical Center	9201 W. Thomas Road		Phoenix	AZ	85037
Banner Good Samaritan Medical Center.	1111 East McDowell Road		Phoenix	AZ	85006–2612
Banner Thunderbird Medical Center.	5555 W. Thunderbird Road		Glendale	AZ	85306
Baptist Health Medical Center	9601 Interstate 630 Exit 7		Little Rock	AR	72205
Baptist Health Medical Center	3333 Springhill Drive		North Little Rock.	AR	72117
Baptist Hospital	1000 W. Moreno Street		Pensacola	FL	32501
Baptist Hospital East	4000 Kresge Way		Louisville	KY	40207
Baptist Hospital of East Tennessee.	137 Blount Avenue		Knoxville	TN	37920
Baptist Hospital of Miami	8900 SW 88th Street		Miami	FL	33176
Baptist Hospital West	137 Blount Avenue		Knoxville	TN	37920
Baptist Medical Center	2105 East South Boulevard		Montgomery	AL	36116

Facility name	Address 1	Address 2	City	State	Zip
Baptist Medical Center	800 Prudential Drive		Jacksonville	FL	32207
Baptist Medical Center	111 Dallas Street		San Antonio	TX	78205
Baptist Memorial Hospital	6019 Walnut Grove Road		Memphis	TN	38120
Baptist Memorial Hospital Golden Triangle.	2520 5th Street North P.O. Box 1307.		Columbus	MS	39703
Baptist Memorial Hospital North Mississippi.	2301 South Lamar Boulevard		Oxford	MS	38655
Baptist Memorial Hospital-Desoto.	7601 Southcrest Parkway		Southaven	MS	38671
Baptist Memorial Hospital-Union City.	1201 Bishop Street		Union City	TN	38261
Baptist St. Anthony's Health Systems.	1600 Wallace Boulevard		Amarillo	TX	79106
Barberton Citizens Hospital	155 5th Street NE		Barberton	OH	44203
Barnes Jewish Hospital/Washington University.	Barnes Jewish Hospital. Cardiovascular Procedure C.	600 S. Taylor Avenue, Mailstop 90–59–315.	Saint Louis	MO	63110–9930
Barstow Community Hospital	555 South Seventh Street		Barstow	CA	92311
Bartow Regional Medical Center.	PO Box 1050		Bartow	FL	33831–1050
Bassett Healthcare-(Mary Imogene Bassett Hospital).	One Atwell Road		Cooperstown	NY	13326
Baton Rouge General Medical Center.	3600 Florida Boulevard		Baton Rouge	LA	70806
Battle Creek Health System	300 North Avenue		Battle Creek	MI	49016
Baxter Regional Medical Center Attn: A/P.	624 Hospital Drive		Mountain Home.	AR	72653
Bay Medical Center	615 North Bonita Avenue		Panama City	FL	32401
Bay Regional Medical Center	1900 Columbus Avenue		Bay City	MI	48708
Bayfront Medical Center	701 Sixth Street South		St. Petersburg	FL	33701
Bayhealth Medical Center (KGH).	640 S. State Street		Dover	DE	19901
Baylor All Saints Medical Center at Fort Worth.	1400 Eighth Avenue		Fort Worth	TX	76104
Baylor Jack and Jane Hamilton Heart and Vascular Hospital.	621 North Hall Street		Dallas	TX	75226
Baylor Medical Center at Garland.	2300 Marie Curie Drive		Garland	TX	75042
Baylor Medical Center at Irving	1901 North MacArthur Boulevard.		Irving	TX	75061
Baylor Regional Medical Center at Grapevine.	1650 West College Street		Grapevine	TX	76051
Baylor Regional Medical Center at Plano.	4700 Alliance Boulevard		Plano	TX	75093
Bayshore Medical Center	4000 Spencer Highway		Pasadena	TX	77504
Baystate Medical Center	759 Chestnut Street, S4553		Springfield	MA	01199
Bellevue Hospital Center	462 First Avenue		New York	NY	10016
Bellin Memorial Hospital	744 S Webster Avenue	Cardiac Data Center 5th Floor	Green Bay	WI	54301
Benefis Healthcare	1101 26th Street South		Great Falls	MT	59405–5161
Bert Fish Medical Center	401 Palmetto Street		New Smyrna Beach.	FL	32168
Beth Israel Deaconess Medical Center.	185 Pilgrim Road		Boston	MA	02215
Bethesda Memorial Hospital	2815 S. Seacrest Boulevard		Boynton Beach.	FL	33435
Bethesda North Hospitals	375 Dixmyth Avenue		Cincinnati	OH	45220–2489
Beverly Hospital	85 Herrick Street		Beverly	MA	01915
Bexar County Hospital District d.b.a. University Health System.	4502 Medical Drive, Stop 34–1 Room G–0128.		San Antonio	TX	78229
Biloxi Regional Medical Center	150 Reynoir Street		Biloxi	MS	39530
Blake Medical Center	2020 59th Street W		Bradenton	FL	34209
Blanchard Valley Hospital	145 W. Wallace Street		Findlay	OH	45840–1299
Blessing Hospital	11th and Broadway		Quincy	IL	62301
Bloomington Hospital	601 W. Second Street		Bloomington	IN	47403
Blue Ridge HealthCare	2201 South Sterling Street		Morganton	NC	28655
Boca Raton Community Hospital.	800 Meadows Road		Boca Raton	FL	33486
Bon Secours DePaul Medical Center.	150 Kingsley Lane		Norfolk	VA	23505
Bon Secours Maryview Medical Center.	3636 High Street		Portsmouth	VA	23707
Bon Secours-Memorial Regional Medical Center.	5801 Bremo Road	Suite 310, North Medical Office Building.	Richmond	VA	23226

Facility name	Address 1	Address 2	City	State	Zip
Bon Secours St. Francis Medical Center.	13701 Centerpointe Parkway ..		Midlothian	VA	23114
Bon Secours-St. Marys Hospital.	5801 Bremo Road		Richmond	VA	23226
Boone Hospital Center	1600 E. Broadway		Columbia	MO	65201–5897
Borgess Medical Center	1521 Gull Road		Kalamazoo	MI	49048
Boston Medical Center	One Boston Medical Place		Boston	MA	02118
Botsford Hospital	28050 Grand River Avenue		Farmington Hills.	MI	48336
Boulder Community Hospital	1100 Balsam Avenue		Boulder	CO	80304
Braddock Campus	900 Braddock Drive		Cumberland	MD	21502
Brandon Regional Hospital	119 Oakfield Drive		Brandon	FL	33511
Brandon Regional Hospital	119 Oakfield Drive, Attn: CCL		Brandon	FL	33511
Brandywine Hospital	201 Reeceville Road		Coatesville	PA	19320
Bridgeport Hospital	267 Grant Street		Bridgeport	CT	06610
Brigham & Women's Hospital	75 Francis Street		Boston	MA	02115
BroMenn Hospital	P.O. Box 2850		Bloomington	IL	61702–2850
Bronson Methodist Hospital	601 John Street		Kalamazoo	MI	49007–5348
Brookdale Hospital & Medical Center.	1 Brookdale Plaza		Brooklyn	NY	11212
Brooklyn Hospital Center	121 Dekalb Avenue		Brooklyn	NY	11201
Brooksville Regional Hospital	17240 Cortez Boulevard		Brooksville	FL	34601
Brookwood Medical Center	2010 Brookwood Medical Center.		Birmingham	AL	35209
Brotman Medical Center	3828 Delmas Terrace		Culver City	CA	90231–2459
Broward General Medical Center.	1600 S Andrews Avenue		Ft. Lauderdale	FL	33316
Bryan LGH Medical Center	1600 South 48th Street		Lincoln	NE	68526
Bryn Mawr Hospital	Suite 557, Lankenau MOB East.	100 Lancaster Avenue	Wynnewood	PA	19096
Buffalo General Hospital Aaron Health Science Library 4D.	100 High Street		Buffalo	NY	14203
Cabell Huntington Hospital	1340 Hal Greer Boulevard		Huntington	WV	25701
California Pacific Medical Center.	2330 Clay Street, Elm Building, Room #103.		San Francisco	CA	94115
CAMC Teays Valley Hospital	1400 Hospital Drive		Hurricane	WI	25526
Camden-Clark Memorial Hospital.	800 Garfield Avenue		Parkersburg	WV	26101
Candler Hospital, Inc	5353 Reynolds Street		Savannah	GA	31405
Cape Canaveral Hospital	701 West Cocoa Beach Causeway.		Cocoa Beach	FL	32931
Cape Cod Hospital	40 Quinlan Way		Hyannis	MA	02601
Cape Fear Valley Health System.	303 Wagoner Drive		Fayetteville	NC	28303–4646
Capital Regional Medical Center.	*Barbara.scott3@hcahealthcare.com.*		Tallahassee	FL	32308
Capital Regional Medical Center.	1125 Madison Street (PO Box 1128).		Jefferson City	MO	65102–1128
Cardiovascular Center of Puerto Rico.	PO Box 366528		San Juan	PR	00936–6528
Carilion Roanoke Memorial Hosp.	Att: Cardiac Cath Lab	PO Box 13367	Roanoke	VA	24033–3367
Caritas Norwood Hospital	800 Washington Street		Norwood	MA	02062
Caritas St. Elizabeths Med Center.	736 Cambridge Street		Boston	MA	02135
Carle Foundation Hospital	611 W. Park Street		Urbana	IL	61801
Carolina Pines Regional Medical Center.	1304 W. Bobo Newsome Highway.		Hartsville	SC	29069
Carolinas Hospital System	805 Pamplico Highway		Florence	SC	29505
Carolinas Medical Center	P.O. Box 32861		Charlotte	NC	28232
Carolinas Medical Center-Mercy.	2001 Vail Avenue		Charlotte	NC	28207
Carondelet Heart Institute at St. Joseph Medical Center.	1000 Carondelet Drive		Kansas City	MO	64114
Carson Tahoe Regional Medical Center.	775 Fleischmann Way		Carson	NV	89703
Cartersville Medical Center	PO Box 20008		Cartersville	GA	30120
Castleview Hospital	300 North Hospital Drive		Price	UT	84501
Catholic Medical Center	100 McGregor Street		Manchester	NH	03102–3770
Cayuga Medical Center of Ithaca.	101 Dates Drive		Ithaca	NY	14850
Cedars-Sinai Health Systems	8631 West Third Street, Suite 415E.		Los Angelos	CA	90048
Centennial Medical Center	2300 Patterson Street		Nashville	TN	37203

Facility name	Address 1	Address 2	City	State	Zip
Centennial Medical Center	12505 Lebanon Road		Frisco	TX	75035
Centerpoint Medical Center	19600 E. 39th Street		Independence	MO	64057
Centinela Hospital Medical Center.	555 E. Hardy Street		Inglewood	CA	90301
Central Baptist Hospital	1800 Nicholasville Road, Suite 401.		Lexington	KY	40503
Central DuPage Hospital	25 N Winfield Road		Winfield	IL	60190
Central Florida Regional Hospital.	1401 W. Seminole Boulevard		Sandford	FL	32771
Central Maine Medical Center	300 Main Street		Lewiston	ME	04240
Central Minnesota Heart Center at St. Cloud Hospital.	1406 Sixth Avenue North		St. Cloud	MN	56303
Central Mississippi Medical Center.	1850 Chadwick Drive		Jackson	MS	39204
Chandler Regional Medical Center.	475 S. Dobson Road		Chandler	AZ	85224–5695
Charleston Area Medical Center.	501 Morris Street		Charleston	WV	25301
Charlotte Regional Medical Center.	809 East Marion Avenue		Punta Gorda	FL	33950
Charlton Memorial Hospital	363 Highland Avenue		Fall River	MA	02720–3700
Chattanooga-Hamilton County Hospital Authority/ER.	975 E. Third Street		Chattanooga	TN	37403
Chesapeake General Hospital	736 Battlefield Boulevard North.		Chesapeake	VA	23320
Cheshire Medical Center	580 Court Street		Keene	NH	3431
Chester County Hospital	701 East Marshall Street		West Chester	PA	19380
Chester River Hospital Center	100 Brown Street		Chestertown	MD	21620
Cheyenne Regional Medical Center.	Cheyenne Regional Medical Center.	214 E. 23rd Street	Cheyenne	WY	82001
Christian Hospital	11133 Dunn Road		St. Louis	MO	63136
Christiana Care Health System	4755 Ogletown-Stanton Road		Newark	DE	19718
Christus Hospital-St. Mary	3600 Gates Boulevard		Port Arthur	TX	77642
Christus Saint Elizabeth Hospital.	2830 Calder Street		Beaumont	TX	77702
Christus Santa Rosa Hospital	333 N. Santa Rosa Street		San Antonio	TX	78207
Christus Spohn Hospital Corpus Christi-Shoreline.	600 Elizabeth Street		Corpus Christi	TX	78404
Christus St. Michael Health System.	2600 St. Michael Drive		Texarkana	TX	75501
Christus St. Patrick Hospital	524 South Ryan Street		Lake Charles	LA	70602–3401
Christus-Schumpert Highland Hospital.	One St. Mary Place		Shreveport	LA	71101
Christus-St. Frances Cabrini Hospital.	3330 Masonic Drive		Alexandria	LA	71301
Citrus Memorial Health System	502 W. Highland Boulevard		Inverness	FL	34452
CJW Medical Center	7101 Jahnke Road		Richmond	VA	23225–4044
Clarian Health Partners—Methodist Hospital campus.	1701 N. Senate Boulevard	Room A1082	Indianapolis	IN	46202
Clark Memorial Hospital	1220 Missouri Avenue		Jeffersonville	IN	47130
Clear Lake Regional Medical Center.	500 Medical Center Boulevard		Webster	TX	77598
Cleveland Clinic Florida	3100 Weston Road		Weston	FL	33331
Cleveland Clinic Foundation	9500 Euclid Avenue		Cleveland	OH	44195
Coliseum Medical Centers	350 Hospital Drive		Macon	GA	31217
College Station Medical Center	1604 Rock Prairie Road		College Station.	TX	77845
Columbia North Hills Hospital	4401 Booth Calloway Road		North Richland Hills.	TX	76180
Columbia Regional Hospital	1 Hospital Drive		Columbia	MO	65212
Columbia St. Mary's Hospital Milwaukee.	4425 North Port Washington Road.		Milwaukee	WI	53212
Columbia St. Mary's Hospital Ozaukee.	13111 North Port Washington Road.		Mequon	WI	53097
Columbus Regional Hospital	2400 17th Street		Columbus	IN	47201
Comanche County Memorial Hospital.	3401 W. Gore Boulevard		Lawton	OK	73505
Community Health Partners	3700 Kolbe Road		Lorain	OH	44053
Community Hospital	2615 E. High Street		Springfield	OH	45505
Community Hospital and Wellness Center.	433 West High Street		Bryan	OH	43506
Community Hospital East	Cardiovascular Services	1500 North Ritter Avenue	Indianapolis	IN	46219
Community Hospital of the Monterey Peninsula.	PO Box HH		Monterey	CA	93942–1085

Facility name	Address 1	Address 2	City	State	Zip
Community Hospital South	1500 N. Ritter Avenue		Indianapolis	IN	46219–3027
Community Medical Center	2827 Fort Missoula Road		Missoula	MT	59804
Community Medical Center 99 Highway.	37 West		Toms River	NJ	08775
Community Medical Center	1800 Mulberry Street		Scranton	PA	18510
Community Medical Center-Clovis.	2755 Herndon Avenue		Clovis	CA	93611
Community Memorial Hospital	147 N. Brent Street		Ventura	CA	93003
Community Memorial Hospital	W180 N8085 Town Hall Road		Menomonee Falls.	WI	53052
Concord Hospital	250 Pleasant Street		Concord	NH	03301
Condell Medical Center	801 S. Milwaukee Avenue		Libertyville	IL	60048
Conroe Regional Medical Center.	504 Medical Center Boulevard		Conroe	TX	77304
Convenant Heart Institute	3615 19th Street		Lubbock	TX	79410
Conway Regional Medical Center.	2302 College Avenue		Conway	AR	72032–6226
Cookeville Regional Medical Center.	142 W. 5th Street		Cookeville	TN	38501–1760
Cooley Dickinson Hospital	30 Locust Street		North Hampton.	MA	01060
Cooper University Hospital	One Cooper Plaza	D368B	Camden	NJ	08103
Coral Springs Medical Center	3000 Coral Hills Drive		Coral Springs	FL	33065
Coral Gables Hospital	3100 Douglas Road		Coral Gables	FL	33134
Corpus Christi Medical Center	1533 Brownlee Boulevard		Corpus Christi	TX	78412
County of Santa Clara	751 S. Bascom Avenue		San Jose	CA	95128
Covenant Healthcare	1447 N. Harrison Street		Saginaw	MI	48602
Cox Medical Center South	3801 S. National Avenue		Springfield	MO	65807
Craven Regional Medical Center.	2000 Neuse Boulevard	PO Box 12157	New Bern	NC	28561
Creighton University Medical Center.	601 N. 30th Street		Omaha	NE	68131
Crittenton Hospital Medical Center.	1101 W. University Drive		Rochester	MI	48307–1831
Crouse Hospital	736 Irving Avenue		Syracuse	NY	13210
Crozer Chester Medical Center	1 Medical Center Boulevard		Chester	PA	19013–3995
CVPH Medical Center	75 Beekman Street		Plattsburgh	NY	12901
Dakota Clinic	3000 32nd Avenue SW		Fargo	ND	58104
Dameron Hospital	525 W. Acacia Street		Stockton	CA	95203
Danbury Hospital	24 Hospital Avenue		Danbury	CT	06810–6099
Davis Hospital	1600 West Antelope Drive		Layton	UT	84041
Davis Regional Medical Center	218 Old Mocksville Road		Statesville	NC	28625
Dayton Heart Hospital	707 S. Edwin C. Moses Boulevard.		Dayton	OH	45408
DCH Regional Medical Center	809 University Boulevard East		Tuscaloosa	AL	35401–2029
Deaconess Hospital	600 Mary Street		Evansville	IN	47747
Deaconess Hospital	311 Straight Street		Cincinnati	OH	45219
Deaconess Hospital	5501 N. Portland Avenue		Oklahoma City.	OK	73112
Deaconess Medical Center	W. 800 Fifth Avenue		Spokane	WA	99204
Deborah Heart & Lung Center	200 Trenton Road		Browns Mills	NJ	08015
Decatur General Hospital	1201 7th Street S.E.		Decatur	AL	35601
Degraff Memorial Hospital	100 High Street		Buffalo	NY	14203
Dekalb Regional Medical Center.	200 Medical Center Drive		Fort Payne	AL	35968
Del Sol Medical Center	10301 Gateway West		El Paso	TX	79925
Delray Medical Center	5352 Linton Boulevard		Delray Beach	FL	33484
Delta Regional Medical Center	1400 E. Union Street		Greenville	MS	38702
Denton Regional Medical Center.	3535 South I–35E		Denton	TX	76205
Denver Health Medical Center	777 Bannock Street		Denver	CO	80204
DePaul Health Center	12303 DePaul Drive		Bridgeton	MO	63044
Des Peres Hospital	2345 Dougherty Ferry Road		St. Louis	MO	63122
Desert Regional Medical Center.	1150 North Indian Canyon		Palm Springs	CA	92262
Desert Springs Hospital	620 Shadow Lane		Las Vegas	NV	89106
Desert Valley Hospital	16850 Bear Valley Road		Victorville	CA	92392
Dixie Regional Medical Center	1380 E. Medical Drive		St. George	UT	84790
Doctors Hospital	5000 University Drive		Miami	FL	33146
Doctors Hospital	5100 West Broad Street		Columbus	OH	43228
Doctors Hospital	9440 Poppy Drive		Dallas	TX	75218
Doctors Hospital at Renaissance.	5501 S McColl Road		Edinburg	TX	78539
Doctors Hospital-Augusta	3651 Wheeler Drive		Augusta	GA	30909

Facility name	Address 1	Address 2	City	State	Zip
Doctors Hospital of Laredo	10700 McPherson Road		Laredo	TX	78045
Doctors Hospital of Sarasota	5731 Bee Ridge Road		Sarasota	FL	34233
Doctors Hospital of Stark	400 Austin Avenue		Massillon	OH	44646
Doctors Medical Center	2000 Vale Road		San Pablo	CA	94806
Doctors Medical Center	1441 Florida Avenue		Modesto	CA	95350
Dominican Santa Cruz Hospital	1555 Soquel Drive		Santa Cruz	CA	95065
Downey Regional Medical Center.	11500 Brookshire Avenue		Downey	CA	90241
Doylestown Hospital	595 West State Street		Doylestown	PA	18901
DuBois Regional Medical Center.	100 Hospital Avenue		DuBois	PA	15801
Duke Health Raleigh Hospital	DUMC Box 3973 (3400 Wake Forest Road).		Raleigh	NC	27609
Duke University Hospital	Erwin Road DUMC 3943		Durham	NC	27710
Dunn Memorial Hospital	1600 23rd Street		Bedford	ID	47421
Durham Regional Hospital	(3643N Roxboro Road) DUMC Box 3973.		Durham	NC	27710
East Alabama Medical Center	2000 Pepperell Parkway		Opelika	AL	36804
East Georgia Regional Medical Center.	1499 Fair Road (PO Box 1048).		Statesboro	GA	30459
East Jefferson General Hospital.	4200 Houma Boulevard	4200 Houma Boulevard	Metairie	LA	70006
East Ohio Regional Hospital	90 N. 4th Street		Martins Ferry	OH	43935
East Texas Medical Center	1000 South Beckham Avenue		Tyler	TX	75711
Eastern Idaho RMC	3100 Channing Way		Idaho Falls	ID	83404
Easton Hospital (Northampton Hospital Corp).	250 South 21st Street		Easton	PA	18042
Edward Hospital	120 Spalding Drive #205		Naperville	IL	60540
Eisenhower Medical Center	39000 Bob Hope Drive		Rancho Mirage.	CA	92270
El Camino Hospital	2500 Grant Road		Mountain View.	CA	94040
Eliza Coffee Memorial Hospital	205 Marengo Street		Florence	AL	35630
Elkhart General Hospital	600 East Boulevard	3 South Suites	Elkhart	IN	46514–2499
Elliot Hospital	1 Elliot Way		Manchester	NH	03103
Ellis Hospital	1101 Nott Street		Schenectady	NY	12308
Elmhurst Memorial Hospital Marquardt Memorial Library.	200 Berteau Avenue		Elmhurst	IL	60126
EMH Regional Medical Center	630 East River Street		Elyria	OH	44035
Emory Crawford Long Hospital	550 Peachtree Street		Atlanta	GA	30308
Emory Dunwoody Medical Center.	4575 North Shallowford Road		Atlanta	GA	30338
Emory Eastside Medical Center	1700 Medical Way (PO Box 587).		Snellville	GA	30078
Emory University Hospital	1364 Clifton Road, NE C408		Atlanta	GA	30322
Encino-Tarzana Regional Medical Center.	18321 Clark Street		Tarzana	CA	91356–3501
Englewood Hospital & Medical Center.	350 Engle Street		Englewood	NJ	07631
Enloe Medical Center	1600 Esplanade		Chico	CA	95926
Erie County Medical Center	462 Grider Street		Buffalo	NY	14215
Evanston Hospital	2650 Ridge Avenue		Evanston	IL	60626
Excela Health Westmoreland Hospital.	532 West Pittsburgh Street		Greensburg	PA	15601
Exempla Good Samaritan Medical Center.	200 Exempla Circle		Lafayette	CO	80026
Exempla Lutheran Medical Center.	8300 W 38th Avenue		Wheat Ridge	CO	80033
Exempla Saint Joseph Hospital	2420 W 26th Avenue, Buidling D, Suite 140.		Denver	CO	80211
Exeter Hospital	Exeter Hospital Cardiac Cath Lab 5 Alumni Drive.		Exeter	NH	03833
F.E. Lajam, MD PC	140–04 58th Road		Flushing	NY	11355
Fairfield Cardiac Cath Labs	3000 Mack Road, Suite 200		Fairfield	OH	45014
Fairfield Medical Center	401 North Ewing Street		Lancaster	OH	43130
Fairview General Hospital	18101 Lorain Road		Cleveland	OH	44111
Fairview Park Hospital	200 Industrial Boulevard		Dublin	GA	31021
Fairview Southdale Hospital	6401 France Avenue South		Edina	MN	55435
Faith Regional Health Services	2700 W. Norfolk Avenue		Norfolk	NE	68701
Fawcett Memorial Hospital	21298 Olean Boulevard		Port Charlotte	FL	33949–4960
FirstHealth Moore Regional Hospital.	155 Memorial Drive		Pinehurst	NC	28374
Fisher-Titus Medical Center	272 Benedict Avenue		Norwalk	OH	44857
Flagler Hospital	400 Health Park Boulevard		St. Augustine	FL	32086

Facility name	Address 1	Address 2	City	State	Zip
Fletcher Allen Health Care	111 Colchester Avenue		Burlington	VT	05401
Florida Hospital	220 Winter Park Street		Orlando	FL	32803
Florida Hospital Zephyrhills	7050 Gall Boulevard		Zephyrhills	FL	33541
Florida Hospital Ormond Memorial.	875 Sterthaus Avenue		Ormond Beach.	FL	32174
Florida Hospital Waterman Inc	1000 Waterman Way		Tavares	FL	32778
Florida Medical Center	5000 W Oakland Park Boulevard.		Fort Lauderdale.	FL	33313–1585
Flowers Hospital	4370 West Main Street		Dothan	AL	36305
Floyd Medical Center	304 Turner McCall Boulevard		Rome	GA	30162
Floyd Memorial Hospital	1850 State Street		New Albany	IN	47150
Forest Hills Hospital	102–01 66th Road		Forest Hills	NY	11375
Forrest General Hospital	6051 Highway 49 South		Hattiesburg	MS	39404–6389
Forsyth Medical Center	3333 Silas Creek Parkway		Winston-Salem.	NC	27103
Fort Sanders Regional Med Center.	1901 Clinch Avenue		Knoxville	TN	37916–2307
Fort Walton Beach Medical Center.	1000 Mar Walt Drive		Fort Walton Beach.	FL	32547
Forum Health-Northside Medical Center.	500 Gypsy Lane		Youngstown	OH	44501–0240
Fountain Valley Regional Hosp	17100 Euclid Street		Fountain Valley.	CA	92708–4004
Frankford Hospital	Red Lion & Knights Road		Philadelphia	PA	19114
Frankfort Regional Medical Center.	299 Kings Daughter Drive		Frankfort	KY	40601
Franklin Square Hospital	9000 Franklin Square Drive		Baltimore	MD	21237
Frederick Memorial Hospital	400 W. Seventh Street		Frederick	MD	21710
Freeman Hospital	1102 West 32nd Street	1102 West 32nd Street	Joplin	MO	64804
Freeport Health Network	1045 W. Stephenson Street		Freeport	IL	61032
Fremont Area Medical Center	450 East 23rd Street		Fremont	NE	68025
French Hospital Medical Center	1911 Johnson Avenue		San Luis Obispo.	CA	93401
Fresno Community Hospital and Medical Center.	110 N. Valeria Street #103		Fresno	CA	93710
Fresno Heart Hospital	15 East Audubon Drive		Fresno	CA	93720
Froedtert Hospital	9200 W. Wisconsin Avenue		Milwaukee	WI	53226
Frye Regional Medical Center	420 N. Center Street		Hickory	NC	28601
Gadsden Regional Medical Center.	1007 Goodyear Avenue		Gadsden	AL	35903
Galichia Heart Hospital	2610 N. Woodlawn Street		Wichita	KS	67220
Garden City Hospital	6245 Inkster Road		Garden City	MI	48135
Garden Grove Hospital	12601 Garden Grove Boulevard.		Garden Grove	CA	92843
Gaston Memorial Hospital	2525 Court Drive		Gastonia	NC	28054
Gateway Medical Center Gateway Health System.	1771 Madison Street		Clarksville	TN	37043
Gateway Regional Medical Center.	2100 Madison Avenue		Granite City	IL	62040
Geisinger Medical Center	100 North Academy Avenue		Danville	PA	17822–2160
Geisinger Wyoming Valley Medical Center.	100 North Academy Avenue		Danville	PA	17822–2160
Genesis Medical Center	1236 East Rusholme Street	Suite 190	Davenport	IA	52803–2459
Genesis Medical Center, Illini Campus.	801 Illini Drive		Silvis	IL	61282
Genesys Regional Medical Center.	One Genesys Parkway		Grand Blanc	MI	48439
Georgetown University Hospital	3800 Reservoir Road NW		Washington	DC	20007
Gerald Champion Regional Medical.	2669 North Scenic Drive		Alamogordo	NM	88310
Glenbrook Hospital	2100 Pfingsten Road		Evanston	IL	60026
Glendale Adventist Medical Center.	1509 Wilson Terrace		Glendale	CA	91206
Glendale Memorial Hospital and Health Center.	1420 S. Central Avenue		Glendale	CA	91204–2594
Glens Falls Hospital	100 Park Street		Glens Falls	NY	12801
Glenwood Regional Medical Center.	503 McMillian Road		West Monroe	LA	71291
Good Samaritan Heart Center	520 South 7th Street		Vincennes	IN	47591
Good Samaritan Hospital & Health Center.	2222 Philadelphia Drive		Dayton	OH	45406
Good Samaritan Hospital	1225 Wilshire Boulevard		Los Angeles	CA	90017
Good Samaritan Hospital	2425 Samaritan Drive	2425 Samaritan Drive	San Jose	CA	95124
Good Samaritan Hospital	605 N. 12th Street		Mount Vernon	IL	62864

Facility name	Address 1	Address 2	City	State	Zip
Good Samaritan Hospital	3815 Highland Avenue		Downers Grove.	IL	60515
Good Samaritan Hospital	10 East 31st Street,	PO Box 1990	Kearney	NE	68848
Good Samaritan Hospital	255 Lafayette Avenue		Suffern	NY	10901
Good Samaritan Hospital	375 Dixmyth Avenue		Cincinnati	OH	45220–2489
Good Samaritan Hospital Cardiology.	1000 Montauk Highway		West Isiip	NY	11795
Good Samaritan Hospital of Maryland.	5601 Loch Raven Boulevard		Baltimore	MD	21239
Good Samaritan Regional Medical Center.	3600 NW Samaritan Drive		Corvallis	OR	97330
Good Shepherd Medical Center.	700 E. Marshall Avenue		Longview	TX	75601
Governor Juan F. Luis Hospital & Medical Center.	4007 Estate Diamond Ruby		Christiansted	VT	00820
Graduate Hospital	1800 Lombard Street		Philadelphia	PA	19146
Grady Memorial Hospital	561 West Central Avenue		Delaware	OH	43015–1489
Grand View Hospital	700 Lawn Avenue		Sellersville	PA	18960
Grandview Medical Center	405 Grand Avenue		Dayton	OH	45405
Grant Medical Center	111 S. Grant Avenue		Columbus	OH	43215
Gratiot Medical Center	300 East Warwick Drive		Alma	MI	48801
Great Plains Regional Medical Center.	Box 2339		Elk City	OK	73648
Greater Baltimore Medical Center.	6701 N. Charles Street		Baltimore	MD	21204
Greenville Memorial Hospital	701 Grove Road		Greenville	SC	29605
Greenwich Hospital	5 Perryridge Road		Greenwich	CT	06830
Gulf Coast Medical Center	449 W. 23rd Street		Panama City	FL	32406–5309
Gulf Coast Medical Center	1400 Highway 59		Wharton	TX	77488
Gundersen Lutheran Medical Center, Inc..	1910 South Avenue		LaCrosse	WI	54601
Gwinnett Hospital System	1000 Medical Center Boulevard.		Lawrenceville	GA	30045
Hackensack University Medical Center.	30 Prospect Avenue		Hackensack	NJ	07601
Hackley Hospital General Fund	1700 Clinton Street		Muskegon	MI	49443
Hahnemann University Hospital	230 N. Broad Street		Philadelphia	PA	19102
Halifax Medical Center	303 N Clyde Morris Boulevard		Daytona Beach.	FL	32114–2732
Halifax Regional Hospital	2204 Wilborn Avenue		South Boston	VA	24592
Hamilton Medical Center	1200 Memorial Drive		Dalton	GA	30720
Hamot Medical Center	201 State Street		Erie	PA	16550
Hannibal Regional Hospital	6000 Hospital Drive		Hannibal	MO	63401
Harbor Hospital Center	3001 S. Hanover Street		Baltimore	MD	21225
Hardin Memorial Hospital	913 N Dixie Avenue		Elizabethtown	KY	42701–2599
Harlingen Medical Center	5501 South Expressway 77		Harlingen	TX	78550
Harper University Hospital	3990 John R. Street		Detroit	MI	48201
Harris Methodist Fort Worth	1301 Pennsylvania Avenue		Fort Worth	TX	76104
Harris Methodist HEB	1600 Hospital Parkway		Bedford	TX	76022
Harrison Medical Center	2520 Cherry Avenue		Bremerton	WA	98310
Hartford Hospital	80 Seymour Street		Hartford	CT	06102
Harton Regional Medical Center.	1801 N Jackson Street		Tullahoma	TN	37388
Havasu Regional Medical Center.	101 Civic Center Lane		Lake Havasu City.	AZ	86403
Hawaii Medical Center East, LLC.	2230 Liliha Street		Honolulu	HI	96817
Hays Medical Center	2220 Canterbury Drive		Hays	KS	67601
Hazard ARH Regional Medical Center.	100 Medical Center Drive		Hazard	KY	41701
Heart and Lung Clinic	900 East Broadway Box 5510		Bismarck	ND	58502
Heart Center of Indiana	8333 Nabb Road, Suite 330	Suite 330	Indianapolis	IN	46290
Heart Hospital of Austin	3801 N. Lamar Boulevard		Austin	TX	78756
Heart Hospital of Lafayette	1105 Kaliste Saloom Road		Lafayette	LA	70508
Heart Hospital of New Mexico	504 Elm Street NE		Albuqerque	NM	87102
Heart of Florida Regional Medical Center.	40100 Highway 27		Davenport	FL	33837
Heart of Lancaster Regional Medical Center.	250 College Avenue		Lancaster	PA	17604
Heartland Regional Medical Center.	3333 W. Deyoung Street		Marion	IL	62959
Heartland Regional Medical Center.	The Heart Center—Cardiac Cath Lab.	5325 Faraon Street	Saint Joseph	MO	64506–3373

Facility name	Address 1	Address 2	City	State	Zip
Helen Ellis Memorial	1395 South Pinella Avenue		Tarpon Springs.	FL	34689
Helen Keller Hospital	1300 South Montgomery Avenue.		Sheffield	AL	35660
Hendrick Medical Center	1900 Pine Street		Abilene	TX	79601
Hennepin County Medical Center.	701 Park Avenue		Minneapolis	MN	55415–1829
Henrico Doctors Hospital	1602 Skipwith Drive		Richmond	VA	23229
Henry Ford Hospital	2799 West Grand Boulevard	K–14	Detroit	MI	48202
Henry Ford Macomb	15855 Nineteen Mile Road		Clinton	MI	48038
Henry Ford Macomb Hospital—Warren Campus.	13355 East Ten Mile Road		Warren	MI	48089
Henry Mayo Newhall Memorial Hospital.	23845 McBean Parkway		Valencia	CA	91355
Henry Medical Center, Inc.	1133 Eagles Landing Parkway		Stockbridge	GA	30281
Hialeah Hospital	651 East 25th Street		Hialeah	FL	33013
High Point Regional Hospital	High Point Regional Hospital		High Point	NC	27261
Highland Park Hospital	718 Glenview Avenue		Highland Park	IL	60035
Highlands Regional Medical	3600 S. Highlands Avenue		Sebring	FL	33870
Highlands Regional Medical Center.	5000 U.S. 321		Prestonsburg	KY	41653
Hillcrest Baptist Medical Center	3000 Herring Avenue		Waco	TX	76708
Hillcrest Hospital	6780 Mayfield Road		Mayfield Heights.	OH	44124
Hillcrest Medical Center	1120 South Utica		Tulsa	OK	74104
Hinsdale Hospital	120 N. Oak Street		Hinsdale	IL	60521
HMA—Physician Management, Inc..	6101 Pine Ridge Road		Naples	FL	34119
Hoag Memorial Hospital Presbyterian.	One Hoag Drive		Newport Beach.	CA	92658
Hollywood Medical Center	3600 Washington Street		Hollywood	FL	33021
Holmes Regional Medical Center.	1355 South Hickory Street	Suite 203	Melbourne	FL	32901
Holy Cross Hospital	4725 N. Federal Highway		Ft. Lauderdale	FL	33308
Holy Cross Hospital	2701 W. 68th Street		Chicago	IL	60629
Holy Cross Hospital/Medical Library.	1500 Forest Glen Road		Silver Spring	MD	20910
Holy Spirit Health System	503 N. 21st Street	Heart Center Administration	Camp Hill	PA	17011–2204
Hospital Auxilio Mutuo	PO Box 191227		San Juan	PR	00919
Hospital of St. Raphael	Section of Cardiology Pvt 207,	1450 Chapel Street	New Haven	CT	06511
Hospital of the University of Pennsylvania.	9011 E. Gates	3400 Spruce Street	Philadelphia	PA	19104
Houston Northwest Medical Center Accounts Payable.	710 Farm	1960 West Road	Houston	TX	77090
Howard County General Hospital.	5755 Cedar Lane		Columbia	MD	21044
Howard Regional Health System.	3500 South Lafountain Street		Kokomo	IN	46904–9011
Howard University Hospital	2041 Georgia Avenue		Washington	DC	20060
Huguley Memorial Medical Center.	11801 S. Freeway		Ft. Worth	TX	76115
Huntington Hospital	100 W. California Boulevard		Pasadena	CA	91109
Huntington Hospital	270 Park Avenue		Huntington	NY	11743
Huntsville Hospital	Huntsville Hospital		Huntsville	AL	35801
Hutchinson Hospital	1701 E. 23rd Avenue		Hutchinson	KS	67502
Iberia Medical Center	2315 East Main Street		New Iberia	LA	70560
Immanuel-St. Joseph's Hospital	1025 Marsh Street		Mankato	MN	56002
Indian River Memorial Hospital	1000 36th Street		Vero Beach	FL	32960
Indiana Heart Institute	8333 Naab Road, Suite 330		Indiana	IN	46260
Indiana Regional Medical Center Cardiology Department.	835 Hospital Road		Indiana	PA	15701
Ingalls Hospital	1 Ingalls Drive		Harvey	IL	60426
Ingham Regional Medical Center.	401 W. Greenlawn Avenue		Lansing	MI	48910
Inland Valley Medical Center	36485 Inland Valley		Wildomar	CA	92595
Inova Alexandria Hospital	4320 Seminary Road		Alexandria	VA	22304
Inova Fairfax Hospital/Inova Heart & Vascular Institute.	Inova Heart and Vascular	Center 3300 Gallows Road	Falls Church	VA	22042–3300
Inova Loudoun Hospital	44035 Riverside Parkway	Suite 120	Leesburg	VA	20176
Integris Baptist Medical Center	3300 NW Expressway, 100–4282.		Oklahoma City.	OK	73112
Integris Health	600 S. Monroe Street		Enid	OK	73701
Integris Southwest Medical Center.	4401 S. Western Avenue		Oklahoma City.	OK	73109

Facility name	Address 1	Address 2	City	State	Zip
Iowa Lutheran Hospital	1200 Pleasant Street		Des Moines	IA	50309
Iowa Methodist Medical Center	1200 Pleasant Street, Suite 300A.		Des Moines	IA	50309
Iredell Memorial Hospital	557 Brookdale Drive		Statesville	NC	28687
Iroquois Memorial Hospital	200 Fairman Avenue		Watseka	IL	60970
Irvine Regional Hospital & Medical Center.	16200 Sand Canyon Avenue		Irvine	CA	92618–3701
Jackson Hospital and Clinic	1725 Pine Street		Montgomery	AL	36106
Jackson Madison General Hospital.	708 West Forrest Avenue		Jackson	TN	38301
Jackson Memorial Hospital	1611 NW 12th Avenue		Miami	FL	33136
Jane Phillips Memorial Medical Center.	3500 Frank Phillips Boulevard		Bartlesville	OK	74006
Jeanes Hospital	7600 Central Avenue		Philadelphia	PA	19111
Jeff Anderson Regional Medical Center.	2124 14th Street		Meridian	MS	39301
Jefferson Memorial Hospital	PO Box 350		Crystal City	MO	63019
Jefferson Regional Medical Center.	565 Coal Valley Road		Pittsburgh	PA	15236–0119
Jennie Edmundson Memorial Hospital.	933 E. Pierce Street		Council Bluffs	IA	51503
Jersey City Medical Center	355 Grand Street		Jersey City	NJ	07307
Jersey Shore University Medical Center.	1945 State Route 33		Neptune	NJ	07753
Jewish Hospital	200 Abraham Flexner Way		Louisville	KY	40202
Jewish Hospital	4777 East Galbraith Road		Cincinnati	OH	45236
JFK Medical Center	5631 Glencrest Boulevard		Tampa	FL	33625–1008
John C Lincoln Hospital-Deer Valley.	19829 N. 27th Avenue		Phoenix	AZ	85027–4002
John C Lincoln Hospital-North Mountain.	250 E. Dunlap Avenue		Phoenix	AZ	85020–2871
John F. Kennedy Memorial Hospital.	47–111 Monroe Street		Indio	CA	92201
John Muir—Concord	2540 East Street		Concord	CA	94520
John Muir—Walnut Creek	1601 Ygnacio Valley Road		Walnut Creek	CA	94550
Johns Hopkins Bayview Medical Center.	4940 Eastern Avenue		Baltimore	MD	21224
Johns Hopkins Hospital	600 North Wolfe Street		Baltimore	MD	21287
Johnson City Medical Center Hosp.	400 N. State of Franklin		Johnson City	TN	37604
Jordan Valley Hospital	3580 W. 9000 Street		West Jordan	UT	84088
Kadlec Medical Center	888 Swift Boulevard		Richland	WA	99352
Kaiser Foundation Hospital	1526 Edgemont Street		Los Angeles	CA	90027
Kaiser Foundation Hospital	6600 Bruceville Road		Sacramento	CA	95823
Kaiser Permanente-Moanalua Medical Center.	3288 Moanalua Road		Honolulu	HI	96819
Kaiser Permanente Medical Center-Santa Clara.	700 Lawrence Expressway		Santa Clara	CA	95051
Kaiser Permanente Medical CenterHealth Sciences Library.	9400 E. Rosecrans Avenue		Bellflower	CA	90706
Kaiser Sunnyside Medical Center.	10180 SE Sunnyside Road		Clackamas	OR	97015
Kaiser Walnut Creek	4647 Zion Avenue		San Diego	CA	92120
Kansas Heart Hospital	3601 N. Webb Road		Wichita	KS	67226
Kansas University Hospital Authority.	3901 Rainbow Boulevard		Kansas City	KS	66160
Kapi'olani Medical Center Pali Momi.	98–1079 Moanalua Road		Aiea	HI	96701
Katherine Shaw Bethea Hospital.	403 E. First Street		Dixon	IL	61021
Kaweah Delta Hospital District	Kaweah Delta Hospital District	400 W. Mineral King Avenue	Visalia	CA	93291
Kenmore Mercy Hospital	2950 Elmwood Avenue		Kenmore	NY	14217
Kennestone Hospital	677 Church Street		Marietta	GA	30066
Kershaw County Medical Center.	1315 Roberts Street		Camden	SC	29020
Kettering Medical Center	35235 Southern Boulevard		Kettering	OH	45429
Kingman Regional Medical Center.	3269 Stockton Hill Road		Kingman	AZ	86401
Kings Daughters Medical Center.	2201 Lexington Avenue		Ashland	KY	41101
Kingwood Medical Center	22999 Highway 59 North		Kingwood	TX	77339
Kootenai Medical Center	2003 Lincoln Way		Coeur d' Alene.	ID	83814

Facility name	Address 1	Address 2	City	State	Zip
Kuakini Medical Center	347 North Kuakini Street	Cardiac Cath Lab	Honolulu	HI	96817
Labette County Medical Center	1920 S. U.S. Highway 59 , PO Box 956.		Parson	KS	67357
Lafayette General Medical Center.	1214 Coolidge Avenue		Lafayette	LA	70505
LaGrange Memorial Hospital	120 North Oak Street		Hinsdale	IL	60521
Lahey Clinic	41 Mall Road		Burlington	MA	01805
Lake Charles Memorial Hospital.	1701 Oak Park Boulevard		Lake Charles	LA	70601
Lake Hospital System	36000 Euclid Avenue		Willoughby	OH	44094
Lake Norman Regional Medical Center.	171 Fairview Road		Mooresville	NC	28117
Lake Pointe Medical Center	6800 Scenic Drive		Rowlett	TX	75088
Lake Regional Health System	54 Hospital Drive		Osage Beach	MO	65065
Lakeland Hospital	1234 Napier Avenue		Saint Joseph	MI	49085–2112
Lakeland Regional Medical Center.	1324 Lakeland Hills Boulevard		Lakeland	FL	33805–4500
Lakeside Hospital	6901 N. 72nd Street, Suite 3300.		Omaha	NE	68122
Lakeview Regional Medical Center.	95 East Fairway Drive		Covington	LA	70433–7500
Lakeway Regional Hospital	726 McFarland Street		Morristown	TN	37814
Lakewood Hospital	14519 Detroit Avenue		Lakewood	OH	44107
Lakewood Ranch Medical Center.	8330 Lakewood Ranch Boulevard.		Bradenton	FL	34202
Lakewood Regional Medical Center.	3700 E. South Street		Lakewood	CA	90712
Lancaster Community Hospital	43830 North 10th Street West		Lancaster	CA	93534
Lancaster General Hospital	555 North Duke Street		Lancaster	PA	17604–3555
Lancaster Regional Medical Center.	250 College Avenue		Lancaster	PA	17604
Landmark Medical Center	115 Cass Avenue		Woonsocket	RI	02895
Lane Regional Medical Center	6300 Main Street		Zachary	LA	70791
Lankenau Hospital	100 Lancaster Avenue	Lankenau Hospital	Wynnewood	PA	19096
Laredo Medical Center	1720 Bustamante Street		Laredo	TX	78044
Largo Medical Center	201 14th Street SW		Largo	FL	33770
Las Colinas Medical Center	Las Colinas Medical Center		Irving	TX	75039
Las Palmas Medical Center	1801 N. Oregon Street		El Paso	TX	79902
Lawrence & Memorial Hospital	365 Montauk Avenue		New London	CT	06375
Lawrence Hospital	55 Palmer Avenue		Broxville	NY	10708–3491
LDS Hospital	8th Avenue and C Street		Salt Lake City	UT	84143
Lee Memorial Health System—Cape Coral Hospital.	276 Cleveland Avenue		Fort Myers	FL	33901
Lee Memorial Health System—Health Park Medical Center.	276 Cleveland Avenue		Fort Myers	FL	33901
Leesburg Regional Medical Center.	600 East Dixie Avenue		Leesburg	FL	34748
Legacy Emanuel Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Legacy Good Samaritan	1919 NW Lovejoy Street		Portland	OR	97209
Legacy Meridian Park	19300 SW 65th Street		Tualatin	OR	97062
Legacy Salmon Creek Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Lehigh Regional Medical Center.	1500 Lee Boulevard		Lehigh Acres	FL	33963
Lehigh Valley Hospital	1200 S. Cedar Crest Boulevard.		Allentown	PA	18105
Lehigh Valley Hospital/Muhlenberg.	2545 Schoenersville Road		Bethlehem	PA	18017
Lenox Hill Heart and Vascular Institute of New York.	100 East 77th Street		New York	NY	10021
Lewis Gale Medical Center	1900 Electric Road		Salem	VA	24153
Lexington Medical Center	2720 Sunset Boulevard		West Columbia.	SC	29169
Liberty Hospital	2525 Glenn Hendren Drive		Liberty	MO	64068
Lima Memorial Hospital	1001 Bellefontaine Avenue		Lima	OH	45804
Lincoln County Medical Center	1000 E. Cherry Street		Troy	MO	63379
Little Company of Mary Hospital.	4101 Torrance Boulevard		Torrance	CA	90503
Little Company of Mary Hospital.	2800 W. 95th Street		Evergreen Park.	IL	60805
Logan General Hospital, LLC	20 Hospital Drive		Logan	WV	25601
Loma Linda University Medical Center.	11234 Anderson Street Room 2431.		Loma Linda	CA	92354
Long Beach Memorial Medical Center.	2801 Atlantic Avenue		Long Beach	CA	90806

Facility name	Address 1	Address 2	City	State	Zip
Long Island College Hospital	339 Hicks Street		Brooklyn	NY	11201
Long Island Jewish Medical Center.	270–05 76th Avenue		New Hyde Park.	NY	11040
Longmont United Hospital	1950 Mountain View Avenue		Longmont	CO	80501
Longview Regional Medical Center.	PO Box 14000		Longview	TX	75607
Los Alamitos Medical Center	3751 Katella Avenue		Los Alamitos	CA	90720
Los Robles Hospital & Medical Center.	215 W. Janss Raod		Thousand Oaks.	CA	91360–1899
Louisiana Heart Hospital	64030 Louisiana Highway 434		Lacombe	LA	70445
Lourdes Hospital	1530 Lone Oak Road		Paducah	KY	42003
Lovelace Medical Center	5400 Gibson Boulevard SE		Albuquerque	NM	87108
Lowell General Hospital	295 Varnum Avenue		Lowell	MA	01854
Lower Bucks Hospital	501 Bath Road		Bristol	PA	19007
Lower Keys Medical Center	5900 College Road		Key West	FL	33040
LSUHSC-Cath Lab	1501 Kings Highway		Shreveport	LA	71130
Lubbock Heart Hospital	4810 N. Loop 289		Lubbock	TX	79416
Luther Hospital	1221 Whipple Street		Eau Claire	WI	54703
Lutheran Hospital of Indiana	7950 W. Jefferson Boulevard		Ft. Wayne	IN	46804
Lynchburg General Hospital	1901 Tate Springs Road		Lynchburg	VA	24501–1167
MacNeal Hospital	3249 S. Oak Park Avenue		Berwyn	IL	60402
Magnolia Regional Health Center.	611 Alcorn Drive		Corinth	MS	38834
Maimonides Medical Center Division of Cardiology.	4802 10th Avenue		Brooklyn	NY	11219
Maine Medical Center	22 Bramhall Street		Portland	ME	04102
Manatee Memorial Hospital	206 2nd Street East		Bradenton	FL	34208
Marian Medical Center	1400 East Church Street		Santa Maria	CA	93454
Maricopa Medical Center	2601 East Roosevelt Street		Phoenix	AZ	85008
Marin General Hospital	250 Bon Air Road		Greenbrae	CA	94904
Marion General Hospital	441 N. Wabash Avenue		Marion	IN	46952
Marion General Hospital	1000 McKinley Park Drive		Marion	OH	43302–6397
Marquette General Hospital System.	580 W. College Avenue		Marquette	MI	49855
Marshall University School of Medicine.	420 West Magnetic Street		Huntington	WV	25701
Martha Jefferson Hospital	459 Locust Avenue		Charlottesville	VA	22902
Martin Memorial Medical Center.	300 SE Hospital Avenue		Stuart	FL	34994
Mary Black Hospital	1700 Skylyn Drive		Spartanburg	SC	29307
Mary Greeley Medical Center	1111 Duff Avenue		Ames	IA	50010
Mary Hitchcock Memorial Hospital.	One Medical Center Drive		Lebanon	NH	03756
Mary Rutan Hospital	205 Palmer Avenue		Bellefontaine	OH	43311
Mary Washington Hospital	1001 Sam Perry Boulevard		Fredericksburg.	VA	22401
Marymount Medical Center	310 East 9th Street		London	KY	40741
Massachusetts General Hospital.	55 Fruit Street		Boston	MA	02114
Maury Regional Hospital	1224 Trotwood Avenue		Columbia	TN	38401
Mayo Clinic Arizona	5777 E. Mayo Boulevard		Phoenix	AZ	85054
Mayo Clinic-St. Mary's Hospital	200 First Street SW		Rochester	MN	55905
Mcalester Regional Health Center.	1 Clark Bass Boulevard		McAlester	OK	74501
McAllen Medical Center	301 W. Expressway 83		McAllen	TX	78503
MCG Health, Inc.	1120 15th Street, BA–4407		Augusta	GA	30912
McKay-Dee Hospital Center	4401 Harrison Boulevard		Ogden	UT	84405
McKee Medical Center	2000 Boise Avenue		Loveland	CO	80538
Mclaren Regional Medical Center.	401 S. Ballenger Highway		Flint	MI	48532
McLeod Regional Medical Center.	555 E. Chaves Street		Florence	SC	29501
Mease Countryside Hospital	3231 McCullen Booth Road		Safety Harbor	FL	34695
Mease Dunedin Hospital	207 Jeffords Street, MS 142		Clearwater	FL	33756
MedCentral/Mansfield Hospital	335 Glessner Avenue		Mansfield	OH	44903
Medcenter One	300 North 7th Street		Bismarck	ND	58501
Medical Center at Bowling Green.	250 Park Street		Bowling Green.	KY	42101
Medical Center Hospital	500 W. 4th Street		Odessa	TX	79760
Medical Center of Arlington	3301 Matlock Road		Arlington	TX	76015
Medical Center of Aurora	1501 S. Potomac Street		Aurora	CO	80012
Medical Center of Central Georgia.	777 Hemlock Street HB 53		Macon	GA	31208
Medical Center of Lewisville	500 West Main Street		Lewisville	TX	75057

Facility name	Address 1	Address 2	City	State	Zip
Medical Center of Louisiana	1541 Tulane Avenue, Room #203, Butterworth Building.		New Orleans	LA	70112
Medical Center of Mckinney	4500 Medical Center Drive		McKinney	TX	75069
Medical Center of Mesquite	1011 N. Galloway Avenue		Mesquite	TX	75149
Medical Center of Plano	3901 W 15th Street		Plano	TX	75075–7738
Medical Center of South Arkansas, LLC.	700 West Grove Street		El Dorado	AR	71730
Medical Center of the Rockies	2500 Rocky Mountain Avenue		Loveland	CO	80538
Medical City Dallas Hospital	7777 Forrest Lane		Dallas	TX	75230
Medical University of South Carolina.	326 Calhoun Street—Suite 239.		Charleston	SC	29401
Memorial Health System	1400 E. Boulder Street		Colorado Springs.	CO	80909–5599
Memorial Health University Medical Center.	Cardiac Cath Lab, Memorial Health University Medical Center.	4700 Waters Avenue	Savannah	GA	31404
Memorial Hermann Hospital	6411 Fannin Street		Houston	TX	77030
Memorial Hermann HVI South West.	7787 Southwest Freeway		Houston	TX	77074
Memorial Hermann Memorial City Hospital.	921 Gessner Road		Houston	TX	77024
Memorial Hospital	2525 Desales Avenue		Chattanooga	TN	37404–1102
Memorial Hospital at Gulfport	4500 13th Street	PO Box 1810	Gulfport	MS	39502
Memorial Hospital Carbondale	405 W. Jackson Street		Carbondale	IL	65902
Memorial Hospital Miramar	1901 SW 172 Avenue		Miramar	FL	33029
Memorial Hospital of Martinsville.	320 Hospital Drive		Martinsville	VA	24112
Memorial Hospital of Rhode Island Brown University.	111 Brewster Street		Pawtucket	RI	02860
Memorial Hospital of South Bend.	615 N. Michigan Street		South Bend	IN	46601–1033
Memorial Hospital of Tampa	2901 W Swann Avenue		Tampa	FL	33609
Memorial Hospital Pembroke/ South Broward Hospital.	7800 Sheridan Street		Pembroke Pines.	FL	33024
Memorial Hospital West/South Broward Hospital District.	703 North Flamingo Road		Pembroke Pines.	FL	33028
Memorial Hospital-Jacksonville	3625 University Boulevard South.		Jacksonville	FL	32216
Memorial Hospitals Association	1700 Coffee Road		Modesto	CA	95355
Memorial Medical Center	701 N. First Street		Springfield	IL	62781
Memorial Medical Center	2450 S. Telshor Boulevard		Las Cruces	NM	88011
Memorial Medical Center	1086 Franklin Street		Johnstown	PA	15905–4398
Memorial Regional Hospital/ South Broward Hospital.	703 North Flamingo Road		Pembroke Pines.	FL	33028
Memphis Hospital (Germantown Campus).	1265 Union Avenue		Memphis	TN	38104–3499
Memphis Hospital (North Campus).	1265 Union Avenue		Memphis	TN	38104–3499
Memphis Hospital (South Campus).	1265 Union Avenue		Memphis	TN	38104–3499
Memphis Hospital (University Campus).	1265 Union Avenue		Memphis	TN	38104–3499
Menifee Valley Medical Center	28400 McCell Boulevard		Sun City	CA	92585
Menorah Medical Center	5721 West 119th Street		Overland Park	KS	66209
Mercy Fitgerald Hospital	1500 Lansdowne Avenue		Darby	PA	19023
Mercy General Health Partners	1500 East Sherman Boulevard		Muskegon	MI	49444
Mercy General Hospital—Sacramento.	3939 J Street	Suite 215	Sacramento	CA	95819
Mercy Gilbert Medical Center	3555 South Val Vista Drive	Attn: Cardiac Cath Lab	Gilbert	AZ	85296
Mercy Health System of Northwestern Arkansas.	1200 West Walnut Street		Rogers	AR	72756
Mercy Hospital	144 State Street		Portland	ME	04101
Mercy Hospital-Scranton	746 Jefferson Avenue		Scranton	PA	18510
Mercy Hospital & Medical Center.	2525 S. Michigan Avenue		Chicago	IL	60616
Mercy Hospital Attn: Accounts Payable.	3663 South Miami Avenue		Miami	FL	33133
Mercy Hospital of Buffalo	565 Abbott Road		Buffalo	NY	14220
Mercy Hospital of Pittsburgh	1400 Locust Street		Pittsburgh	PA	15219
Mercy Hospital Attn: A/P	271 Carew Street, PO Box 9012.		Springfield	MA	01102
Mercy Iowa City	500 E. Market Street	Cardiac Cath Lab	Iowa City	IA	52245
Mercy Medical Center	701 10th Street SE		Cedar Rapids	IA	52403
Mercy Medical Center	801 5th Street		Sioux City	IA	51101

Facility name	Address 1	Address 2	City	State	Zip
Mercy Medical Center	1111 6th Street		Des Moines	IA	50314–2611
Mercy Medical Center	301 St Paul Place		Baltimore	MD	21202
Mercy Medical Center	1000 North Village Avenue		Rockville Centre.	NY	11571
Mercy Medical Center	1320 Mercy Drive NW	Attn: SCU	Canton	OH	44708
Mercy Medical Center	1343 North Fountain Boulevard.		Springfield	OH	45503
Mercy Medical Center	2700 Steward Parkway		Roseburg	OR	97470
Mercy Medical Center	500 S. Oakwood Road		Oshkosh	WI	54904
Mercy Medical Center Merced	301 E. 13th Street		Merced	CA	95340
Mercy Medical Center Redding	2175 Rosaline Avenue	PO Box 496009	Redding	CA	96049–6009
Mercy Medical Center-North Iowa.	1000 4th Street SW		Mason City	IA	50401
Mercy Regional Medical Center	1010 Three Springs Boulevard		Durango	CO	81301
Mercy San Juan Hospital	3941 J Street	c/o Mercy General Hospital Administration.	Sacramento	CA	95819
MeritCare Hospital	MeritCare Hospital/Heart Services Data/Research—Route 108.		Fargo	ND	58122
Meriter Hospital	202 South Park Street	10 Tower Heart Center	Madison	WI	53715
Mesa General Hospital	515 N. Mesa Drive		Mesa	AZ	85201
Mesquite Community Hospital	3500 I–30		Mesquite	TX	75150
Methodist Health System	PO Box 655999		Dallas	TX	75203
Methodist Hospital	6500 Excelsior Building, 2nd floor HVC.		St. Louis Park	MN	55426
Methodist Hospital	7700 Floyd Curl Drive		San Antonio	TX	78229
Methodist Hospital of South CA	300 W. Huntington Drive		Arcadia	CA	91007–3402
Methodist Hospital Northlake Campus.	600 Grant Street		Gary	IN	46402
Methodist Hospital Southlake Campus.	8701 Broadway		Merrillville	IN	46410–7035
Methodist Medical Center	280 Fort Sanders Boulevard, Building 4, Suite 218.		Knoxville	TN	37922
Methodist Medical Center of Illinois.	221 NE Glen Oak Avenue		Peoria	IL	61636
Methodist Speciality and Transplant Hospital.	7700 Floyd Curl Drive		San Antonio	TX	78229
Methodist Sugar Land Hospital	16655 Southwest Freeway		Sugar Land	TX	77479
Methodist Willowbrook Hospital	18220 Tomball Parkway		Houston	TX	77070
Metro Health Hospital	1919 Boston Street SE		Grand Rapids	MI	49546
MetroHealth Medical Center	2500 MetroHealth Drive		Cleveland	OH	44109
Metroplex Hospital	2201 South Clear Creek Road		Killeen	TX	76549
MetroWest Medical Center	115 Lincoln Street		Framingham	MA	01702–6327
Miami Valley Hospital	One Wyoming Street		Dayton	OH	45409
Michael Reese Hospital	2929 S. Ellis Avenue		Chicago	IL	60616
Mid America Heart Institute	St. Lukes Hospital	4401 Womall Road	Kanasas City	MO	64111
Middletown Regional Hospital	105 McKnight Drive		Middletown	OH	45044–4838
Midland Memorial Hospital	2200 W. Illinois Ave c/o Heart Institute.		Midland	TX	79701
Midlands Community Hospital	6901 N. 72nd Street		Omaha	NE	68122
MidMichigan Medical Center-Midland.	4005 Orchard Drive		Midland	MI	48670
Midwest Regional Medical Center.	2825 Parklawn Drive		Midwest City	OK	73110
Milford Regional Medical Center.	14 Prospect Street		Milford	MA	01568
Millard Fillmore Hospital	100 High Street		Buffalo	NY	14203
Millard Fillmore Suburban	100 High Street		Buffalo	NY	14203
Mills-Peninsula Hospital	1783 El Camino Real		Burlingame	CA	94010
Mission Hospital Regional Medical Center.	27700 Medical Center Road		Mission Viejo	CA	92691–6426
Mission Hospitals, Inc.	509 Biltmore Avenue		Asheville	NC	28801–4690
Mission Regional Medical Center.	900 S. Bryan Road		Mission	TX	78572
Mississippi Baptist Medical Center.	1225 N. State Street		Jackson	MS	39202–2097
Missouri Baptist Medical Center.	3015 N. Ballas Road	3105 N. Ballas Road	Saint Louis	MO	63131–2374
Moberly Regional Medical Center.	1515 Union Avenue		Moberly	MO	65270
Mobile Infirmary Medical Center.	PO Box 21445 Mobile Infirmary Circle.		Mobile	AL	36652
Monongalia General Hospital	1200 JD Anderson Drive		Morgantown	WV	26505
Montefiore Medical Center	111 East 210th Street		Bronx	NY	10467–2490

Facility name	Address 1	Address 2	City	State	Zip
Montgomery General Hospital	18101 Prince Phillip Drive		Olney	MD	20832
Morris Hospital	150 West High Street		Morris	IL	60450
Morristown Memorial Hospital	100 Madison Avenue		Morristown	NJ	07962
Morton Plant Hospital	207 Jeffords Street, MS 142		Clearwater	FL	33756
Morton Plant North Bay Hospital.	6600 Madison Street		New Port Richey.	FL	34652
Moses Cone Health System	1200 N. Elm Street		Greensboro	NC	27401
Mother Frances Hospital	800 E. Dawson Street		Tyler	TX	75701
Mount Auburn Hospital	330 Mount Auburn Street	South 2 Administration	Cambridge	MA	02138
Mount Carmel East	6150 East Broad Street		Columbus	OH	42313
Mount Carmel St. Anns Hospital.	6150 East Broad Street		Columbus	OH	43213
Mount Carmel West	6150 East Broad Street	Suite 505A	Columbus	OH	43213
Mount Clemens General Hospital.	1000 Harrington Street		Mount Clemens.	MI	48043–2992
Mount Sinai Medical Center	4300 Alton Road		Miami Beach	FL	33140
Mount St Mary's Hospital	5300 Military Road		Lewiston	NY	14092
Mountainview Hospital	3100 N. Tenaya Way		Las Vegas	NV	89128
Munroe Regional Medical Center.	1500 SW 1st Avenue PO Box 6000.		Ocala	FL	34478
Munson Medical Center	1105 Sixth Street		Traverse City	MI	49684–2386
Muskogee Regional Medical Center.	300 Rockefeller Drive		Muskogee	OK	74401
Nacogdoches Medical Center	4920 NE Stallings Drive		Nocogdoches	TX	75965
Naples Community Hospital	350 7th Street South		Naples	FL	34102
Nashoba Valley Medical Center	200 Groton Road		Ayer	MA	01432
Natchez Community Hospital	129 Jefferson Davis Boulevard		Natchez	MS	39120
Natchez Regional Medical Center.	54 Sgt. Prentiss Drive		Natchez	MS	39120
Navapaches Regional Medical Center.	2200 East Show Low Lake Road.		Show Low	AZ	85901
NEA Medical Center	3024 Stadium Boulevard		Joneboro	AR	72401
Nebraska Heart Hospital	7500 South 91st Street		Lincoln	NE	68526
Nebraska Methodist Hospital	8303 Dodge Street		Omaha	NE	68114
New Hanover Regional Medical Center.	2131 S. 17th Street		Wilmington	NC	28402
New York Community Hospital	2525 Kings Highway		Brooklyn	NY	11229
New York Hospital Medical Center of Queens Health Education Library.	56–45 Main Street EP Lab/3rd Floor.		Flushing	NY	11355
New York Methodist Hospital	506 6th Street, Brooklyn		New York City	NY	11215
New York Presbyterian Hospital.	622 West 168th Street		New York	NY	10032
Newark Beth Israel Medical Center.	201 Lyons Avenue at Osborne Terrace.		Newark	NJ	07112
Niagara Falls Memorial Medical Center.	621 Tenth Street		Niagara Falls	NY	14092
Nicholas H. Noyes Memorial Hospital.	111 Clara Barton Street		Dansville	NY	14437
Nix Healthcare System	414 Navarro Street		San Antonio	TX	78205
Norman Regional Health System.	PO Box 1308		Norman	OK	73070–1308
North Austin Medical Center	12221 MoPac Expressway North.		Austin	TX	78758
North Bay Medical Center	1200 B. Gale Wilson Boulevard.		Fairfield	CA	94533
North Broward Medical Center	201 E. Sample Road		PomPano Beach.	FL	33064
North Carolina Baptist Hospital	Medical Center Boulevard		Winston-Salem.	NC	27157
North Central Baptist Hospital	520 Madison Oak Drive		San Antonio	TX	78258
North Colorado Medical Center	1801 16th Street		Greeley	CO	80631
North Florida Regional Medical Center.	6500 Newberry Road		Gainesville	FL	32605
North Kansas City Hospital	2800 Clay Edwards Drive		North Kansas City.	MO	64116
North Memorial Medical Center	3300 Oakdale Avenue N.		Robbinsdale	MN	55422
North Mississippi Medical Center.	830 S. Gloster Street		Tupelo	MS	38801
North Oaks Medical Center	15790 Paul Vega MD Drive		Hammond	LA	70403
North Ridge Medical Center	5757 N. Dixie Highway		Fort Lauderdale.	FL	33334
North Shore Medical Center	1100 NW 95th Street		Miami	FL	33150

Facility name	Address 1	Address 2	City	State	Zip
North Shore Medical Center-Salem Hospital.	81 Highland Avenue	Davenport 5	Salem	MA	01970
North Shore University Hospital	300 Community Drive		Manhasset	NY	11030
North Suburban Medical Center.	9191 Grant Street		Denver	CO	80229
North Vista Hospital	1409 E. Lake Mead Boulevard		North Las Vegas.	NV	89030
Northeast Baptist Hospital	8811 Village Drive		San Antonio	TX	78217
Northeast Georgia Medical Center.	743 Spring Street		Gainesville	GA	30501
NorthEast Medical Center	920 Church Street North		Concord	NC	28025
Northeast Methodist Hospital	12412 Judson Road		Live Oak	TX	78233
Northern Illinois Medical Center	dwittkamp@centegra.com		McHenry	IL	60050
Northern Michigan Hospital	416 Connable Avenue		Petoskey	MI	49770
Northern Nevada Medical Center.	2375 E Prater Way		Sparks	NV	89434
Northlake Medical Center	1455 Montreal Road		Tucker	GA	30084
Northridge Hospital Medical Center.	18300 Roscoe Avenue		Northridge	CA	91325
Northshore Regional Medical Center.	100 Medical Center Drive		Slidell	LA	70461
Northside Hospital	6000 49th Street N		Pinellas Park	FL	33709
Northside Hospital	1000 Johnson Ferry Road		Atlanta	GA	30342
Northside Hospital-Forsyth	1200 Northside Forsyth Drive		Cumming	GA	30041
Northwest Community Hospital	800 W. Central Raod		Arlington Heights.	IL	60005
Northwest Hospital	1550 North 115th Street		Seattle	WA	98113
Northwest Medical Center	2801 N. State Road 7		Margate	FL	33063
Northwest Medical Center-Bentonville.	3000 Medical Center Parkway		Bentonville	AR	72712
Northwest Medical Center-Springdale.	609 West Maple Street		Springdale	AR	72764
Northwest Mississippi Regional Medical Center.	1970 Hospital Drive		Clarksdale	MS	38614
Northwest Texas Surgical Hospital.	3501 Soncy Road Suite 118		Amarillo	TX	79119
Northwestern Memorial Hospital.	676 North St Clair Suite 1700		Chicago	IL	60611
Norton Audubon	P.O. Box 35070		Louisville	KY	40232
Norton Hospital	P.O. Box 35070		Louisville	KY	40232
Norwalk Hospital	24 Stevens Street		Norwalk	CT	06856
NYU Medical Center	560 First Avenue, TCH 576 Cath Lab.		New York	NY	10016
Oak Hill Hospital	11375 Cortez Boulevard		Brooksville	FL	34613
Oakwood Hospital & Medical Center.	18101 Oakwood Boulevard, Suite 124.		Dearborn	MI	48124
Obici Hospital	2800 Godwin Boulevard		Suffolk	VA	23434
Ocala Regional Medical Center	1431 SW First Avenue		Ocala	FL	34474
Ocean Springs Hospital	3109 Bienville Boulevard		Oceansprings	MS	39564
Ochsner Medical Center-Baton Rouge.	17000 Medical Center Drive		Baton Rouge	LA	70816
Ochsner Medical Center-West Bank.	2500 Belle Chasse Highway		Gretna	LA	70056
Ochsner Medical Center-Kenner (Kenner Regional Medical Center).	180 West Esplanade Avenue		Kenner	LA	70065
Ochsner Medical Foundation	1514 Jefferson Highway		New Orleans	LA	70121
O'Connor Hospital	2105 Forest Avenue		San Jose	CA	95128
Odessa Regional Hospital	520 East Sixth Street		Odessa	TX	79760
Ogden Regional Medical Center.	5475 South 500 East		Ogden	UT	84403
Ohio State University Medical Center.	410 W. 10th Avenuel	1420 Doan Hal	Columbus	OH	43210–1228
Ohio Valley Medical Center	2000 Eoff Street		Wheeling	WV	26003
Oklahoma Heart Hospital	4050 W. Memorial Road		Oklahoma City.	OK	73120
Oklahoma State University Medical Center.	744 W. 9th Street		Tulsa	OK	74127
Olathe Medical Center	20333 W. 151 Street		Olathe	KS	66061–7211
Opelousas General Health System.	539 E. Prudhomme Street		Opelousas	LA	70570
Orange Coast Memorial Medical Center.	9920 Talbert Avenue		Fountain Valley.	CA	92708

Facility name	Address 1	Address 2	City	State	Zip
Orange Regional Medical Center.	60 Prospect Avenue		Middletown	NY	10940
Oregon Health & Science University.	3181 SW Sam Jackson Road		Portland	OR	97239
Orlando Regional Medical Center.	1414 Kuhl Avenue		Orlando	FL	32806
Osceola Regional Medical Center.	700 W. Oak Street		Kissimmee	FL	34745
OSF Saint Anthony Medical Center.	5666 East State Street		Rockford	IL	61108
OSF Saint Joseph Medical Center.	2200 E. Washington Street		Bloomington	IL	61701
OSF Saint Francis Medical Center.	530 NE Glen Oak Avenue		Peoria	IL	61637
OU Medical Center	700 NE 13th Street		Oklahoma City.	OK	73104
Our Lady of Lourdes Medical Center.	1600 Haddon Avenue		Camden	NJ	08103
Our Lady of Lourdes Regional Medical Center.	611 St Landry (PO Box 4027)		Lafayette	LA	70506
Our Lady of The Lake Regional Medical Center.	5000 Hennessy Boulevard		Baton Rouge	LA	70808–4350
Our Lady of the Resurrection Medical Center.	5645 W. Addison Street		Chicago	IL	60634
Overlake Hospital Medical Center.	1035—116th Avenue NE		Bellevue	WA	98004
Overland Park Regional Medical Center/Health Midwest.	10500 Quivira Road		Overland Park	KS	66215
Owensboro Medical Health System.	811 E. Parrish Avenue		Owensboro	KY	42303
Ozarks Medical Center	1100 Kentucky Avenue		West Plains	MO	65775
P and S Surgical Hospital	312 Grammont Street		Monroe	LA	71201
Palm Beach Gardens Medical Center.	3360 Burns Road		Palm Beach Gardens.	FL	33410
Palmetto General Hospital	2001 West 68th Street		Hialeah	FL	33016
Palmetto Health Heart Hospital	5 Richland Medical Park Drive		Columbia	SC	29203
Palomar Medical Center	555 East Valley Parkway		Escondido	CA	92025
Palos Community Hospital	12251 S. 80th Avenue		Palos Heights	IL	60463–0930
Paoli Hospital	100 Lancaster Avenue		Wynnewood	PA	19096
Paradise Valley Hospital	3929 E. Bell Road		Phoenix	AZ	85023
Paradise Valley Hospital	2400 E. Fourth Street		National City	CA	91950
Paris Regional Medical Center	820 Clarksville Street		Paris	TX	75460
Park Plaza Hospital	1313 Hermann Drive		Houston	TX	77004
Parkland Health and Hospital Systems.	5201 Harry Hines Boulevard		Dallas	TX	75235
Parkridge Medical Center	2333 McCallie Avenue		Chattanooga	TN	37404
Parkview Hospital	2200 Randallia Drive		Fort Wayne	IN	46805
Parkview Hospital	1726 Shawano Avenue		Green Bay	WI	54303–3282
Parkview Medical Center	400 West 16th Street		Pueblo	CO	81003
Parkway Regional Medical Center.	160 N.W. 170th Street		North Miami	FL	33169
Parkwest Medical Center	9352 Parkwest Boulevard		Knoxville	TN	37932
Parma Community General Hospital.	7007 Powers Boulevard		Parma	OH	44129
Parrish Medical Center	951 N. Washington Avenue		Titusville	FL	32796
Pasco Regional Medical Center	13000 100 Fort King Road		Dade City	FL	33525
PBI Regional Medical Center	350 Boulevard		Passaic	NJ	07055
Peace River Regional Medical	2500 Harbor Boulevard		Port Charlotte	FL	33952
Peconic Bay Medical Center	1300 Roanoake Avenue		Riverhead	NY	11901
Peninsula Regional Medical Center.	100 East Carroll Street		Salisbury	MD	21801
Penn Presbyterian Medical Center.	39th & Market Streets		Philadelphia	PA	19104
Penn State Hershey Medical Center.	PO Box 850 H139		Hershey	PA	17033
Pennsylvania Hospital	800 Spruce Street		Philadelphia	PA	19107–6192
Penrose-St. Francis Health Services.	2222 North Nevada, #220		Colorado Springs.	CO	80907
Phelps County Regional Medical Center.	1000 W. 10th Street		Rolla	MI	65401
Phoenix Baptist Hospital	2000 W. Bethany Home Road		Phoenix	AZ	85015
Phoenixville Hospital	140 Nutt Road		Phoenixville	PA	19460–3906
Physicians Medical Center Carraway.	1600 Carraway Boulevard		Birmingham	AL	35234

Facility name	Address 1	Address 2	City	State	Zip
Piedmont Hospital	95 Collier Road Suite 5005		Atlanta	GA	30309
Piedmont Medical Center	222 S. Herlong Avenue		Rock Hill	SC	29732
Pikeville Medical Center	911 Bypass Road		Pikeville	KY	41501
Pinnacle Health Invasive Cardiology.	111 South Front Street		Harrisburg	PA	17101–2099
Pioneer Valley Hospital	3590 West 9000 South, Suite 315.		West Jordan,	UT	84088
Pitt County Memorial Hospital	2100 Stantonsburg Road		Greenville	NC	27834–2832
Plantation General Hospital	401 NW 42nd Avenue		Plantation	FL	33317
Plaza Medical Center of Fort Worth.	900 Eighth Avenue		Fort Worth	TX	76104
Pocono Medical Center	206 East Brown Street		East Stroudsburg.	PA	18301
Pomona Valley Hospital Medical Center.	1798 N. Garey Avenue		Pomona	CA	91722
Pontiac Osteopathic Hospital	50 North Perry Street		Pontiac	MI	48342
Poplar Bluff Regional Medical Center.	2620 N. Westwood Boulevard		Poplar Bluff	MO	63901
Port Huron Hospital	1221 Pine Grove Avenue		Port Huron	MI	48060
Porter Adventist Hospital	2525 S Downing Street—Mailstop 33F.		Denver	CO	80210–5817
Porter Valparaiso Hospital Campus.	814 Laporte Avenue		Valparaiso	IN	46383
Portneuf Medical Center	651 Memorial Drive		Pocatello	ID	83201
Portsmouth Regional Hospital	333 Borthwick Avenue		Portsmouth	NH	03801
Poudre Valley Hospital	2500 Rocky Mountain Avenue		Loveland	CO	80538
Prairie Lakes Healthcare	401 9th Avenue NW	Box 1210	Watertown	SD	57201
Presbyterian Healthcare Services.	PO Box 26666		Albuqerque	NM	87125
Presbyterian Hospital	200 Hawthorne Lane		Charlotte	NC	28204
Presbyterian Hospital of Dallas	Presbyterian Hospital	8200 Walnut Hill Lane	Dallas	TX	75231
Presbyterian Hospital of Plano	6200 West Parker Road		Plano	TX	75093–7914
Presbyterian Intercommunity Hospital.	12401 Washington Boulevard		Whittier	CA	90602
Presbyterian/St.Lukes Medical Center.	1719 E. 19th Avenue—CV Registry.		Denver	CO	80218–1235
Prince George's Hospital Center.	3001 Hospital Drive		Cheverly	MD	20785
Princeton Baptist Medical Center.	701 Princeton Avenue		Birmingham	AL	35211–1399
Proctor Hospital	5409 N. Knoxville Avenue		Peoria	IL	61614
Protestant Memorial Medical Center.	4500 Memorial Drive		Belleville	IL	62226
Provena Covenant Medical Center.	1400 West Park Street		Urbana	IL	61801–9901
Provena Mercy Medical Center	1325 North Highland Avenue		Aurora	IL	60506
Provena Saint Joseph Medical Center.	333 N. Madison Street		Joliet	IL	60435
Provena Saint Marys Hospital	500 West Court Street		Kankakee	IL	60901
Providence Alaska Medical Center.	3200 Providence Drive		Anchorage	AK	99508–4662
Providence Everett Medical Center.	1321 Coby Avenue	PO Box 1147	Everett	WA	98206–1147
Providence Health Center	6901 Medical Parkway		Waco	TX	76712
Providence Holy Cross Medical Center.	15031 Rinaldi Street		Mission Hills	CA	91346
Providence Hospital	6801 Airport Boulevard		Mobile	AL	36608
Providence Hospital	2435 Forest Drive		Columbia	SC	29204
Providence Medford Medical	1111 Crater Lake Avenue		Medford	OR	97504
Providence Medical Center	8929 Parallel Parkway		Kansas City	KS	66112–1689
Providence Memorial Hospital	2001 North Oregon		El Paso	TX	79902
Providence Portland Medical Center.	9205 SW Barnes Road	9205 SW Barnes Road	Portland	OR	97225
Providence Saint Joseph Medical Center.	501 South Buena Vista		Burbank	CA	91505
Providence Saint Vincent Medical Center.	Regional Heart Data Services	9205 South West Barnes Road #33.	Portland	OR	97225
Providence St. Peter Hospital	413 N. Lilly Road		Olympia	WA	98506
Queen of the Valley Medical Center.	1000 Trancas Street		Napa	CA	94558
Queens Medical Center	1301 Punchbowl Street		Honolulu	HI	96813
Rancho Spring Medical Center	36485 Inland Valley		Wildomar	CA	92595
Rankin Medical Center	350 Crossgates Boulevard		Brandon	MS	39042
Rapid City Regional Hospital	353 Fairmont Boulevard		Rapid City	SD	57702

Facility name	Address 1	Address 2	City	State	Zip
Rapides Regional Medical Center.	211 4th Street (Box 30101)		Alexandria	LA	71301
Redmond Regional Medical Center.	501 Redmond Road		Rome	GA	30165
Regents of the University of Michigan.	2929 Plymouth Rd Suite 210		Ann Arbor	MI	48105
Regional Hospital of Jackson	367 Hospital Boulevard		Jackson	TN	38305
Regional Medical Center	400 East 10th Street		Anniston	AL	36202
Regional Medical Center	225 N. Jackson Street		San Jose	CA	95116
Regional Medical Center	900 Hospital Drive		Madisonville	KY	42431–1644
Regional Medical Center	3000 St. Matthews Road		Orangeburg	SC	29118
Regional Medical Center Bayonet Point.	1400 Fivay Road		Hudson	FL	34667
Regions Hospital	640 Jackson Street		St. Paul	MN	55101
Reid Hospital & Healthcare Services.	1401 Chester Boulevard		Richmond	IN	47374
Renown Regional Medical Center.	1155 Mill Street	R 11	Reno	NV	89502
Research Medical Center	2316 East Meyer Boulevard		Kansas City	MO	64132
Reston Hospital Center	1850 Town Center Parkway		Reston	VA	20190
Resurrection Medical Center	7435 W. Talcott Avenue		Chicago	IL	60631
Rex Hospital	4420 Lake Boone Trail		Raleigh	NC	27607
Rhode Island Hospital	593 Eddy Street		Providence	RI	02903
Richmond University Medical Center.	355 Bard Avenue		Staten Island	NY	10310
Rideout Memorial Hospital	726 4th Street		Maryville	CA	95901
Ridgecrest Regional Hospital	1081 N. China Lake Boulevard		Ridgecrest	CA	93555
Riley Hospital	1102 Constitution Avenue		Meridian	MS	39301
Rio Grande Regional Hospital	101 E. Ridge Road		McAllen	TX	78503
River Oaks Hospital	1030 River Oaks Drive		Jackson	MS	39232
River Region Medical Center	2100 Highway 61 North		Vicksburg	MS	39180
Riverside Community Hospital	4445 Magnolia Avenue		Riverside	CA	92501
Riverside Methodist Hospital	3535 Olentangy River Road		Columbus	OH	43214
Riverside Regional Medical Center.	500 J Clyde Morris Boulevard		Newport News.	VA	23601
Riverview Hospital	395 Westfield Road		Noblesville	IN	46060
Riverview Regional Medical Center.	600 South Third Street		Gadsden	AL	35901
Robert Packer Hospital	1 Guthrie Square		Sayre	PA	18840
Robinson Memorial Hospital	6847 N. Chestnut Street		Ravenna	OH	44266
Rochester General Hospital	1425 Portland Avenue		Rochester	NY	14621
Rockford Memorial Hospital	2400 N. Rockton Avenue		Rockford	IL	61103
Rogue Valley Medical Center	2825 E. Barnett Road		Medford	OR	97504
Roper Hospital	316 Calhoun Street		Charleston	SC	29401
Rose Medical Center	4567 E. 9th Avenue		Denver	CO	80220–3941
Round Rock Medical Center	2400 Round Rock Avenue		Round Rock	TX	78681
Rush Hospital	1314 19th Avenue		Meridian	MS	39301
Rush North Shore Medical Center.	9600 Gross Point Road		Skokie	IL	60076
Rush University Medical Center	1653 West Congress Parkway		Chicago	IL	60612
Rush-Copley Medical Center Attn: Health Science Lib.	2000 Ogden Avenue		Aurora	IL	60504
Russell Medical Center	3316 Highway 280 (P.O. Box 939).		Alexander City.	AL	35011
Russellville Hospital	15155 Highway 43		Russellville	AL	35653
Rutland Regional Medical Center.	160 Allen Street		Rutland	VT	05701
Sacred Heart Hospital of Pensacola.	5151 North 9th Avenue		Pensacola	FL	32504
Sacred Heart Hospital Attn: A/P.	900 W. Clairemont Avenue		Eau Claire	WI	54701
Sacred Heart Medical Center	1155 Hilyard Street		Eugene	OR	97401
Sacred Heart Medical Center	101 W. Eighth Avenue		Spokane	WA	99204
Saddleback Memorial Medical Center.	24451 Health Center Drive		Laguna Hills	CA	92653
Saint Agnes Medical Center	1303 East Hemdon Avenue		Fresno	CA	93720
Saint Anthony Medical Center	1201 S. Main Street		Crown Point	IN	46307
Saint Anthonys Medical Center	10010 Kennerly Road		Saint Louis	MO	63128–2106
Saint Bernadine Medical Center.	2101 N. Waterman Avenue	2101 N. Waterman Avenue	San Bernardino.	CA	92404–4836
Saint Clare's Hospital	611 St. Joseph's Avenue		Marshfield	WI	54449
Saint Elizabeth Health Center	1044 Belmont Avenue		Youngstown	OH	44501
Saint Elizabeth Hospital	1611 S. Madison Street		Appleton	WI	54915

Facility name	Address 1	Address 2	City	State	Zip
Saint Elizabeth Medical Center-South.	1 Medical Village Drive		Edgewood	KY	41017
Saint Elizabeth Regional Medical Center.	555 S. 70th Street		Lincoln	NE	68510–2462
Saint Elizabeths Hospital	211 South 3rd Street		Belleville	IL	62220–1915
Saint Francis Heart Hospital	10501 E. 91st Street South		Tulsa	OK	74133
Saint Francis Hospital	2122 Manchester Expressway		Columbus	GA	31904
Saint Francis Hospital	6161 S. Yale Avenue		Tulsa	OK	74136
Saint Francis Hospital	5959 Park Ave		Memphis	TN	38119
Saint Francis Hospital & Health Center.	8111 S. Emerson Avenue		Indianapolis	IN	46237
Saint Francis Hospital & Medical Center.	118 Woodland Street		Hartford	CT	06105
Saint Francis Hospital and Health Center.	12935 Gregory Street		Blue Island	IL	60406–2470
Saint Francis Hospital of Evanston.	355 Ridge Avenue		Evanston	IL	60202
Saint John Hospital & Medical Center.	22151 Moross Road	Professional Building #1, #126	Detroit	MI	48236–2148
Saint John Macomb Hospital	11800 E. 12 Mile Road	Room #2510	Warren	MI	48093
Saint Johns Health Center	1328 Twenty Second Street		Santa Monica	CA	90404
Saint Johns Mercy Medical Center.	615 S. New Ballas Road		Saint Louis	MO	63141–8221
Saint Joseph Hospital	St Josephs Hospital & Medical Center.	350 West Thomas Road	Phoenix	AZ	85013
Saint Joseph Hospital	2700 Dolbeer Street		Eureka	CA	95501–4799
Saint Joseph Hospital	1100 West Stewart Drive		Orange	CA	92868
Saint Joseph Hospital	3001 W. Martin Luther King Boulevard.		Tampa	FL	33607
Saint Joseph Hospital	2900 N. Lake Shore Drive		Chicago	IL	60657–6274
Saint Joseph Hospital (Provena).	77 North Airlite Street		Elgin	IL	60123–4912
Saint Joseph Medical Center	1717 South J Street		Tacoma	WA	98405–4933
Saint Joseph Regional Health Center.	2801 Franciscan Street		Bryan	TX	77802–2544
Saint Josephs Hospital	1824 Murdoch Avenue		Parkersburg	WV	26102–0327
Saint Josephs Hospital/ Marshfield Clinic.	611 St. Joseph Avenue		Marshfield	WI	54449–1832
Saint Josephs Hospital of Atlanta.	5665 Peachtree Dunwoody Road.		Atlanta	GA	30342
Saint Louis University Hospital	3635 Vista at Grand		Saint Louis	MO	63110
Saint Lukes Hospital	1026 A Avenue, North East		Cedar Rapids	IA	52406–3026
Saint Lukes Hospital	232 S. Woods Mill Road	Heart Failure Center	Chesterfield	MO	63017–3417
Saint Luke's Hospital	4401 Wornall Road (MAHI 5th Floor).		Kansas City	MO	64111
Saint Lukes Regional Medical Center.	190 E. Bannock Street		Boise	ID	83712–6241
Saint Margaret Mercy	5454 S. Hohman Avenue		Hammond	IN	46320
Saint Mary Corwin Medical Center.	1008 Minnequa Avenue		Pueblo	CO	81004–3798
Saint Mary Mercy Hospital	36475 West Five Mile Road		Livonia	MI	48154
Saint Mary's Hospital	56 Franklin Street		Waterbury	CT	06706
Saint Marys Hospital and Regional Medical Center.	2635 N. 7th Street		Grand Junction.	CO	81501–8209
Saint Marys Medical Center	3700 Washington Avenue		Evansville	IN	47750
Saint Marys Medical Center	2900 First Avenue		Huntington	WV	25702
Saint Mary's Medical Center	450 Stanyan Street		San Francisco	CA	94117
Saint Mary's Regional Medical Center.	235 W. Sixth Street		Reno	NV	89503
Saint Peter's Hospital	315 South Manning Boulevard		Albany	NY	12208
Saint Ritas Medical Center	730 West Market Street		Lima	OH	45801–4602
Saint Thomas Health Care Services.	4220 Harding Road		Nashville	TN	37202–0380
Saint Vincent Health Center	232 West 25th Street		Erie	PA	16544
Saint Vincent Hospital	123 Summer Street		Worcester	MA	01608
Saint Vincent Hospital Manhattan.	170 W. 12th Street		New York	NY	10011
Saint Vincent Medical Center/ Health Center.	2 St. Vincent Circle		Little Rock	AR	72205
Saint Vincents Medical Center	2800 Main Street		Bridgeport	CT	06606
Salem Hospital (Regional Health Services).	665 Winter Street, SE		Salem	OR	97309–5014
Salina Regional Health Center	400 S. Santa Fe Avenue		Salina	KS	67401

Facility name	Address 1	Address 2	City	State	Zip
Salinas Valley Memorial Hospital.	450 E Romie Lane		Salinas	CA	93901–4098
Salt Lake Regional Medical Center.	1050 East South Temple		Salt Lake	UT	84102
San Antonio Community Hospital.	999 San Bernardino Road		Upland	CA	91786
San Francisco Heart and Vascular Institute.	1900 Sullivan Avenue		Daly City	CA	94015
San Jacinto Methodist Hospital	4401 Garth Road		Baytown	TX	77521
San Joaquin Community Hospital.	2615 Eye Street		Bakersfield	CA	93301
San Juan Regional Medical Center.	801 West Maple		Farmington	NM	87401
San Ramon Regional Medical Center.	6001 Norris Canyon Road		San Ramon	CA	94583
Sand Lake Hospital	1414 Kuhl Avenue		Orlando	FL	32806
Sanford USD Medical Center	1305 West 18th Street		Sioux Falls	SD	57117
Santa Barbara Cottage Hospital.	PO Box 689		Santa Barbara	CA	93102–0689
Santa Rosa Memorial Hospital	1165 Montgomery Drive PO Box 522.		Santa Rosa	CA	95402
Santa Teresa Community Hospital.	250 Hospital Parkway, 1st Floor Cath Office.		San Jose	CA	95119
Sarasota Memorial Hospital	1700 S. Tamiami Trail		Sarasota	FL	34239
Satilla Heart Center	410 Darling Avenue		Waycross	GA	31501
Scott and White Clinic and Hospital.	2401 S. 31 Street, Alexander Building, 218–E.		Temple	TX	76508
Scottsdale Healthcare Osborn	7400 E. Osborn Road		Scottsdale	AZ	85260
Scottsdale Healthcare Shea	9003 E. Shea Boulevard-Administration.		Scottsdale	AZ	85260
Scripps Green Hospital-La Jolla.	10666 North Torrey Pines Road.		La Jolla	CA	92037
Scripps Memorial Hospital Encinitas.	354 Santa Fe Drive		Encinitas	CA	92024
Scripps Memorial Hospital-La Jolla.	9888 Genesee Avenue LJ101		La Jolla	CA	92037
Scripps Mercy Hospital-San Diego.	4077 5th Avenue, MER 74		San Diego	CA	92103
Scripps Mercy Hosptial-Chula Vista.	435 H Street		Chula Vista	CA	91910
Sebastian River Medical Center.	13695 U.S. Highway 1		Sebastian	FL	32962
Self Regional Healthcare	1325 Spring Street		Greenwood	SC	29646
Sentara Norfolk General Hospital.	600 Gresham Drive		Norfolk	VA	23507
Sentara Obici Hospital	2800 Goodwin Boulevard		Suffolk	VA	23434
Sentara Virginia Beach General Hospital.	1060 First Colonial Road		Virginia Beach	VA	23454–0685
Sequoia Hospital	Whipple & Alameda Avenues	170 Alameda de Las Pulgas	Redwood City	CA	94062
Seton Medical Center	1201 W. 38th Street		Austin	TX	78705
Shady Grove Adventist Hospital.	9901 Medical Center Drive		Rockville	MD	20850
Shands at AGH	801 SW 2nd Avenue		Gainesville	FL	32601
Shands Jacksonville Medical Center.	2000 Jefferson Street		Jacksonville	FL	32209–6511
Sharp Chula Vista Medical Center.	8695 Spectrum Center Court		San Diego	CA	92123
Sharp Grossmont	5555 Grossmont Center Drive		La Mesa	CA	91942
Sharp Memorial Hospital	7901 Frost Street		San Diego	CA	92123
Shasta Regional Medical Center.	1100 Butte Street		Redding	CA	96001
Shawnee Mission Medical Center.	9100 West 74th Street		Shawnee Mission.	KS	66204–4004
Shelby Baptist Medical Center	1000 First Street North		Alabaster	AL	35007
Sherman Hospital	934 Center Street	Decision Support	Elgin	IL	60120
Shore Health System of Maryland.	219 South Washington Street		Easton	MD	21601
Sid Peterson Memorial Hospital	710 Water Street		Kerrville	TX	78028
Sierra Medical Center	1625 Medical Center Drive		El Paso	TX	79902
Sierra View District Hospital	465 W. Putnam Avenue		Porterville	CA	93257
Sierra Vista Regional Medical Center.	1010 S. Murray Avenue		San Luis Obispo.	CA	93405
Silver Cross Hospital	1200 Maple Road		Joliet	IL	60432

Facility name	Address 1	Address 2	City	State	Zip
Simi Valley Hospital & Health Care Services.	2975 North Sycamore Drive		Simi Valley	CA	93065
Sinai-Grace Hospital	6071 W. Outer Drive		Detroit	MI	48235
Sinai Hospital of Baltimore	2401 West Belvedere Avenue		Baltimore	MD	21215–5271
Singing River Hospital	2809 Denny Avenue		Pascagoula	MS	39567
Sisters of Charity Hospital	2157 Main Street		Buffalo	NY	14120
Skaggs Community Health Center.	PO Box 650		Branson	MO	65615–0650
Sky Ridge Medical Center	10101 Ridgegate Parkway		Lone Tree	CO	80124
Skyline Medical Center/ HTI Memorial Hospital Corp.	3441 Dickerson Pike		Nashville	TN	37207
Smith of Georgia, LLC d.b.a. Smith Northview Hopsital.	PO Box 10010		Valdosta	GA	31604
Sound Shore Medical Center	16 Guion Place		New Rochelle	NY	10801
South Austin Hospital	901 W. Ben White Boulevard		Austin	TX	78704
South Bay Hospital	4016 Sun City Center Boulevard.		Sun City Center.	FL	33570
South Crest Hospital	8801 S. 101 Street E Avenue		Tulsa	OK	74133
South Fulton Medical Center	1170 Cleveland Avenue		East Point	GA	30344
South GA Medical Center	PO Box 1727		Valdosta	GA	31603–1727
South Miami Hospital	6200 SW 73rd Street		Miami	FL	33143–4989
South Nassau Communities Hospital.	One Healthy Way		Oceanside	NY	11572
South Shore Hospital	55 Fogg Road		South Weymouth.	MA	02190–2432
Southampton Hospital	240 Meeting House Lane		Southhampton	NY	11968
Southeast Alabama Medical Center.	1108 Ross Clark Circle		Dothan	AL	36301
Southeast Baptist Hospital	4214 E. Southcross		San Antonio	TX	78222
Southeast Missouri Hospital	1701 Lacey Street		Cape Girardeau.	MO	63701
Southern Hills Hospital	9300 West Sunset Road		Las Vegas	NV	89148
Southern New Hampshire Medical Center.	8 Prospect Street		Nashua	NH	03060
Southern Ohio Medical Center	1805 27th Street		Portsmouth	OH	45662
Southern Regional Medical Center.	11 Upper Riverdale Road		Riverdale	GA	30274
Southlake Hospital	1099 Citrus Tower Boulevard		Clermont	FL	34711
Southside Hospital	301 East Main Street		Bayshore	NY	11706
Southwest Florida Regional	636 Del Prado Boulevard, Suite 104.		Cape Coral	FL	33990
Southwest General Health Center.	18697 Bagley Road		Middleburg Heights.	OH	44130–3417
Southwest General Hospital	7400 Barlite Boulevard		San Antonio	TX	78224
Southwest Medical Center	2810 Ambassador Caffery Parkway.		Lafayette	LA	70506
Southwest MS Regional Medical Center.	215 Marion Avenue		McComb	MS	39648
Southwest Washington Medical Center.	600 NE 92nd Avenue		Vancouver	WA	98664
Southwestern Medical Center	5602 SW Lee Boulevard		Lawton	OK	73505
Spalding Regional Medical Center.	601 South 8th Street		Griffin	GA	30224
Sparks Regional Medical Center.	PO Box 17006		Fort Smith	AR	72917–7006
Sparrow Health System	1210 W. Saginaw Highway		Lansing	MI	48915
Spartanburg Regional Medical Center.	101 East Wood Street	3rd Floor Heart Center	Spartanburg	SC	29303
Spectrum Health	100 Michigan Street NE		Grand Rapids	MI	49503–2560
Springhill Memorial Hospital	3719 Dauphin Street		Mobile	AL	36608
Springs Memorial Hospital	800 West Meeting Street		Lancaster	SC	29720
SSM St. Joseph Health Center	300 First Captiol Drive		St. Charles	MO	63301
SSM St. Joseph Hospital of Kirkwood.	525 Couch Avenue		Kirkwood	MO	63122
St. Anthony Central Hospital	4231 W. 16th Avenue		Denver	CO	80204–1335
St James Hospital and Health Centers.	20201 S. Crawford Avenue		Olympia Fields.	IL	60461
St. John's Hospital	69 W. Exchange Street		St. Paul	MN	55102
St. Joseph Hospital	700 Broadway Street		Fort Wayne	IN	46802
St. Joseph Hospital-Oakland	44405 Woodward Avenue		Pontiac	MI	48341–5023
St. Josephs Hospital	69 W. Exchange Street		St. Paul	MN	55102
St. Josephs Hospital Health Center.	301 Prospect Avenue		Syracuse	NY	13203
St. Lukes's Cornwall Hospital	70 Dubois Street		Newburgh	NY	12550

Facility name	Address 1	Address 2	City	State	Zip
St. Mary's Health Care Systems.	1230 Baxter Street		Athens	GA	30606
St. Mary's Hospital	400 North Pleasant		Centralia	IL	62801
St. Mary's Regional Medical Center.	305 S. 5th Street		Enid	OK	73701
St. Vincent Mercy Medical Center.	2213 Cherry Street		Toledo	OH	43608
St. Agnes Hospital	900 Caton Avenue		Baltimore	MD	21229
St. Alexius Medical Center	1555 Barrington Road		Hoffman Estates.	IL	60194–1018
St. Alphonsus Regional Medical Center.	1055 N. Curtis Road		Boise	ID	83706
St. Anthony Hospital	1000 N. Lee Avenue		Oklahoma City.	OK	73102
St. Anthony's Health Care	1200 7th Avenue North		St. Petersburg	FL	33705
St. Barnabas Medical Center	94 Old Short Hills Road		Livingston	NJ	07039
St. Bernards Medical Center	225 E. Jackson Avenue		Jonesboro	AR	72401
St. Catherine Hospital E Chicago.	1500 South Lake Park Avenue		Hobart	IN	46342
St. Catherine of Siena	50 Route 25A		Smithtown	NY	11787
St. Charles Hospital	200 Belle Terre Road		Port Jefferson	NY	11777
St. Charles Medical Center	2500 North East Neff Road		Bend	OR	97701–6015
St. Clair Memorial Hospital	1000 Bower Hill Road		Pittsburgh	PA	15243
St. Cloud Regional Medical Center.	2906 17th Street		St. Cloud	FL	34769
St. David's Medical Center	919 East 32nd		Austin	TX	78765
St. Dominic-Jackson Memorial Hospital.	969 Lakeland Drive		Jackson	MS	39216
St. Edwards Mercy Medical Center.	7301 Rogers Avenue		Ft. Smith	AR	72917–7000
St. Elizabeth Hospital	2233 W. Division		Chicago	IL	60622
St. Elizabeth Medical Center	2209 Genesee Street		Utica	NY	13501
St. Francis Health Center	1700 SW 7th Street		Topeka	KS	66605
St. Francis Hospital	701 N. Clayton Street		Wilmington	DE	19805
St. Francis Hospital	100 Port Washington Boulevard.		Roslyn	NY	11576–1348
St. Francis Hospital	One St. Francis Drive		Greenville	SC	29601
St. Francis Hospital	333 Laidley Street	PO Box 44 Culloden, WV 25510.	Charleston	WV	25322
St. Francis Medical Center	3630 Imperal Highway		Lynwood	CA	90265
St. Francis Medical Center	309 Jackson Street		Monroe	LA	71210
St. Francis Medical Center	211 Saint Francis Drive		Cape Girardeau.	MO	63703–5049
St. Francis Medical Center	601 Hamilton Avenue		Trenton	NJ	08629
St. Francis North Hospital	309 Jackson Street		Monroe	LA	71201
St. Helena Hospital	10 Woodland Road		St. Helena	CA	94574
St. James Health Care	400 South Clark Street		Butte	MT	59701
St. John Medical Center	1923 S. Utica Avenue		Tulsa	OK	74104
St. John Medical Center	1615 Delaware Street		Longview	WA	98632
St. John Providence Hospital	16001 W. Nine Mile Road		Southfield	MI	48075
St. John West Shore Hospital	29000 Center Ridge Road		Westlake	OH	44145
St. John's Hospital	800 E. Carpenter Street		Springfield	IL	62769
St. John's Hospital	1235 E. Cherokee Street		Springfield	MO	65804
St. John's Pleasant Valley Hospital.	2309 Antonio Avenue		Camarillo	CA	93010
St. John's Queens Hospital	90–02 Queens Boulevard		Elmhurst	NY	11373
St. Johns Regional Medical Center.	1600 N. Rose Avenue		Oxnard	CA	93030–3722
St. Johns Regional Medical Center.	2727 McClelland Boulevard		Joplin	MO	64804
St. John's Riverside Hospital	967 North Broadway	Health Information	Yonkers	NY	10701
St. Joseph Hospital	1 Saint Joseph Drive		Lexington	KY	40504
St. Joseph Hospital	360 Broadway		Bangor	ME	04401
St. Joseph Hospital	172 Kinsley Street		Nashua	NH	03060
St. Joseph Hospital	2901 Squalicum Parkway		Bellingham	WA	98225
St. Joseph Intercommunity Hospital.	2605 Harlem Road		Cheektowaga	NY	14225
St. Joseph Medical Center	2200 E. Washington Street		Bloomington	IL	61701
St. Joseph Medical Center	7601 Osler Drive		Towson	MD	21204
St. Joseph Medical Center	12th & Walnut Street		Reading	PA	19603
St. Joseph Medical Center	1401 St. Joseph Parkway		Houston	TX	77002
St. Joseph Mercy Hospital	5325 Elliot Drive		Ann Arbor	MI	48106
St. Joseph Regional Medical Center.	801 E. Lasalle Avenue		South Bend	IN	46617

Facility name	Address 1	Address 2	City	State	Zip
St. Joseph Regional Medical Center.	703 Main Street		Paterson	NJ	07503
St. Joseph's Hospital	350 N. Wilmot Road		Tucson	AZ	85711
St. Joseph's Hospital	11705 Mercy Boulevard		Savannah	GA	31419
St. Joseph's Medical Center	127 South Broadway		Yonkers	NY	10701
St. Josephs Medical Center of Stockton.	1805 North California Street	Suite #303	Stockton	CA	95204
St. Josephs Mercy Health Center.	300 Werner Drive		Hot Springs	AR	71913
St. Jude Medical Center	101 East Valencia Mesa		Fullerton	CA	92838
St. Luke Hospital East.	85 N. Grand Avenue		Ft. Thomas	KY	41075
St. Luke Hospital West	7380 Turfway Road		Florence	KY	41042
St. Luke's Baptist Hospital	7830 Floyd Curl Drive		San Antonio	TX	78229
St. Luke's Community Medical Center (The Woodlands).	17200 St. Luke's Way		The Woodlands.	TX	77384
St. Luke's Episcopal Hospital	6720 Bertner Avenue		Houston	TX	77030
St. Lukes Hospital	363 Highland Avenue		Falls River	MA	02720
St. Lukes Hospital	901 Monclova Road		Maumee	OH	43537
St. Luke's Hospital	915 E. First Street		Duluth	MN	55805
St. Lukes Hospital & Health Network.	801 Ostrum Street		Bethlehem	PA	18088
St. Luke's Hospital-Mayo Clinic	4201 Belfort Road		Jacksonville	FL	32216
St. Lukes Medical Center	2901 West Oklahoma Avenue		Milwaukee	WI	53215–4330
St. Luke's Medical Center	1800 East Van Buren		Phoenix	AZ	85006
St. Luke's-Roosevelt Hospital Center.	1111 Amsterdam Avenue		New York City	NY	10025
ST. Marks Hospital/Northern Utah Healthcare Corp..	1200 East 3900 South		Salt Lake City	UT	84124
St. Mary Hospital	1201 Langhorne Newtown Road.		Langhorne	PA	19047
St. Mary Medical Center	18300 Highway 18		Apple Valley	CA	92307
St. Mary Medical Center	1050 Linden Avenue		Long Beach	CA	90813–3321
St. Mary Medical Center	1500 South Lake Park Avenue		Hobart	ID	46342
St. Mary of Nazareth Hospital Center.	2233 W. Division Street		Chicago	IL	60622
St. Mary's Health Center	6420 Clayton Road		St. Louis	MO	63117
St. Mary's Hospital	1800 East Lake Shore Drive		Decatur	IL	62521
St. Mary's Hospital	707 S. Mills Street		Madison	WI	53715–1849
St. Mary's Medical Center	901 45th Street		West Palm Beach.	FL	33407
St. Mary's Medical Center	407 East Third Street		Duluth	MN	55805
St. Mary's Medical Center	900 Oak Hill Avenue		Knoxville	TN	37917–4556
St. Mary's of Michigan	800 S. Washington Avenue		Saginaw	MI	48601
St. Mary's Regional Medical Center.	PO Box 291 Campus Avenue		Lewiston	ME	04243–0291
St. Michael's Medical Center	111 Central Avenue		Newark	NJ	07102
St. Nicholas Hospital	3100 Superior Avenue		Sheboygan	WI	53081
St. Patrick Hospital and Health Sciences Center.	500 W. Broadway		Missoula	MT	59802
St. Rose Hospital	27200 Calaroga Avenue		Hayward	CA	94539
St. Tammany Parish Hospital	1202 S. Tyler Street		Covington	LA	70433
St. Vincent Charity Hospital	2351 E. 22nd Street		Cleveland	OH	44115
St. Vincent Healthcare	1233 N. 30th Street		Billings	MT	59101
St. Vincent Hospital	810 St. Vincents Drive		Birmingham	AL	35205
St. Vincent Medical Center	2131 W. 3rd Street		Los Angeles	CA	90703
St. Vincent's Medical Center	1800 Barrs Street		Jacksonville	FL	32204
St. Vincent's East	50 Medical Park East Drive		Birmingham	AL	35235–3499
Stacia Hansen	45 Reade Place		Poughkeepsie	NY	12601
Stanford Hospital and Clinics	Falk Building 2nd Floor, 300 Pasteur Drive.		Stanford	CA	94305
Stony Brook University Medical Center.	3 Technology Drive		East Setauket	NY	11733–4073
Stormont-Vail Regional Medical Center.	1500 SW 10th Avenue		Topeka	KS	66604
Straub Clinic & Hospital: Cath Lab.	888 S King Street—Makai, 2nd Floor #22.		Honolulu	HI	96813
Stringfellow Memorial Hospital	301 East 18th Street		Anniston	AL	36202
Suburban Hospital	8600 Old Georgetown Road		Bethesda	MD	20814
Summerlin Hospital Medical Center.	657 Town Center Drive		Las Vegas	WI	89144
Summit Medical Center	East Main & South 20th Street		Van Buren	AR	72956
Sun Coast Hospital	2025 Indian Rocks Road		Largo	FL	33774
Sun Health Boswell Hospital	10401 West Thunderbird Boulevard.		Sun City	AZ	85351

Facility name	Address 1	Address 2	City	State	Zip
Sunrise Hospital and Medical Center.	3186 S. Maryland Parkway		Las Vegas	NV	89109
Sutter Delta Medical Center	3901 Lone Tree Way		Antioch	CA	94509
Sutter Medical Center—Sacramento.	PO Box 160727		Sacramento	CA	95819
Sutter Medical Center of Santa Rosa.	3325 Chanate Road		Santa Rosa	CA	95404
Swedish American Hospital	1401 E. State Street		Rockford	IL	61104
Swedish Covenant Hospital	5145 N. California Avenue		Chicago	IL	60625
Swedish Health Services	747 Broadway		Seattle	WA	98122
Swedish Medical Center	501 East Hampden Avenue		Englewood	CO	80113
T.J. Samson Community Hospital.	1301 North Race Street		Glasgow	KY	42141
Tacoma General Hospital (Multicare Health System).	315 Martin Luther King Jr. Way.		Tacoma	WA	98415
Tahlequah City Hospital	1400 East Downing Street		Tahlequah	OK	74465
Tallahassee Memorial Hospital	1310 N. Magnolia Drive		Tallahassee	FL	32308
Tampa General Hospital	PO Box 1289		Tampa	FL	33601
Temple University Hospital	3401 North Broad Street		Philadelphia	PA	19140
Terre Haute Regional Hospital	3901 South 7th Street		Terre Haute	IN	47802
Terrebonne General Medical Center.	8166 Main Street		Houma	LA	70360
Texoma Medical Center	1000 Memorial Drive		Denison	TX	75020
Texsan Heart Hospital	6700 IH–10 West		San Antonio	TX	78201
The Christ Hospital	2139 Auburn Avenue		Cincinnati	OH	45219
The George Washington University Hospital.	900 23rd Street NW		Washington	DC	20037
The Heart Hospital Baylor Plano.	1100 Allied Drive		Plano	TX	75093
The Heart Hospital of Northwest Texas.	1501 S. Coulter Street		Amarillo	TX	79106
The Hospital at Westlake Medical Center.	5656 Bee Caves Road, M–302		Austin	TX	78746
The Hospital of Central Connecticut.	100 Grand Street PO Box 100		New Britain	CT	06050
The Indiana Heart Hospital	8075 North Shadeland Avenue		Indianapolis	IN	46250
The Medical Center (TMC)	1000 Dutch Ridge Road		Beaver	PA	15009
The Medical Center Of Southeast Texas.	2555 Jimmy Johnson Boulevard.		Port Arthur	TX	77640
The Methodist DeBakey Heart Center.	6565 Fannin Street		Houston	TX	77030
The Monroe Clinic	515 22nd Avenue		Monroe	WI	53566
The Mount Sinai Hospital of Queens.	25–11 30th Avenue		Long Island City.	NY	11102
The Mount Sinai Medical Center.	Mountt Sinai Medical Center		New York	NY	10029
The Nebraska Medical Center	987551 Nebraska Medical Center.		Omaha	NE	68198
The Outpatient Cath Lab-BRCC.	5000 Hennessy Boulevard		Baton Rouge	LA	70808
The Outpatient Cath Lab-LCA	5000 Hennessy Boulevard		Baton Rouge	LA	70808
The Reading Hospital and Medical Center.	Sixth Avenue and Spruce Street.		West Reading	PA	19611
The Toledo Hospital	2142 North Cove Boulevard		Toledo	OH	43606
The Valley Hospital	223 North Van Dien Avenue		Ridgewood	NJ	07450
The Village Regional Hospital	1451 El Camino Real		The Villages	FL	32159
The Washington Hospital	155 Wilson Avenue		Washington	PA	15301–3398
The Western Pennsylvania Hospital.	4800 Friendship Avenue		Pittsburgh	PA	15224
The Wisconsin Heart Hospital, Inc..	WFH Clinical Data, 5000 West Chambers Street, M 229.	5000 West Chambers Street, M 229.	Milwaukee	WI	53210
Thomas Jefferson University Hospital.	TJUH	111 S. 11th Street Gibbon Building.	Philadelphia	PA	19107
Tift Regional Medical Center	PO Box 747		Tifton	GA	31794
Timpanogos Regional Hospital	750 W. 800 North		Orem	UT	84057
Tobey Hospital	363 Highland Avenue		Fall River	MA	02720
Tomball Regional Hospital	605 Holderrieth Street		Tomball	TX	77375
Torrance Memorial Medical Center.	3330 Lomita Boulevard		Torrance	CA	90505
Touro Infirmary Medical Center	1401 Foucher Street		New Orleans	LA	70115
Tri-City Medical Center	4002 Vista Way		Oceanside	CA	92056
Trident Regional Medical Center.	9330 Medical Plaza Drive		Charleston	SC	29406
Trinity Hospitals	PO Box 5020		Minot	ND	58702–5020

Facility name	Address 1	Address 2	City	State	Zip
Trinity Medical Center	800 Montclair Road		Birmingham	AL	35213
Trinity Medical Center	4602 3rd Street		Moline	IL	61265
Trinity Medical Center West	4000 Johnson Road		Steubenville	OH	43952
Trinity Regional Medical Center	802 Kenyon Road		Fort Dodge	IA	50501
Trinity Regional Medical Center	4602 3rd Street		Moline	IL	61265
Trover Foundation Regional Medical Center.	900 Hospital Drive		Madisonville	KY	42431
Tucson Heart Hospital	4888 North Stone Avenue		Tucson	AZ	85704
Tucson Medical Center	5301 Grant Road		Tucson	AZ	85712
Tufts-New England Medical Center.	750 Washington Street		Boston	MA	02111
Tulane University Hospital and Clinic.	1415 Tulane Avenue		New Orleans	LA	70112
Tulare District Hospital	869 Cherry Street		Tulare	CA	93274
Tuomey Healthcare System/ Tuomey Regional Medical Center.	129 N. Washington Street		Sumter	SC	29150
Twelve Oaks Medical Center	4200 Twelve Oaks Drive		Houston	TX	77027
UC San Diego Medical Center	200 W. Arbor Drive		San Diego	CA	92103
UMASS Memorial Medical Center.	55 Lake Avenue North		Worcester	MA	01655–0002
Union Hospital	1606 N. 7th Street		Terre Haute	IN	47804
Union Memorial Hospital	201 E. University Parkway		Baltimore	MD	21218–2891
United Health Services Hospitals/Wilson Regional Medical Center.	33–57 Harrison Street		Johnson City	NY	13790
United Hospital	333 Smith Avenue, North		Minneapolis	MN	55102
United Hospital Center, Inc.	PO Box 1680		Clarksburg	WV	26302–1680
United Hospital System	6308 8th Avenue		Kenosha	WI	53143
United Regional Healthcare System.	1600 11th Street		Wichita Falls	TX	76301
Unity Health Center	1102 West MacArthur		Shawnee	OK	74804
Unity Hospital	550 Osbourne Road NE		Minneapolis	MN	55432
Unity Hospital	1555 Long Pond Road		Rochester	NY	14626
University Community Hospital	3100 Fletcher Avenue		Tampa	FL	33613
University Hospital	620 19th Street South		Birmingham	AL	35249
University Hospital	1350 Walton Way		Augusta	GA	30901
University Hospital	234 Goodman Street		Cincinnati	OH	45219
University Hospitals Bedford Medical Center.	44 Blaine Avenue		Bedford	OH	44146
University Hospitals Case Medical Center.	11100 Euclid Avenue		Cleveland	OH	44106
University Hospitals Geauga Medical Center.	13207 Ravenna Road		Chardon	OH	44024
University Hospitals Richmond Medical Center.	27100 Chardon Road		Richmond Heights.	OH	44143
University Hospital UMDNJ	150 Bergen Street		Newark	NJ	07101
University Medical Center	1501 N. Campbell Avenue		Tucson	AZ	85724
University Medical Center	1411 Baddour Parkway		Lebanon	TN	37087
University Medical Center	602 Indiana Avenue		Lubbock	TX	79410
University Medical Center LSU	2390 W. Congress Street		Lafayette	LA	70506
University Medical Center of Las Vegas.	1800 W. Charleston Boulevard		Las Vegas	NV	89102
University of Arkansas Medical Sciences Physician R.	4301 West Markham Street, Suite 532.		Little Rock	AR	72205
University of California Irvine/ Division of Cardiology.	101 The City Drive		Orange	CA	92868–3298
University of California (UCLA)	10833 Le Conte Avenue		Los Angeles	CA	90095
University Of California Davis	2315 Stockton Boulevard, Main Hospital, Room 6312.		Sacramento	CA	95817
University of California San Francisco Medical Center.	513 Parnassus Avenue, Room S–1164-E.		San Francisco	CA	94143–0047
University of Chicago Hospitals	5841 S. Maryland Avenue		Chicago	IL	60637
University of Colorado Hospital Authority.	16205 E. 16th Avenue	Box 132	Aurora	CO	80045
University of CT Health Center/ John Dempsey Hospital.	263 Farmington Avenue		Farmington	CT	06030
University of Florida (Shands) College of Medicine.	1600 SW Archer Road		Gainesville	FL	32610
University of Illinois Medical Center at Chicago.	1740 W. Taylor Street, Building 949 Room 21.		Chicago	IL	60610
University of Iowa Hospitals and Clinics.	200 Hawkins Drive		Iowa City	IA	52242
University of Kentucky	800 Rose Street		Lexington	KY	40536

Facility name	Address 1	Address 2	City	State	Zip
University of Louisville Hospital	530 S. Jackson Street		Louisville	KY	40202
University of Maryland Medical Center Cardiology.	22 S. Greene Street		Baltimore	MD	21201–1544
University of Mississippi Medical Center.	2500 N. State Street		Jackson	MS	39216
University of Missouri Hospital and Clinics.	1 Hospital Drive		Columbia	MO	65212
University of North Carolina Hospitals.	UNC Hospitals	101 Manning Drive CB#7075	Chapel Hill	NC	27514
University of Rochester Medical Center.	601 Elmwood Avenue		Rochester	NY	14642
University of South Alabama Cardiology Department.	2451 Fillingim Street		Mobile	AL	36617
University of Tennessee Medical Center.	1924 Alcoa Highway		Knoxville	TN	37920–6999
University of Texas Medical Branch at Galveston.	301 University Boulevard		Galveston	TX	77555–0294
University of Texas Southwestern-University Hospital.	5323 Harry Hines Boulevard		Dallas	TX	75390–9013
University of Toledo Medical Center.	3065 Arlington Avenue	DH2261	Toledo	OH	43614
University of Utah Hospital and Clinic Division of.	50 North Medical Drive		Salt Lake City	UT	84132
University of Virginia Medical Center.	PO Box 800679		Charlottesville	VA	22908–0679
University of Washington Medical Center.	1959 NE Pacific Street		Seattle	WA	98195–6422
University of Wisconsin Hospital & Clinics.	600 Highland Avenue MC 3204.		Madison	WI	53792
UPMC Passavant Hospital	9100 Babcock Boulevard		Pittsburgh	PA	15237
UPMC Presbyterian Hospital	200 Lothrop Street		Pittsburgh	PA	15213
UPMC Shadyside Hospital	5230 Centre Avenue		Pittsburgh	PA	15232
Upper Chesapeake Medical Center, Inc..	500 Upper Chesapeake Drive		Bel Air	MD	21014
Upstate Medical University (SUNY).	750 East Adams Street		Syracuse	NY	13120
USC University Hospital	1500 San Pablo Street		Los Angeles	CA	90033
Utah Valley Regional Medical Center.	1034 North 500 West		Provo	UT	84604
Val Verde Regional Medical Center.	801 Bedell Avenue		Del Rio	TX	78840
Valley Baptist Medical Center	2101 Pease Street		Harlingen	TX	78550
Valley Baptist Medical Center-Brownsville.	1040 W. Jefferson Street		Brownsville	TX	78540
Valley Care Medical Center	1111 East Stanley Boulevard		Livermore	CA	94550
Valley Hospital Medical Center	620 Shadow Lane		Las Vegas	NV	89106
Valley Medical Center	400 South 43rd Street		Renton	WA	98058
Valley Presbyterian Hospital	15107 Vanowen Street		Van Nuys	CA	91405
Valley Regional Medical Center	100 Unit A East Alton Gloor Boulevard.		Brownsville	TX	78526
Valley View Medical Center	5330 S. Highway 95		Fort Mohave	NM	86427
Vanderbilt Heart Institute	1215 21st Avenue	MCE 5th Floor	Nashville	TN	37235
Vaughan Regional Medical Center.	1015 Medical Center Parkway		Selma	AL	36701
VCU-Medical College Of Virginia.	PO Box 980036		Richmond	VA	23298
Venice Regional Medical Center.	540 The Rialto		Venice	FL	34285
Verdugo Hills Hospital	1812 Verdugo Boulevard		Glendale	CA	91208
Via Christi Wichita Health Network.	929 N. St. Francis Street		Wichita	KS	67214
Virginia Hospital Center	1701 N. George Mason Drive		Arlington	VA	22205–3698
Virginia Mason Medical Center	1100 Ninth Avenue	X3–CVL	Seattle	WA	98111
W.A. Foote Memorial Hospital	205 N. East Avenue		Jackson	MI	49201
Wadley Regional Medical Center.	1000 Pine Street		Texarkana	TX	75501
WakeMed Cary Hospital	3128 Smoketree Boulevard		Raleigh	NC	27518
WakeMed Raleigh Campus	3000 New Bern Avenue		Raleigh	NC	27610
Walker Regional Medical Center.	3400 Highway 78 E		Jasper	AL	35501
Washington Adventist Hospital	7600 Carroll Avenue		Takoma Park	MD	20912
Washington County Hospital	251 East Antietam Street		Hagerstown	MD	21740
Washington Hospital	2000-Mowry Avenue		Fremont	CA	94538

Facility name	Address 1	Address 2	City	State	Zip
Washington Hospital Center	110 Irving Street, NW Room 5A14.		Washington	DC	20010
Washington Regional Medical Center.	1125 N College Avenue		Fayetteville	AR	72703–1994
Waterbury Hospital	PO Box 2153		Waterbury	CT	06722
Watsonville Community Hospital.	75 Nielson Street		Watsonville	CA	95076
Waukesha Memorial Hospital	725 American Avenue		Waukesha	WI	53188
Weatherford Regional Medical Center.	713 East Anderson Street		Weatherford	TX	76086
Weiss Memorial Hospital	4646 N. Marine Drive		Chicago	IL	60640
Wellmont Holston Valley Medical Center.	130 W. Ravine Street		Kingsport	TN	37664
Wellstar Cobb Hospital	531 Roselane Street		Marietta	GA	30060
Wellstar Kennestone Hospital	677 Church Street		Marietta	GA	30066
Wesley Medical Center	550 N. Hillside Street		Wichita	KS	67214
Wesley Medical Center	5001 Hardy Street		Hattiesburg	MS	39402
West Florida Hospital	8383 N. Davis Highway		Pensacola	FL	32514
West Hills Hospital	7300 Medical Center Drive		West Hills	CA	91307
West Houston Medical Center	12141 Richmond Avenue		Houston	TX	77082
West Jefferson Medical Center	1101 Medical Center Boulevard.		Marrero	LA	70072
West Suburban Medical Center	3 Erie Court		Oak Park	IL	60302
West Virginia University Hospitals Inc.	Box 8003	Medical Center Drive	Morgantown	WV	26506–8003
Westchester County Medical Center.	95 Grasslands Road, Suite 114.		Valhalla	NY	10595
Western Arizona Regional Medical Center.	2735 Silver Creek Road		Bullhead City	AZ	86442
Western Baptist Hospital	2501 Kentucky Avenue		Paducah	KY	42003
Western Medical Center Anaheim.	1025 South Anaheim Boulevard.		Anaheim	CA	92805
Western Medical Center Santa Ana.	1001 North Tustin Avenue		Santa Ana	CA	92705
Western Plains Medical Center	3001 Avenue A		Dodge City	KS	67801
Westside Regional Medical Center.	8201 West Broward Boulevard		Plantation	FL	33324
Wheaton Franciscan Healthcare-All Saints, Inc..	WFH Clinical Data, 5000 West Chambers Street, M229.	5000 West Chambers Street, M229.	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-St. Francis, Inc..	WFH Clinical Data, 5000 West Chambers Street, M229.	5000 West Chambers Street, M229.	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-St. Joseph, Inc..	WFH Clinical Data 5000 West Chambers Street, M229.	5000 West Chambers Street, M229.	Milwaukee	WI	53210
Wheeling Hospital	1 Medical Park		Wheeling	WV	26003
White County Medical Center	3214 E. Race Avenue		Searcy	AR	72143–4810
White Memorial Medical Center	1720 Cesar Chavez Avenue		Los Angeles	CA	90033
White River Medical Center	1710 Harrison Street		Batesville	AR	72501
William Beaumont Hospital	3601 West Thirteen Mile Road		Royal Oak	MI	48073
William Beaumont Hospital—Troy.	44201 Dequindre Road		Troy	MI	48085
William W. Backus Hospital	326 Washington Street		Norwich	CT	06360
Williamsport Hospital and Medical Center.	777 Rural Avenue		Williamsport	PA	17701
Willis-Knighton Medical Center	2600 Greenwood Road		Shreveport	LA	71103
Wilson Memorial Hospital	915 West Michigan Street		Sidney	OH	45365
Wilson N. Jones Medical Center.	500 N. Highland Avenue		Sherman	TX	75092
Winchester Medical Center, Inc..	220 Campus Boulevard	Suite 313	Winchester	VA	22601
Winter Haven Hospital	20005 Avenue F Northeast		Winter Haven	FL	33881
Winthrop University Hospital	259 First Street		Mineola	NY	11501
Wishard Health Services Attn: A/P.	1001 W. 10th Street		Indianapolis	IN	46202
Woman's Christian Association Hospital.	207 Foote Avenue		Jamestown	NY	14701
Woodland Heights Medical Center.	505 S. John Redditt Drive		Lufkin	TX	75904
Wuesthoff Health System	110 Longwood Avenue		Rockledge	FL	32956–5002
Wyckoff Heights Medical Center.	374 Stockholm Street		Brooklyn	NY	11237
Wyoming Medical Center	1233 East 2nd Street		Casper	WY	82601–2988
Wyoming Valley Health Care System.	575 North River Street		Wilkes-Barre	PA	18764

Facility name	Address 1	Address 2	City	State	Zip
Yakima Regional Medical Center/Cardiac Center.	110 South Ninth Avenue		Yakima	WA	98902
Yakima Valley Memorial Hospital.	2811 Tieton Drive		Yakima	WA	98902
Yale New Haven Hospital	20 York Street		New Haven	CT	65104
Yavapai Regional Medical Center.	1003 Willow Creek Road		Prescott	AZ	86301
York Hospital	15 Hospital Drive		York	ME	03909
York Hospital	1001 South George Street		York	PA	17405
Yuma Regional Medical Center	2400 S. Avenue A		Yuma	AZ	85364

Addendum X—Active CMS Coverage-Related Guidance Documents [July Through September 2007]

On September 24, 2004, we published a notice in the **Federal Register** (69 FR 57325), in which we explained how we would develop coverage-related guidance documents. These guidance documents are required under section 731 of the MMA. In our notice, we committed to the public that, "At regular intervals, we will update a list of all guidance documents in the **Federal Register**."

Addendum X includes a list of active CMS guidance documents as of the ending date of the period covered by this notice. To obtain full-text copies of these documents, visit the CMS Coverage Web site at *http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcd_1.*

Document Name: Factors CMS Considers in Commissioning External Technology Assessments
Date of Issuance: April 11, 2006

Document Name: Factors CMS Considers in Opening a National Coverage Determination
Date of Issuance: April 11, 2006

Document Name: (Draft) Factors CMS Considers in Referring Topics to the Medicare Coverage Advisory Committee
Date of Issuance: March 9, 2005

Document Name: National Coverage Determinations with Data Collection as a Condition of Coverage: Coverage With Evidence Development
Date of Issuance: July 12, 2006

Addendum XI—List of Special One-Time Notices Regarding National Coverage Provisions [July Through September 2007]

As medical technologies, the contexts under which they are delivered, and the health needs of Medicare beneficiaries grow increasingly complex, our national coverage determination (NCD) process must adapt to accommodate these complexities. As part of this adaptation, our national coverage decisions often include multi-faceted coverage determinations, which may place conditions on the patient populations eligible for coverage of a particular item or service, the providers who deliver a particular service, or the methods in which data are collected to supplement the delivery of the item or service (such as participation in a clinical trial).

We outline these conditions as we release new or revised NCDs. However, details surrounding these conditions may need to be shared with the public as "one-time notices" in the **Federal Register**. For example, we may require that a particular medical service may be delivered only in the context of a CMS-recognized clinical research study, which was not named in the NCD itself. We would then use Addendum XI of this notice, along with our coverage Web site at *http://www.cms.hhs.gov/coverage*, to provide the public with information about the clinical research study that it ultimately recognizes.

Addendum XI includes any additional information we may need to share about the conditions under which an NCD was issued as of the ending date of the period covered by this notice.

There were no Special One-Time Notices Regarding National Coverage Provisions published this quarter.

Addendum XII—National Oncologic PET Registry (NOPR)

In January 2005, we issued our decision memorandum on positron emission tomography (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the Registry. The following facilities have met the CMS's requirements for performing PET scans under National Coverage Determination CAG–00181N.

Facility name	Provider number	Date approved	State	Other information
Barnes—Jewish Hospital, Barnes—Jewish Plaza, Mailstop # 90–72–374, St. Louis, MO 63110.	E40080o	03/07/2006	MO	
Duke University Medical Center PET Facility, Room 0402 Duke So., Durham, NC 27710.	34003	03/07/2006	NC	Yellow Zone Box 3949.
VCU Health System—Molecular Imaging Center, Dept of Nuclear Medicine—North Hospital 7th Floor, Richmond, VA 23298.	490032	03/07/2006	VA	1300 East Marshall—PO Box 980001.
Acadiana Oncologic Imaging, 2311 Kaliste Saloom, Lafayette, LA 70508.	5CA64	03/06/2006	LA	
Adler Institute for Advanced Imaging, 261 Old York Road, Suite 106, Jenkintown, PA 19046.		03/07/2006	PA	
Advanced Medical Imaging San Saba, 215 N San Saba, Suite 107, San Antonio, TX 78207.	00BC90	03/07/2006	TX	
Advanced Medical Imaging Stone Oak, 540 Oak Centre, Suite 100, San Antonio, TX 78258.	00BC90	03/07/2006	TX	
Advanced Radiological PET Imaging, PC, 2334 30th Avenue, Astoria, NY 11102.	05677	03/07/2006	NY	Lower Level.

Facility name	Provider number	Date approved	State	Other information
Akron Regional PET Scan, LLC, 3009 Smith Road, Suite 350, Akron, OH 44333.	AKID01691	03/07/2006	OH	
American Radiology Services—Owings Mills, 21 Crossroads Drive, Suite 100, Owings Mills, MD 21117.	434L	03/07/2006	MD	
American Radiology Services—Bethesda, 6430 Rockledge Drive, Suite 100, Bethesda, MD 20817.	G00000	03/07/2006	MD	
American Radiology Services—Waldorf, 3510 Old Washington Road, Suite 101, Waldorf, MD 20602.	435L	03/07/2006	MD	
American Radiology Services—Columbia, 8820 Columbia Parkway, 100, Columbia, MD 21045.	434L	03/07/2006	MD	
American Radiology Services—Frederick, 141 Thomas Johnson Drive, Suite 170, Frederick, MD 21702.	435L	03/07/2006	MD	
American Radiology Services—Timonium, 2080 York Road, Suite 160, Timonium, MD 21093.	434L	03/07/2006	MD	
Angel Williamson Imaging Center—Ft. Walton Beach, 1013—D Mar—Walt Drive, Ft. Walton Beach, FL 32547.	39953A	03/07/2006	FL	
Angel Williamson Imaging Center—Pensacola, 5120 Bayou Boulevard, Suite 9, Pensacola, FL 32503.	39953	03/07/2006	FL	
Edison Imaging Center, 3900 Park Avenue, Suite 107, Edison, NJ 08820.	AS008835	03/07/2006	NJ	
Avon Medical Diagnostic Center, 1480 Center Road, Suite C, Avon, OH 44011.	MC4039571	03/07/2006	OH	
Baltimore Imaging Centers, 3708 Mountain Road, Pasadena, MD 21122.	H476	03/07/2006	MD	
Baptist Hospital PET/CT, 1000 West Moreno Street, Pensacola, FL 32501.	100093	03/07/2006	FL	
Bethesda Health City, 2623 S Seacrest Boulevard, Boynton Beach, FL 33435.	40237	03/07/2006	FL	
PET/CT Imaging at White Marsh, 9900 Franklin Square Drive, Suite D, Nottingham, MD 21236.	FMNX01	03/07/2006	MD	
Biomedical Research Foundation PET Imaging Center, 1505 Kings Highway, Shreveport, LA 71103.	5D914	03/07/2006	LA	
BodyScan of Louisville LLC, 807 Shelbyville Road, Suite 201, Louisville, KY 40222.	9372701	03/07/2006	KY	
Bradley Regional PET Imaging, Cleveland, TN 37311	3373976	03/07/2006	TN	2305 Chambliss Ave NW.
PET Imaging Institute of NJ, 1608 Rte 88 West, Suite 302, Brick, NJ 08724.	070684	03/07/2006	NJ	
Broward PET Imaging Center, LLC, 4850 W. Oakland Park Boulevard, Suite A, Fort Lauderdale, FL 33313.	E5709	03/07/2006	FL	
Camelback Imaging, 15215 S. 48th Street, #110, Phoenix, AZ 85044.	100488	03/07/2006	AZ	
California Imaging and Treatment Center, 3000 Oak Road, #111, Walnut Creek, CA 95497.	ZZZ27175Z	03/07/2006	CA	
Cancer Care Centers of Brevard, 1430 S Pine Street, Melbourne, FL 32901.	39835	03/07/2006	FL	
Center for Medical Imaging—Florida Hospital, 1922 Salk Avenue, Tavares, FL 32778.	100057	03/07/2006	FL	
Cancer Center of Colorado Springs, 320 E. Fontanero, Suite 200, Colorado Springs, CO 80907.	79804	03/07/2006	CO	
Centro Sononuclear de Rio Piedras, 1028 Los Angeles Street, San Juan, PR 00926.	83910	03/07/2006	PR	
Chattanooga Imaging East, 1710 Gunbarrel Road, Chattanooga, TN 37421.	3716643	03/07/2006	TN	
Chester County PET Associates, 701 East Chester Marshall Street, West Chester, PA 19380.	085698	03/07/2006	PA	
Cincinnati PET Scan, LLC—Kenwood, 7730 Montgomery Road, Suite 120, Cincinnati, OH 45236.	311754291	03/07/2006	OH	
Cincinnati PET Scan, LLC, Monfort Heights, 5575 Cheviot Road, Cincinnati, OH 45247.	311754291	03/07/2006	OH	
Clinical PET of Hernando, 4003 Mariner Boulevard, Spring Hill, FL 34609.	L13228	03/07/2006	FL	
Clinical PET of Citrus, 6140 W Corporate Oaks Drive, Crystal River, FL 34429.	U0121	03/07/2006	FL	
Clinical PET of Lake City, 484 SW Commerce Drive, Suite 145, Lake City, FL 32025.	V2683	03/07/2006	FL	
Clinical PET of Ocala, 3143 SW 32nd Avenue, Suite 100, Ocala, FL 34474.	E7179	03/07/2006	FL	
Columbus Regional Hospital, 2400 East 17th Street, Columbus, IN 47201.	150112	03/07/2006	IN	
Concord Imaging, 18802 Meisner Drive, San Antonio, TX 78258.	00126Z	03/07/2006	TX	
Dartmouth Hitchcock Medical Center, One Medical Center Drive, Lebanon, NH 03756.		03/07/2006	NH	

Facility name	Provider number	Date approved	State	Other information
Dedicated PET Imaging, 2315 Sunset Boulevard, Suite E, Steubenville, OH 43952.	01181	03/07/2006	OH	
Diablo Valley Oncology & Hematology Medical Group, 3000 Oak Road, #111, Walnut Creek, CA 94597.	ZZZ26796Z	03/07/2006	CA	
Diagnostic Imaging at Baywalk, 129 1st Avenue N, St. Petersburg, FL 33701.	00022	03/07/2006	FL	
DMS Imaging, 2101 N. University Drive, Fargo, ND 58109		03/07/2006	ND	P.O. Box 8070.
Doylestown PET Associates, 599 W. State Street, Doylestown, PA 18901.	059536	03/07/2006	PA	Suite 202.
East Bay Medical Oncology—Hematology Assoc., Inc, 3000 Oak Road, #111, Walnut Creek, CA 94597.	ZZZ267792	03/07/2006	CA	
East River Medical Imaging, 519 East 72 Street, Suite 103, New York, NY 10021.	W11781	03/07/2006	NY	
El Camino Imaging Center, 8020 Constitution Place, NE., Albuquerque, NM 87110.	237150	03/07/2006	NM	
Elite Imaging, LLC, 2845 Aventura Boulevard, Suite 145, Aventura, FL 33180.	K3535	03/07/2006	FL	
EPIC Imaging Center, 233 NE 102nd Avenue, Portland, OR 97220.	0000WCGNQ	03/07/2006	OR	
Evergreen Radia, 11521 NE 128th Street, Kirkland, WA 98034.	GAB39931	03/07/2006	WA	
Excel Diagnostics Imaging Clinics, 9701 Richmond Avenue, Suite 122, Houston, TX 77042.	FTA109	03/07/2006	TX	
First Imaging of the Carolinas, 30 Memorial Drive, Pinehurst, NC 29374.	2346997	03/07/2006	NC	
Florida Hospital Advanced Nuclear Imaging PET, 328 Spruce Street, Orlando, FL 32804.	100007	03/07/2006	FL	
Fort Jesse Imaging Center, LLC, 2200 Fort Jesse Road, Suite 120, Normal, IL 61761.	209824	03/07/2006	IL	
Fox Chase Cancer Center, 333 Cotman Avenue, Philadelphia, PA 19111.	390196	03/07/2006	PA	
Frederick Imaging Centers, 46B Thomas Johnson Drive, Frederick, MD 21702.	H476	03/07/2006	MD	
Fusion Diagnostic Group, LLC, 1700 California Street, Suite 260, San Francisco, CA 94109.	00G366470	03/07/2006	CA	
Fusion Imaging Institute, 2419 E. Commercial Boulevard, Suite 101, Ft. Lauderdale, FL 33308.	18281	03/07/2006	FL	
Future Diagnostics Group, 254 N. Republic Avenue, Joliet, IL 60435.	200825	03/07/2006	IL	
Greater Niagra PET, LLC, 1 Columbia Drive, Suite 3, Niagra Falls, NY 14305.	BA0213	03/07/2006	NY	Witmer Park Medical Center.
Hematology Oncology Associates of Baton Rouge, 4950 Essen Lane, Baton Rouge, LA 70809.	5C696	03/07/2006	LA	
Gulf Coast Cancer & Diagnostic of Southeast, 12811 Beamer Road, Houston, TX 77089.	149949301	03/07/2006	TX	
Henry Ford, Department of Radiology, 2799 W. Grand Boulevard, Detroit, MI 48202.	230053	03/07/2006	MI	
High Point Regional Health System, 601 N. Elm Street, High Point, NC 27262.	3400040	03/07/2006	NC	
Highlands Oncology Group, 3232 N. North Hills Boulevard, Fayetteville, AR 27203.	5B823	03/07/2006	AR	
Holy Name Hospital, 718 Teaneck Road, Teaneck, NJ 07666	310008	03/07/2006	NJ	PET/CT Center.
Holy Family Memorial Medical Center, PO Box 1450, Manitowoc, WI 54221.	520107	03/07/2006	WI	2300 Western Ave.
Hospital of Saint Raphael, 1450 Chapel Street, New Haven, CT 05611.	070001	03/07/2006	CT	
San Patricio MRI & CT Center, 1508 Roosevelt Avenue, Suite 103, San Juan, PR 00920.	84997	03/07/2006	PR	
Imaging Center of Hartford Hospital, 80 Seymour Street, PO Box 5037, Hartford, CT 06102.	070025	03/07/2006	CT	
Indian Wells PET/CT Center, 74785 Highway 111, #101, Indian Wells, CA 92210.	1264523891	03/07/2006	CA	
Imaging Technology Associates, 3800 Reservoir Road, NW., Washington, DC 20007.	FDNCX1	03/07/2006	DC	Gorman 2043, PET Scan.
San Francisco Magnetic Resonance Center, 1180 Post Street, San Francisco, CA 94109.	ZZZ27498Z	03/07/2006	CA	
Intermountain Medical Imaging, 2929 E Magic View Drive, Meridian, ID 83642.	82–05144–22	03/07/2006	ID	
Jefferson Center City Imaging, 850 Walnut Street, Philadelphia, PA 19107.	66277	03/07/2006	PA	
Kansas City Cancer Center—Kansas, 12200 W. 110th Street, Overland Park, KS 66210.	5650000D	03/07/2006	KS	
Kansas City Cancer Center—Missouri, 4881 Goodview Circle, Lee's Summit, MO 66064.	5650000E	03/07/2006	MO	

Facility name	Provider number	Date approved	State	Other information
Kreitchman PET Center, 180 Ft. Washington Avenue, HP3–315, New York, NY 10032.	WEM661	03/07/2006	NY	
LakePointe PET, 10914 Hefner Pointe Drive, Suite 100, Oklahoma City, OK 73120.	700522143	03/07/2006	OK	
Lakeshore PET Imaging, LLC, 4932 W 95th Street, Oak Lawn, IL 60453.	200108	03/07/2006	IL	
Larchmont Imaging Associates, LLC, 210 Ark Road, Mt. Laurel, NJ 08054.	517216	03/07/2006	NJ	
Las Cruces PET/CT Imaging, 1121 Mall Drive, Suite D, Las Cruces, NM 88011.	300521065	03/07/2006	NM	
Lehigh Valley Diagnostic Imaging PET/CT, 1230 S. Cedar Crest Boulevard, Suite 104, Allentown, PA 18103.	563802	03/07/2006	PA	
LifeScan Louisville, LLC, 4046 Dutchmans Lane, Louisville, KY 40207.	9365601	03/07/2006	KY	
Limerick PET Associates, 420 W. Linfield—Trappe Road, Limerick, PA 19468.	075015	03/07/2006	PA	Suite 3400, Third Floor, Rear.
LifeScan Minnesota, 6525 France Avenue S, Suite 225, Edina, MN 55435.	470000014	03/07/2006	MN	
Louisiana PET Imaging of Alexandra, LLC, 5419 A Jackson Street Exit, Alexandria, LA 71303.	5C743	03/07/2006	LA	
LMR PET, 12600 Creekside Lane, Ft. Meyers, FL 33919	E5725	03/07/2006	FL	
Louisiana PET Imaging of Lake Charles, LLC, 1750 Ryan Street, Lake Charles, LA 70601.	5C905	03/07/2006	LA	
Insight Diagnostic Center—Forest Lane, 11617 N. Central Expressway, #132, Dallas, TX 75243.	FTA016	03/07/2006	TX	
MDI of Thousand Oaks, 300 Lombard Street, Thousand Oaks, CA 91360.	W14186	03/07/2006	CA	
Meadowbrook PET Associates, 1695 Huntington Pike, Meadowbrook, PA 19046.	064866	03/08/2006	PA	
Medical Imaging of Baltimore, 6715 N. Charles Street, Baltimore, MD 21204.	258L	03/08/2006	MD	
Metabolic Imaging of Laredo, 2344 Laguna Del Mar, Suites 5 & 6, Laredo, TX 78045.	FTN029	03/08/2006	TX	
Methodist Hospital PET Imaging Center, 301 W. Huntington Drive, Suite 120, Arcadia, CA 91007.	9511643336	03/08/2006	CA	
Metro Region PET Center at Chevy Chase, 5454 Wisconsin Avenue, Suite 810, Chevy Chase, MD 20815.	724811	03/08/2006	MD	
Clinical PET of St. Charles County, 1475 Kisker Road, St. Charles, MO 63304.	000047047	03/08/2006	MO	
Metro Region PET Center at Woodburn Nuclear Medicine, 3289 Woodburn Road, Annandale, VA 22003.	724811	03/08/2006	VA	
Michiana Hematology—Oncology, PC, 100 Navarre Place, Suite 5550, South Bend, IN 46601.	216950	03/08/2006	IN	
Michigan State University—Radiology, 184 Radiology Building, East Lansing, MI 48824.	OC36350	03/08/2006	MI	
Clinical PET of West County, 450 N. New Ballas Road, Creve Coeur, MO 63141.	000093043	03/08/2006	MO	
Modality Integration Services, Inc., 1854 SW Greenway Circle, West Linn, OR 97068.		03/08/2006	OR	
Molecular Imaging Center, 1733 Curie Drive, Suite 305, El Paso, TX 79912.	00315U	03/08/2006	TX	
Molecular Imaging of Suburban Chicago, LLC 908 N. Elm Street, Suite 110, Hinsdale, IL 60521.	212300	03/08/2006	IL	
Montclair Road Imaging LLC, 924 Montclair Road Suite 108, Birmingham, AL 35213.	000056277	03/08/2006	AL	
Montefiore Medical Center, 1695A Eastchester Road, Bronx, NY 10461.	W06552	03/08/2006	NY	
Neurodiagnostics, PSC, 1725 Harrodsburg Road, Suite 100, Lexington, KY 40504.	0406	03/08/2006	KY	
New Century Imaging, 555 Kinderkamack Road, Oradel, NJ 07649.	085146	03/08/2006	NJ	
Newport Diagnostic Center, 1605 Avocado Avenue, Newport Beach, CA 92660.	W13396	03/08/2006	CA	
Next Generation Radiology PET/CT, 560 Northern Boulevard, Suite 111, Great Neck, NY 11021.	WR6091	03/08/2006	NY	
North Valley MRI and CT, 1638 Esplanade, Chico, CA 95926	ZZZ247802	03/08/2006	CA	
Northwest Alabama Cancer Center Radiology Services, 302 W. Dr. Hicks Boulevard, Florence, AL 35630.	051552219	03/08/2006	AL	
Northern Kentucky PET Scan, LLC 651 Centre View Boulevard, Crestview Hills, KY 41017.	311754291	03/08/2006	KY	
Northwest Cancer Center, 17323 Red Oak Drive, Houston, TX 77090.	00D29C	03/08/2006	TX	
Northwestern Memorial Hospital, 251 East Huron Street, Chicago, IL 60611.	140281	03/08/2006	IL	Galter 8–113.

Facility name	Provider number	Date approved	State	Other information
Northern Shared Medical Services—Atlantic IA, 1501 East Tenth Street, Atlantic, IA 50022.	I16068	03/08/2006	IA	Cass County Memorial Hospital.
Northern Shared Medical Services—Audubon IA, 515 Pacific Street, Audubon, Iowa 50025.	I16068	03/08/2006	IA	Audobon County Memorial Hospital,
Northern Shared Medical Services—Beloit, KS 400 West Eighth, Beloit, KS 67420.	130618	03/10/2006	KS	Mitchell County Hospital.
Northern Shared Medical Services—Bloomfield, IA, 507 North Madison Street, Bloomfield, IA 52537.	I16068	03/10/2006	KS	Davis County Hospital.
Northern Shared Medical Services—Carrollton, MO, 1502 North Jefferson, Carrollton, MO 64633.	000047013	03/10/2006	MO	Carroll County Memorial Hospital.
Northern Shared Medical Services—Centerville IA, 1st St. Joseph Drive, Centerville, IA 52544.	I16068	03/10/2006	IA	Mercy Medical Center.
Northern Shared Medical Services—Carthage, IL, 160 S. Adams Street, Carthage, IL 62321.	208196	03/10/2006	IL	Memorial Hospital.
Northern Shared Medical Services—Clarinda, IA, 823 S. 17th Street, Clarinda, IA 51632.	I16068	03/10/2006	IA	Clarinda Regional Health Center.
Northern Shared Medical Services—Chanute, KS, 629 South Plummer, Chanute, KS 66720.	130618	03/10/2006	KS	Neosho Memorial Regional Medical Center.
Northern Shared Medical Services—Edwardsville, IL, 1121 University Drive, Edwardsville, IL 62025.	208196	03/10/2006	IL	Edwardsville Health Center.
Northern Shared Medical Services—El Dorado, AR, 700 West Grove Street, El Dorado, AR 71730.	5F168	03/10/2006	AR	Medical Center of South Arkansas.
Northern Shared Medical Services—Farmington, MO, 1212 Weber Road, Farmington, MO 63640.	000047013	03/10/2006	MO	Mineral Area Regional Medical Center.
Northern Shared Medical Services—Janesville, WI, 1321 Creston Park Drive, Janesville, WI 53545.	000092420	03/10/2006	WI	Janesville Occupational Health & Medical Center.
Northern Shared Medical Services—Hiawatha, KS, 300 Utah Street, Hiawatha, KS 66434.	130618	03/10/2006	KS	Hiawatha Community Hospital.
Northern Shared Medical Services—Keokuk, IA, 1600 Morgan Street, Keokuk, IA 52632.	I16068	03/10/2006	IA	Keokuk Area Hospital.
Northern Shared Medical Services—Macomb, IL, 525 East Grant Street, Macomb, IL 61455.	208196	03/10/2006	IL	McDonough District Hospital.
Northern Shared Medical Services—Mexico, MO, 620 East Monroe Street, Mexico, MO 65265.	000047013	03/10/2006	MO	Audrain Medical Center.
Northern Shared Medical Services—Moberly, MO, 1515 Union Avenue, Moberly, MO 65270.	000047013	03/10/2006	MO	Moberly Regional Medical Center.
Northern Shared Medical Services—Mountain Home, AR, 899 Burnett Drive, Mountain Home, AR 72653.	5F168	03/10/2006	AR	Cogburn Cancer Clinic.
Northern Shared Medical Services—Poplar Bluff, MO, 221 Physicians Park Drive, Poplar Bluff, MO 63901.	000047013	03/10/2006	MO	Poplar Bluff Medical Partners.
Northern Shared Medical Services—Perryville, MO, 434 North West Street, Perryville, MO 63775.	000047013	03/10/2006	MO	Perry County Memorial Hospital.
Northern Shared Medical Services—Rolla, MO, 1000 West Tenth Street, Rolla, MO 65401.	000047013	03/10/2006	MO	Phelps Co Regional Medical Center.
Northern Shared Medical Services—Virginia, MN, 901 Ninth Street North, Virginia, MN 55792.	470000057	03/10/2006	MN	Virginia Regional Medical Center.
Northern Shared Medical Services—Russellville, AR, 2504 West Main Street, Russellville, AR 72801.	5F168	03/10/2006	AR	Russellville Land Co.
Northern Shared Medical Services—West Plains, MO, 1100 Kentucky Avenue, West Plains, MO 65775.	000047013	03/10/2006	MO	Ozarks Medical Center.
Oakwood Hospital Medical Center, 18101 Oakwood Boulevard, Dearborn, MI 48124.	230020	03/10/2006	MI	.....
Oakwood Southshore Medical Center, 5450 Fort Street, Trenton, MI 48183.	230176	03/10/2006	MI	.....
Ocean Medical Imaging Center, 21 Stockton Drive, Toms River, NJ 08755.	158432	03/10/2006	NJ	.....
Orange County Regional PET Center, LLC, 16300 Sand Canyon Avenue, Suite 103, Irvine, CA 92618.	TP018	03/10/2006	CA	.....
Orange Advanced Imaging Center, 230 Main Street, #101, Orange, CA 92868.	TP016A	03/10/2006	CA	.....
Pacific Coast Imaging—Irvine, 250 E Yale Loop, Suite A, Irvine, CA 92604.	WG87478B	03/10/2006	CA	.....
Pacific Coast Imaging—Newport, 3300 West Coast Highway, Newport Beach, CA 92663.	WG87478	03/10/2006	CA	.....
Pacific Imaging and Treatment Center, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	TP126	03/10/2006	CA	.....
Palm Beach Cancer Institute, 1395 State Road 7, Suite 310, Wellington, FL 33414.	34754	03/10/2006	FL	.....

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Pennsylvania PET Associates, 800 Spruce Street, Philadelphia, PA 19107.	066282	03/10/2006	PA	Second Floor, Widener Building.
PET Center of Western NY, 127 North Street, Batavia, NY 14020.	187140	03/10/2006	NY	
PET Imaging at CDR, 7600 N. 15th Street, Suite 102, Phoenix, AZ 85020.	WCFDG	03/10/2006	AZ	
PET Imaging at the Lake, 5000 Hennessy Boulevard, Baton Rouge, LA 70809.	5C868	03/10/2006	LA	
PET Imaging Center at Harford County, 602 S Atwood Road, Suite 201, Bel Air, MD 21014.	FMN006	03/10/2006	MD	
PET Imaging Institute of South Florida—East, 150 N 35th Avenue, 665 Hollywood, FL 33021.	E3783	03/10/2006	FL	
PET Imaging Institute of South Florida—West, 603 N Flamingo Road, S–155, Pembroke Pines, FL 33028.	E3783	03/10/2006	FL	
PET Scan Arizona—Peoria, 13460 N 94th Drive, Suite J1, Peoria, AZ 85381.	75400	03/10/2006	AZ	
PET Scan Arizona—Phoenix, 6036 N 19th Avenue, Suite 305, Phoenix, AZ 85015.	66860	03/10/2006	AZ	
PET/CT Diagnostic Medical Imaging, PC, 1200 Waters Place, Suite M108, Bronx, NY 10461.	W31091	03/10/2006	NY	
Precision Imaging, 4416 East West Highway, Suite 410, Bethesda, MD 20814.	FMN005	03/10/2006	MD	
Preferred PET Imaging of Kansas, LLC, 928 N. St. Francis Street, Wichita, KS 67214.	110693	03/10/2006	KS	
Premium Diagnostics Center, 5319 Hoag Drive, Suite 130, Elyria, OH 44035.	ID01851	03/10/2006	OH	
PET Center Ft. Worth, 800 W. Magnolia Avenue, Fort Worth, TX 76104.	0J062	03/10/2006	TX	Suite 100.
Radiology Associates, LLP, 6001 S. Staples Street, Corpus Christi, TX 78413.	00E816	03/10/2006	TX	
S. Arlington Imaging Center, 4601 Matlock Road, Arlington, TX 76018.	0J062	03/10/2006	TX	
Radiology Group Imaging Center, LLC, 1970 E. 53rd Street, Davenport, IA 52807.	16031	03/10/2006	IA	
PET/CT Scan Center Pembroke, 11325 Pembroke Square, Suite 116, Waldorf, MD 20603.	521454775	03/10/2006	MD	
New York MedScan, 751 Second Avenue, New York, NY 10017.	978701	03/10/2006	NY	
Rex Healthcare, 4420 Lake Boone Trail, Raleigh, NC 27607	340114	03/10/2006	NC	
San Fernando Regional PET Center, 6855 Noble Avenue, Van Nuys, CA 91405.	TP078	03/10/2006	CA	
PET/CT Imaging Center of Northwest Florida, 5149 North 9th Avenue Suite 124, Pensacola, FL 32504.	U4696	03/10/2006	FL	
Saint Joseph's Hospital—Nuclear Medicine, 611 St. Joseph Avenue, Marshfield, WI 54449.	520037	03/10/2006	WI	
Shared PET Imaging, LLC—Brooklyn NY, 6300 Eighth Avenue, Brooklyn, NY 11220.	97Z661	03/10/2006	NY	
SC Cancer Specialists, 25 Hospital Center Boulevard, #301, Hilton Head Island, SC 29926.	1285633289	03/10/2006	SC	
Shared PET Imaging, LLC—Granger IN, 6901 N. Main Street, Granger, IN 46530.	232800	03/10/2006	IN	
University Hospital—Cincinnati, Eden Avenue & Albert Sabin Way, Cincinnati, OH 45219.		03/10/2006	OH	
Shared PET Imaging, LLC—Marion OH, 1050 Delaware Avenue, Marion, OH 43302.	ID01511	03/10/2006	OH	
Shared PET Imaging, LLC—Terre Haute IN, 3702 South Fourth Street, Terre Haute, IN 47802.	201320	03/10/2006	IN	
South Jersey Radiology Associates, PA, 100 Carnie Boulevard, Suite B5, Voorhees, NJ 08043.	S0429966	03/10/2006	NJ	
Southwest PET/CT Institute—Tucson, 3503 N. Campbell, Suite 155, Tucson, AZ 85719.	1396736922	03/10/2006	AZ	
Southwest PET/CT Institute—Yuma, 1951 W. 25th Street, Suite G, Yuma, AZ 85364.	106077	03/10/2006	AZ	
St. Francis Health Center, 1700 SW 7th Street, Topeka, KS 66606.	17–0016	03/10/2006	KS	
Southwoods PET Scan, LLC, 250 Debartolo Place, Building B, Youngstown, OH 44512.	PCN05210036	03/10/2006	OH	
St. Louis PET Centers, LLC, 12637 Olive Boulevard, Creve Coeur, MO 63376.	1861470734	03/10/2006	MO	
St. Vincent's PET Center, LLC, 2660 10th Avenue S, POBI, Suite 104, Birmingham, AL 35205.	051555054	03/10/2006	AL	
Sun Molecular Imaging—Peoria, 13090 N. 94th Drive, #103, Peoria, AZ 85381.	71585	03/10/2006	AZ	

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Sun Molecular Imaging—Sun City West, 13909 W Camino Del Sol, #101, Sun City West, AZ 85375.	71585	03/10/2006	AZ	
Tarzana Advanced Imaging, 5536 Reseda Boulevard, Tarzana, CA 91356.	TP051A 03/10/2006	CA		
The Methodist Hospital PET Center 6565 Fannin Street MBI–066 Houston, TX 77030.	450358	03/10/2006	TX	
Texarkana PET Imaging Institute, LP 1929 Moores Lane Texarkana, TX 75503.	FTN008	03/10/2006	TX	
The PET/CT Center of North Florida 5742 Booth Road Jacksonville, FL 32207.	K7038P	03/10/2006	FL	
The Washington Hospital 155 Wilson Ave., Washington, PA 15301.	390042	03/10/2006	PA	
The PET/CT Scanning Center 235 18th Street, SE Hickory, NC 28602.	2881788	03/10/2006	NC	
Thompson Cancer Survival Center PET Imaging Center 9711 Sherrill Boulevard Knoxville, TN 37923.	3791106	03/10/2006	TN	
Thunderbird MRI and PET Center 6591 W. Thunderbird Road Suite A–1 Glendale, AZ 85306.	79467	03/10/2006	AZ	
Tower Imaging Roxsan 465 N. Roxbury Drive Suite 101 Beverly Hills, CA 90210.	TP114	03/10/2006	CA	
Tower Hematology Oncology Medical Group 9090 Wilshire Boulevard Suite 200 Beverly Hills, CA 90211.	W11793	03/10/2006	CA	
TRA Medical Imaging 2202 S Cedar Suite 200 Tacoma, WA 98405.	001055600	03/10/2006	WA	
Trident PET of Fayette 1275 Highway 54 West Suite 102 Fayetteville, GA 30214.	47BBBJJ	03/10/2006	GA	
Trident PET of Gwinnett 545 Old Norcross Road Lawrenceville, GA 30045.	47BBBGX	03/10/2006	GA	Suite 200.
Trident PET of Savannah 7135 Hodgson Memorial Drive Savannah, GA 31406.	47BBBKP	03/10/2006	GA	Suite 10A.
Tristan Associates 4520 Union Deposit Road Harrisburg, PA 17111.	112344	03/10/2006	PA	
Union Square Diagnostic Imaging 144 Fourth Avenue New York, NY 10003.	WR7502	03/10/2006	NY	
UCLA—Dept. of Molecular & Medical Pharmacology 10833 Le Conte Avenue Los Angeles, CA 90095.	HW13029	03/10/2006	CA	AR–115–CHS.
University Nuclear Medicine, Inc. 105 Parker Hall Buffalo, NY 14214.	14414A	03/10/2006	NY	3435 Main St.
University Radiology Group 75 Veronica Avenue Suite 102 Somerset, NJ 08873.	425699	03/10/2006	NJ	
Anne Arundel Medical Center 2001 Medical Parkway Annapolis, MD 21401.	210023	03/10/2006	MD	
US Imaging Center Corp., LLC 842 Sunset Lake Boulevard Suite 301 Venice, FL 34292.	U0331	03/10/2006	FL	
USC PET Imaging Science Center 1510 San Pablo Street Suite 350 Los Angeles, CA 90033.	W11874	03/10/2006	CA	
Rolling Oaks Radiology 415 Rolling Oak Drive, Suite 160 Thousand Oaks, CA 91361.	W10746	03/10/2006	CA	
Vero Radiology Associates, Inc. 777 37th Street Suite A–103 Vero Beach, FL 32960.	97445	03/10/2006	FL	
Ventura Coast Imaging Center 4601 Telephone Road Suite 101 Ventura, CA 93003.	W11335	03/10/2006	CA	
Washington Imaging Services, LLC 1135–116th Avenue, NE Bellevue, WA 98004.	GAB23386	03/10/2006	WA	
Washington Hospital Center 110 Irving Street, NW Washington, DC 20010.	090011	03/10/2006	DC	
Washoe Med Imaging Services at 75 Kirman 75 Kirman Avenue Reno, NV 89502.	WCHBB	03/10/2006	NV	
Wesley Long Hospital—Moses Cone Health System 501 North Elam Avenue Greensboro, NC 27403.	34–0091	03/10/2006	NC	
Westcoast Radiology 36463 U.S. Highway, 19 N. Palm Harbor, FL 34684.	E4187	03/10/2006	FL	
Western Washington Oncology 4525 3rd Avenue SE Lacey, WA 98503.	1497749642	03/10/2006	WA	
Windber Medical Center 600 Somerset Avenue Windber, PA 15963.	390112	03/10/2006	PA	
Wyoming Valley PET Associates, 190 Welles Street, Forty Fort, PA 18704.	045012	03/10/2006	PA	
Youngstown Regional PET Scan, 850 McKay Court, Youngstown, OH 44512.	Y0ID0174	03/10/2006	OH	
X-RAY Associates at Santa Fe, 490 A West Zia Road, Suite 130, Santa Fe, NM 87505.	2258263	03/10/2006	NM	
Sibley Memorial Hospital, 5255 Loughboro Road, NW., Washington, DC 20016.	090005	03/10/2006	DC	

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Lerman Diagnostic Imaging, 6511 Fort Hamilton Parkway, Brooklyn, NY 11215.	16H771	03/10/2006	NY	
XRC Medical Imaging, 53940 Carmichael Drive, South Bend, IN 46635.	187390	03/10/2006	IN	
St. Luke's Hospital, 1026 A. Avenue, NE., Cedar Rapids, IA 52406–3026.	160045	03/10/2006	IA	P.O. Box 3026.
University Imaging at Science Park, 110 Science Parkway, Suite 100, Rochester, NY 14620.	16624A	03/10/2006	NY	
Kadlec Medical Center/Nuclear Medicine Dept., 945 Goethals Street, Richland, WA 99352.	1972507580	03/10/2006	WA	
Central Georgia PET, LLC, 1650 Hardmon, Macon, GA 31201.	47BBBKC	03/10/2006	GA	
PET/CT Imaging at Swedish Cancer Institute, 1221 Madison Street, First Floor, Seattle, WA 98104.	8857387	03/10/2006	WA	
National PET Scan Duval, LLC, 425 North Lee Street, Jacksonville, FL 32204.	E7348	03/10/2006	FL	
National PET Scan Pinellas, LLC, 805 Executive Center Drive W, St. Petersburg, FL 33702.	E7503	03/10/2006	FL	
National PET Scan Dade, LLC, 7867 North Kendall Drive, Suite 121, Miami, FL 33156.	E5427	03/10/2006	FL	
National PET Scan Broward, LLC, 6290 North Federal Highway, Fort Lauderdale, FL 33308.	E5432	03/10/2006	FL	
Scottsdale Medical Imaging, Ltd., 7624 E. Indian School Road, Suite 109–1, Scottsdale, AZ 85251.	WCFKX	03/10/2006	AZ	
Lakes Regional General Hospital, 80 Highland Street, Laconia, NH 03246.	300005	03/10/2006	NH	
Northern California PET Imaging Center, 3195 Folsom Boulevard, Sacramento, CA 95816.	ZZZ15725Z	03/10/2006	CA	
Northern California PET Imaging Center—Mobile, 3195 Folsom BoulevardSacramento, CA 95816.	ZZZ25157Z	03/10/2006	CA	
Northern California PET Imaging Center—VAPA, 3801 Miranda Avenue, Palo Alto, CA 94304.	ZZZ21308Z	03/10/2006	CA	
Advanced Medical Imaging, 3548 Route 9 South, Old Bridge, NJ 08857.	595865	03/10/2006	NJ	
St. Vincent Infirmary Medical Center, PET/CT Center, 2 St. Vincent Circle, Little Rock, AR, 72205–5499.	04–0007	03/10/2006	AR	
Lincoln Trail Diagnostics, 1111 Woodland Drive, Elizabethtown, KY 42701.	470001408	03/10/2006	KY	
LifeScan Imaging, 607 Clifty Street, Somerset, KY 42503	7614	03/10/2006	KY	
St. John's Hospital Springfield Nuclear Medicine, 1235 E. Cherokee Street, Springfield, MO 65804.	26–0065	03/10/2006	MO.	
City of Hope, 1500 E. Duarte Road, Duarte, CA 91010	050146	03/10/2006	CA	Dept. of Nuclear Medicine.
Hackettstown Regional Medical Center, 651 Willow Grove Street, Hackettstown, NJ 07840.	310115	03/10/2006	NJ	
Imaging Alliance—Nashville PET, LLC, 52 White Bridge Road, Nashville, TN 37205.	3791068	03/10/2006	TN	
Molecular Imaging of Bradenton, 2301 60th Street, Court West, Suite A, Bradenton, FL 34209.	U1334	03/10/2006	FL	
Molecular Imaging of Charlotte County, 4130 Tamiami Trail, Port Charlotte, FL 33952.	U1934	03/10/2006	FL	
Imaging For Life, 3830 Bee Ridge Road, Suite A, Sarasota, FL 34233.	E6704	03/10/2006	FL	
Seattle Nuclear Medicine/Ultrasound Associates, 1229 Madison Street,Suite 1050, Seattle, WA 98104..	G000158400	03/10/2006	WA	
Columbus Circle Imaging, 1790 Broadway, 9th Floor, Yonkers, NY 10704.	W00691	03/10/2006	NY	
Bryn Mawr Imaging Center—PET, 100 Lancaster Avenue,Wynnewood, PA 19096.	473120	03/10/2006	PA	
Beth Israel Deaconess Medical Center, 330 Brookline Avenue,Boston, MA 02215.	220086	03/10/2006	MA	
Boca Raton Community Hospital, 800 Meadows Road,Boca Raton, FL 33486.	100168	03/10/2006	FL	
Centro Tomograficio de PR, Inc.,1409 Ashford Avenue,San Juan, PR 00907.	0087834	03/10/2006	PR	
Comprehensive Cancer Centers of Nevada, 3730 S. Easton,Las Vegas, NV 89109.	WCHCX	03/10/2006	NV	
Grossman Imaging Center of CMH, 2151 E. Gonzales Road,Suite 101,Oxnard, CA 93036.	W17252	03/10/2006	CA	
Cookeville Regional Medical Center, 142 W. 5th Street,Cookeville, TN 38501.	440059	03/10/2006	TN	
Instituto Central de Diagnostico, Inc.,1er. Floor Oncologic Hospital,San Juan, PR 00928.	007835	03/10/2006	PR	PR Medical Center.

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Mercy Medical Center—Cedar Rapids, 701 Tenth Street, SE.,Cedar Rapids, IA 52403.	16–0079	03/10/2006	IA	
Midwest Radiologic Imaging—1144217241,4087 Gateway Boulevard,Newburgh, IN 47630.	1144217241	03/10/2006	IN	
Miami Valley Hospital, 1 Wyoming Street,Dayton, OH 45409	360051	03/10/2006	OH	
Midwest Radiologic Imaging—214790,4087 Gateway Boulevard,Newburgh, IN 47630.	214790	03/10/2006	IN	
Midwest Regional PET/CT Center, 6001 S. Sharon Avenue, Suite #2,Sioux Falls, SD 57108.	41406	03/10/2006	SD	
Mission HospitalPET Center, 222 Asheland Avenue,Asheville, NC 28801.	3400002	03/10/2006	NC	
Mobile Molecular Imaging, LLC, 100 Memorial Hospital Drive,Suite 1E,Mobile, AL 36608.	1003804345	03/10/2006	AL	
Nebraska Health Imaging, 7819 Dodge Street,Omaha, NE 68114.	098975	03/13/2006	NE	
Montgomery Metabolic & Memory Imaging Center, 7100 University Ct.,Montgomery, AL 36117.	057554625	03/13/2006	AL	
Orange County Diagnostic Radiology, Inc.,17150 Euclid Street,Suite 101,Fountain Valley, CA 92708.	TD057	03/13/2006	CA	
Northwest PET Imaging, 265 N. Broadway,Portland, OR 97227.	105512	03/13/2006	OR	
Nevada Cancer Institute Medical Group,One Breakthrough Way, 10441 W. Twain Avenue,Las Vegas, NV 89135.	100505	03/13/2006	NV	
Positron Emission Tomography Institute at Hampton, 5357 Henneman Drive,Norfolk, VA 23513.	FVN001	03/13/2006	VA	
Positron Imaging Facility, 1311 Record Crossing Road,Mail Code 9140,Dallas, TX 75235.	UT000F626	03/13/2006	TX	
Premier Diagnostic Imaging, 10019 Forest Green Boulevard,Louisville, KY 40299.	9375201	03/13/2006	KY	
Positron PET/CT of the Southern Tier, 169 Riverside Drive,Binghamton, NY 13905.	AA1047	03/13/2006	NY	
Radiology Regional Center, PA, Inc.—Naples, 700 Goodlette Road,Naples, FL 34102.	77185	03/13/2006	FL	
Somascan Plaza, Inc.,Suite 405 Torre de Plaza, Plaza Las Americas,San Juan, PR 00917.	0089178	03/13/2006	PR	
Somascan, Inc., Jose Marti #56, San Juan, PR 00917	0082435	03/13/2006	PR	
Southern Indiana Radiological Associates, 500 Landmark Avenue, Bloomington, IN 47403.	214160	03/13/2006	IN	
Southern Illinois Cancer Center, 10286 Fleming Road, Carterville, IL 62918.	643740	03/13/2006	IL	
South Nassau PET, One Healthy Way, Oceanside, NY 11572	97z851	03/13/2003	NY	
Southwest Diagnostic Center for Molecular Imaging, 8440 Walnut Hill Lane, Suite 100, Dallas, TX 75231.	FTN–015	03/13/2006	TX	
St. Mary's Health Systems, 900 E. Oakhill Avenue, Knoxville, TN 37917.	440120	03/13/2006	TN	
Tower Diagnostic Center, 4719 N. Habana Avenue, Tampa, FL 33614.	00169	03/13/2003	FL	
Torrance Morial Medical Center, 3330 Lomita Boulevard, Torrance, CA 90505.	050351	03/13/2006	CA	
University of Colorado Hospital (AOP), 1635 N. Ursula Street, Aurora, CO 80045.	06–0024	03/13/2006	CO	
William Beaumont Hospital—Royal Oak, 3601 West 13 Mile Road, Royal Oak, MI 48073–6769.	23030	03/13/2006	MI	
Esther Quijoy Catalya, M.D., 3000 Oak Road #111, Walnut Creek, CA 94597.	00A449120	03/13/2006	CA	
Valley PET Institute, 311 S. Ham Lane, Lodi, CA 95242	00C283720	03/13/2006	CA	XXX
Dan Ben-Zeev, M.D., 3000 Oak Road, #111, Walnut Creek, CA 94597.	00G129831	03/13/2006	CA	
Midwest Center for Advanced Imaging, 1307 Macom Drive, Naperville, IL 60564.	L72461	03/13/2006	IL	
Crittenton Hospital Medical Center, 1101 W. University Drive, Rochester, MI 48307.	230054	03/13/2006	MI	
Medical Specialists of Palm Beaches, Inc., 5700 Lake Worth Road, Suite 204, Lake Worth, FL 33463.	33941A	03/13/2006	FL	
PET Medical Imaging Center, 3264 North Evergreen Drive, Grand Rapids, MI 49525.	0P02650	03/13/2006	MI	
Radiology Regional Center, PA, Inc.—RPET, 6100 Winkler Road, Suite A, Fort Myers, FL 33919.	77185	03/13/2006	FL	
Good Samaritan Hospital, 520 S. 7th Street, Vincennes, IN 47591.	150042	03/13/2006	IN	
Central Indiana Cancer Center, 6845 Rama Drive, Indianapolis, IN 46219.	065910	03/13/2006	IN	
Decatur PET Imaging, 2774 W. Decatur Road, Decatur, GA 30033.	47BBBLP	03/13/2006	GA	

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Community Memorial Hospital, Medical Imaging, 855 S. Main Street, Oconto Falls, WI 54154.	00439MPN	03/13/2006	WI	
Olympic Radiology, 2700 Clare Avenue, Bremerton, WA 98310.	000242100	03/13/2006	WA	
Capitol Imaging, 3161 L Street, Sacramento, CA 95816	1285615294	03/13/2006	CA	
National Medical Imaging—Bryn Mawr, 574 W. Lancaster Avenue, Bryn Mawr, PA 19010.	024513	03/13/2006	PA	
National Medical Imaging—Langhorne, 2 Doublewoods Road, Suite B, Langhorne, PA 19047.	024513	03/13/2006	PA	
National Medical Imaging—Philadelphia, 1903–05 South Broad Street, Philadelphia, PA 19148.	024513	03/13/2006	PA	
University of VA Health System, Radiology, 1215 Lee Street, Charlottesville, VA 22908.	490009	03/13/2006	VA	
Florida Institute for Advanced Diagnostic Imaging, 9238 U.S. 19, Port Richey, FL 34668.	59–3475930	03/13/2006	FL	
Roseville PET & Nuclear Medicine Imaging, 2241 Douglas Boulevard #110, Roseville, CA 95661.	1194706689	03/13/2006	CA	
Memorial Sloan Kettering Cancer Center, 1275 York Avenue, New York, NY 10021.	330154	03/13/2006	NY	
Northeast PET Imaging Center, 8400 Roosevelt Boulevard, Suite 208, Philadelphia, PA 19152.	083723	03/13/2006	PA	Medical Arts Center at Parte Ridge.
UAMS PET Center, 4301 West Markham Street, Little Rock, AR 72205.	50528	03/13/2006	AR	
Joliet Oncology—Hematology Assoc., Ltd., 1600 W. Route 6, Morris, IL 60450.	205474	03/13/2006	IL	
Saint Luke's Hospital, 4323 Wornall Road, Kansas City, MO 64111.	26–0138	03/13/2006	MO	AH Peet Center.
Mercy Medical Center, 1320 Mercy Drive, Canton, OH 44708	360070	03/13/2006	OH	
Dayton Medical Imaging Center, 7901 Schatz Pointe Drive, Dayton, OH 45459.	US1D00231	03/13/2006	OH	
Community Radiology of Virginia, 2000 Leatherwood Lane, Bluefield, VA 24605.	FVA002	03/13/2006	VA	
Bab Radiology—Huntington, 75 East Main Street, Huntington, NY 11743.	W1L612	03/13/2006	NY	
Bab Radiology—Hauppauge, 521 Route 111, Suite 312, Hauppauge, NY 11788.	W1L601	03/13/2006	NY	
Center for Diagnostic Imaging—37, 5775 Wayzata Boulevard, #190, St. Louis Park, MN 55416.	470000037	03/13/2006	MN	
Center for Diagnostic Imaging, 5775 Wayzata Boulevard, Suite 190, St. Louis Park, MN 55416.	C01307	03/13/2006	MN	
Center for Diagnostic Imaging—Mendota Heights, 910 Sibley Memorial Highway, Mendota Heights, MN 55118.	470000038	03/13/2006	MN	
Huntsville Hospital Imaging Center, 1963 Memorial Parkway, Huntsville, AL 35801.	010039	03/13/2006	AL	
Long Beach PET Imaging Center, 2888 Long Beach Boulevard, Suite 110, Long Beach, CA 90806.	TG167	03/13/2006	CA	
Highway Imaging Associates, LLP, 2095 Flatbush Avenue, Brooklyn, NY 11234.	W10671	03/13/2006	NY	
St. Vincent Hospital, PO Box 13508, Green Bay, WI 54307	520075	03/13/2006	WI	
Park South Imaging Center, 6215 21st Avenue West, #A, Bradenton, FL 34209.	E1858	03/13/2006	FL	
Mary Bird Perkins Cancer Center, 4950 Essen Lane, Baton Rouge, LA 70809.	57290	03/13/2006	LA	
Boston Diagnostic Imaging, 398 Altamonte Drive, Altamonte Springs, FL 32701.	E3510	03/13/2006	FL	
Sioux Valley Hospital Medical Center, 1305 W. 18th Street, Sioux Falls, SD 57117.	430027	03/13/2000	SD	
Indianapolis Regional PET Scan, LLC, 3830 Shore Drive, Indianapolis, IN 46254.	207260	03/13/2006	IN	
St. Joseph's PET Center, 1 Mercy Lane, Suite 105, Hot Springs, AR 71913.	5C739	03/13/2006	AR	
Hinsdale PET Scan, LLC, 812 Ogden Avenue, Westmont, IL 60559.	206271	03/13/2006	IL	
Del Amo PET Imaging Center, 3531 Fashion Way, Torrance, CA 90501.	TP120	03/13/2006	CA	
North Shore PET Imaging Center, 85 Herrick Street, Beverly, MA 01915.	327110	03/13/2006	MA	Beverly Hospital.
Robert D. Russo & Associates Radiology, PC, PO Box 6128, Bridgeport, CT 06606.	C02013	03/13/2006	CT	
Advanced Medical Specialties, 9035 Sunset Drive, Suite 102, Miami, FL 33173.	K7806	05/03/2006	FL	
Baptist M & S Imaging Center—Downtown, 215 E. Quincy Street #100, San Antonio, TX 78215.	FTA078	05/03/2006	TX	

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Community Cancer Center, 545 W. Umpqua Street, Roseburg, OR 97470.	R116571	05/03/2006	OR	
Baptist M & S Imaging Center, 7888 Fredericksburg Road, San Antonio, TX 78228.	FTA078	05/03/2006	TX	
Evanston Northwestern Healthcare—Highland Park, 757 Park Avenue West, Highland Park, IL 60035.	14–0010	05/03/2006	IL	
Grenada Diagnostic Radiology, 1300 Sunset Drive, Suite U, Grenada, MS 38901.	470000034	05/03/2006	MS	
Huntsman Cancer Hospital, 2000 Circle of Hope, Suite 2121, Salt Lake City, UT 84112–5550.	460009	05/03/2006	UT	
High Tech Medical Park, 11800 Southwest Highway, Palos Heights, IL 60463.	0703070	05/03/2006	IL	
Cyrus Diagnostic Imaging, Inc. 165 Waymont Court, Lake Mary, FL 32746.	40586	05/03/2006	FL	
Indiana Regional PET Imaging, 7891 Broadway, Suite A, Merrillville, IN 46410.	229400	05/03/2006	IN	
Lancaster PET Imaging, 2100 Harrisburg Pike, Lancaster, PA 17601.	054504	05/03/2006	PA	
James PET/CT Imaging Center, 236 Doan Hall, Columbus, OH 43210.	360242	05/03/2006	OH	410 W. 10th Ave.
Mary Lanning Memorial Hospital, 715 N. St. Joseph Avenue, Hastings, NE 68901.	280032	05/03/2006	NE	
Maplewood Cancer Center—MOHPA, 1580 Beam Avenue, Maplewood, MN 55109.	C01828	05/03/2006	MN	
Titusville Area Hospital, 406 W. Oak Street, Titusville, PA 16354.	390122	05/03/2006	PA	
Memorial Hospital, 325 S. Belmont Street, York, PA 17403	390101	05/03/2006	PA	
Mercy Regional Health Center, 1823 College Avenue, Manhattan, KS 66502.	17–0142	05/03/2006	KS	
Northshore Regional PET Scan, LLC 1464 Waukegan Road, Glenview, IL 60025.	206272	05/03/2006	IL	
Northwest Indiana PET/CT Center, 1505 S. Calumet Road, Suites 7 & 8 Chesterton, IN 46304.	229810	05/03/2006	AL	
Parkway Ventures, Inc., 9000 Franklin Square Drive, Baltimore, MD 21237.	FMN002	05/03/2006	MD	Franklin Square Hospital.
PET Fusion Imaging, 3707 New Vision Drive, Fort Wayne, IN 46845.	190320	05/03/2006	IN	
River Oaks Imaging & Diagnostics, PO Box 4346, Houston, TX 77210.	FTA059	05/03/2006	TX	Dept 848.
Regional PET Scan, LLC—Beachwood, 2000 Auburn Road, Beachwood, OH 44122.	REID02211	05/03/2006	OH	
Regional PET Scan, LLC—Fairview, 20455 Lorain Road, Fairview Park, OH 44126.	REID02211	05/03/2006	OH	
Regional PET Scan, LLC—Ridgepark, 7575 Northcliff Avenue, Brooklyn, OH 44144.	REID02211	05/03/2006	OH	
Saint Francis Hospital, 114 Woodland Street, Hartford, CT 06105.	07–0002	05/03/2006	CT	
St Nicholas Hospital, 3100 Superior Avenue, Sheboygan, WI 53081.	520044	05/03/2006	WI	
Swedish Medical Center, 501 E. Hampton Avenue, Englewood, CO 80113.	060034	05/03/2006	CO	
St Bernards PET Center, 225 E. Jackson Avenue, Jonesboro, AR 72401.	5C658	05/03/2006	AR	
Toledo Regional PET Scan, LLC, 3442 Granite Circle, Toledo, OH 43617.	T0ID01881	05/03/2006	OH	
University MRI, 3848 F.A.U. Boulevard, Suite 200, Boca Raton, FL 33431.	E1765	05/03/2006	FL	
Tucson PET Imaging, 5355 E. Erickson Drive, Tucson, AZ 85712.	WCBBM	05/03/2006	AZ	
Via Christi Oklahoma Regional Medical Center, 1900 N. 14th Street, Ponca City, OK 74601.	370006	05/03/2006	OK	
Christian Hospital, 11133 Dunn Road, St Louis, MO 63136	260180	05/03/2006	MO	
DRA Imaging PC, 1 Columbia Street, Poughkeepsie, NY 12601.	W18691	05/03/2006	NY	
Cleveland Clinic Star Imaging, 921 Jasonway Avenue, Columbus, OH 43214.	34–1932969	05/03/2006	OH	
Norman PET Associates, LLC 3750 W. Robinson Street Suite 130 Norman, OK 73072.	900522224	05/03/2006	OK	
Rhode Island PET Services—St. Josephs, 200 High Service Avenue, N Providence, RI 02904.	479003556	05/03/2006	RI	
Rhode Island PET Services—South County Hospital, 100 Kenyon Avenue, Wakefield, RI 02879.	479003556	05/03/2006	RI	
Rhode Island PET Services—Roger Williams, 825 Chalkstone Avenue, Providence, RI 02908.	479003556	05/03/2006	RI	

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Rhode Island PET Services—Landmark, 115 Cass Avenue, Woonsocket, RI 02895.	479003556	05/03/2006	RI	
Forest City Diagnostic Imaging, 735 Perryville Road, Rockford, IL 61107.	546450	05/03/2006	IL	Lower Level 2.
New England Molecular Imaging—York, 15 Hospital Drive, York, ME 03909.	479003556	05/03/2006	ME	
Pavilion Imaging, 750 Wellington Avenue, Grand Junction, CO 81502.	060023	05/03/2006	CO	
Lifescan Chicago, 2242 W. Harrison Street, Chicago, IL 60612.	470000014	05/03/2006	IL	
Southeast Medical Imaging, 300 Evergreen Drive, Suite 210, Glen Mills, PA 19342.	092801	05/03/2006	PA	
The Western Pennsylvania Hospital, 4800 Friendship Avenue, Pittsburgh, PA 15224.	390090	05/03/2006	PA	
Southtowns PET/CT, 550 Orchard Park Road, West Seneca, NY 14224.	14422A	05/03/2006	NY	
Main Street Radiology—Bayside, 44–01 Francis Lewis Boulevard, Bayside, NY 11361.	04217	05/03/2006	NY	
Main Street Radiology—Bayside, 44–01 Francis Lewis Boulevard, Bayside, NY 11361.	04217A	05/03/2006	NY	
West VA University Center for Advanced Imaging, 1 Medical Center Drive, Morgantown, WV 26506.	9121131	05/03/2006	WV	PO Box 9236, Health Center South.
Twin Lakes Medical Specialist, PA, 228 Bucher Drive, Mountain Home, AR 72653.	5B019	05/03/2006	AR	
Valley Metabolic Imaging, LLC, 6121 N Thesta Street, Fresno, CA 93710.	ZZZ23924Z	05/03/2006	CA	Suite 207.
Johnson City Medical Center, 400 North State of Franklin, Johnson City, TN 37642.	440063	05/03/2006	TN	
St Louis University Hospital, 3665 Vista Avenue, St Louis, MO 63110.	000050109	05/03/2006	MO	
Margaret R. Pardee Memorial Hospital, 800 North Justice Street, Hendersonville, NC 28791.	340017A	05/03/2006	NC	
Valley Imaging Partnership, 1401 W. Merced Avenue, #103, West Covina, CA 91790.	TP035	05/03/2006	CA	
Sierra Imaging, 155 Calle Portal, Sierra Vista, AZ 85635	Z68496	05/03/2006	AZ	
Aspirus Wausau Hospital, 333 Pine Ridge Boulevard, Wausau, WI 54401.	520030A	05/03/2006	WI	
Cancer Care Northwest PET Center, 910 W 5th, Spokane, WA 99204.	1922072081	05/03/2006	WA	Suite 130.
PET/CT Imaging of North Texas, 2900 North I–35, Denton, TX 76201.	00088Y	05/03/2006	TX	Suite 119.
Loyola University Health System, 2160 S. First Avenue, Maywood, IL 60153.	140276	05/03/2006	IL	
St. Elizabeth Medical Center, One Medical Village Drive, Edgewood, KY 41017.	180035	05/03/2006	KY	
Cleveland Clinic, 9500 Euclid Ave, Cleveland, OH 44195	9925511	05/03/2006	OH	
Ingalls Family Care Center, 6701 159th Street, Tinley Park, IL 60477.	14–0191	05/03/2006	IL	
PET Fusion Center, 4204 Houma Boulevard, Metairie, LA 70006.	5CB31	05/03/2006	LA	
United Regional Medical Center, 1001 McArthur Drive, Manchester, TN 37355.	440007	05/03/2006	TN	
Joel Bernstein, MD, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W18972	05/03/2006	CA	
Hasnat Ahmed, MD, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W18370	05/03/2006	CA	
Meridian North Imaging Center, 12188 N. Meridian Street, Carmel, IN 46280.	026010	05/03/2006	IN	Suite 100.
Cancer Center Oncology Medical Group, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W12245A	05/06/2006	CA	
Firelands Regional Medical Center, 1101 Decatur Street, Sandusky, OH 44870.	360025	05/03/2006	OH	
United Radiology—Greenbelt, PO Box 34979, West Bethesda, MD 20827.	FMN007	05/03/2006	MD	
Richard Just, MD, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W16197	05/03/2006	CA	
Michael Kipper, MD, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	A24091	05/03/2006	CA	
McLaren Regional Medical Center, 401 S. Ballenger Highway, Flint, MI 48532.	230141	05/03/2006	MI	
United Radiology—Silver Spring, PO Box 34979, West Bethesda, MD 20827.	FMN007	05/03/2006	MD	

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United Radiology—Rockville, PO Box 34979, West Bethesda, MD 20827.	FMN007	05/03/2006	MD	
St Mary's Health Center, 6420 Clayton Road, St Louis, MO 63117.	260091	05/03/2006	MO	
Bay Regional Medical Center, 1900 Columbus Avenue, Bay City, MI 48708.	230041	05/03/2006	MI	
Lapeer Regional Medical Center, 1375 N. Main Street, Lapeer, MI 48446.	230193	05/03/2006	MI	
Scottsdale Medical Imaging, Ltd.—SW Diagnostics, 9003 E. Shea Boulevard, Scottsdale, AZ 85260.	1902896236	05/03/2006	AZ	
Valley Medical Oncology Consultants, Inc., 3000 Oak Road, #111, Walnut Creek, CA 94597.	ZZZ29659Z	05/03/2006	CA	
Northwest Community Hospital, 800 W Central Road, Arlington Heights, IL 60005.	36–2340313	05/03/2006	IL	
PET Imaging of Dallas, 8333 Douglas Avenue, C–20, Dallas, TX 75225.	FTN017	05/03/2006	TX	
PET Imaging of Dallas—Northeast, 1250 R Northwest Highway, Garland, TX 75041.	FTN028	05/03/2006	TX	
St Joseph's Regional Medical Center, 703 Main Street, Paterson, NJ 07503.	310019	05/03/2006	NJ	
PET Imaging of Houston, 2493–A South Braeswood, Houston, TX 77030.	FTN010	05/03/2006	TX	
Goshen General Hospital, 200 High Park Avenue, Goshen, IN 46526.	150026	05/03/2006	IN	
PET Imaging of ELMC, 8550 West 38th Avenue, Suite 102, Wheat Ridge, CO 80033.	800665	05/03/2006	CO	
PET Imaging of Houston—Southeast, 6021 Fairmont Parkway, Suite 120, Pasadena, TX 77505.	FTN030	05/03/2006	TX	
Peninsula !maging, LLC, 560 Riverside Drive, Suite A104, Salisbury, MD 21801.	481L	05/03/2006	AL	
Zwanger—Pesiri, 126 Hicksville Road, Massapequa, NY 11758.	W13931	05/03/2006	NY	
Las Calinas PET Imaging, LLP, 1110 Cottonwood Lane, Irving, TX 75038.	FTN019	05/03/2006	TX	Suite 220.
Mt Carmel Regional Medical Center, 1102 East Centennial, Pittsburg, KS 66762.	014041	05/03/2006	KS	
Iowa Blood & Cancer Care, PLC, 855 A. Avenue NE., Cedar Rapids, IA 52402.	I6672	05/03/2006	IA	Medical Office Plaza, LL4.
Hackensack University Medical Center, 30 Prospect Avenue, Hackensack, NJ 07601.	310001	05/03/2006	NJ	
McLeod PET Imaging Center, 800 East Cheves Street, Florence, SC 29501.	570370242001	05/03/2006	SC	Suite 170.
St Alexius Medical Center, 900 E. Broadway Avenue, Bismarck, ND 58506.	35–0002	05/03/2006	ND	PO Box 5510.
Center for Diagnostic Imaging, 1295 Orange Avenue, Winter Park, FL 32789.	K0097	05/03/2006	FL	
Charleston Radiologists, PA, 9313 Medical Plaza Drive, Charleston, SC 29406.	1709	05/03/2006	SC	Suite 302.
PET Imaging of Houston—West, 9525 Katy Freeway, Suite 102, Houston, TX 77024.	FTN023	05/03/2006	TX	
University Hospitals of Cleveland, 11100 Euclid Avenue, Cleveland, OH 44106.	36–0137	05/03/2006	OH	Mailstop BSHB5056.
PET Imaging of Sugar Land, 17320 W Grand Parkway S., Suite A, Sugar Land, TX 77479.	FTN027	05/03/2006	TX	
PET Imaging of Oklahoma City, 1000 N. Lincoln Boulevard, Suite 250, Oklahoma City, OK 73104.	800522283	05/03/2006	OK	
PET Imaging of Tulsa, 6711 S. Yale, #104, Tulsa, OK 74136	400522320	05/03/2006	OK	
PET Imaging of The Woodlands, 3091 College Park Drive, Suite 340, The Woodlands, TX 77384.	FTN021	05/03/2006	TX	
Tarrant Diagnostic Imaging, 1121 8th Avenue, Fort Worth, TX 76104.	FTN012	05/03/2006	TX	
Wyandot Memorial Hospital, 85 North Sandusky Avenue, Upper Sandusky, OH 43351.	361329	05/03/2006	OH	
Oregon Health & Science University, 3181 SW Sam Jackson Park Road, Portland, OR 97229.	380009	05/03/2006	OR	
Saint John's Health System, 2015 Jackson Street, Anderson, IN 46016.	150088	05/03/2006	IN	
Hudson Valley PET Imaging, LLC, 160 North Midland Avenue, Nyack, NY 10960.	W1L903	05/03/2006	NY	
Kingston Diagnostic Center, 167 Schwenk Drive, Kingston, NY 12401.	W1L921	05/03/2006	NY	
Appleton Medical Center, 1818 N. Meade Street, Appleton, WI 54911.	520160	05/03/2006	WI	

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St. Elizabeth Health Center, 1044 Belmont Avenue, Youngstown, OH 44501.	360064	05/03/2006	OH	
Sinai Hospital of Baltimore, 2401 West Belvedere Avenue, Baltimore, MD 21215.	210012	05/03/2006	MD	
Associates in Radiology of Plattsburgh, NY, 762 Route 3, Suite 14, Plattsburgh, NY 12901.	33572A	05/03/2006	NY	
Affiliated PET Systems—Rockville, 9711 Medical Center Drive, Rockville, MD 20850.	FDNX01	05/03/2006	MD	
Lake Medical Imaging & Breast Center, 1400 U.S. Highway 441 North,Suite 510, The Villages, FL 32159.	59–3522082	05/03/2006	FL	
Affiliated PET Systems—Silver Spring, 1400 Forest Glen Road, Silver Spring, MD 20910.	FDNX01	05/03/2006	MD	Suite 430.
North Texas Clinical PET Institute, 3535 Worth Street, Suite 150, Dallas, TX 75246.	99R339	05/03/2006	TX	
Lake Imaging Center, 801 E. Dixie Avenue, Suite 104, Leesburg, FL 34748.	59–3635297	05/06/2006	FL	
Edwards Comprehensive Cancer Center 1400 Hal Greer Boulevard, Huntington, WV 25701.	510055	05/03/2006	WV	
Allison Cancer Center, 301 North N Street, Midland, TX 79701.	140414744	05/03/2006	TX	
Clinical PET of Leesburg, 8525 U.S. Highway 441, Leesburg, FL 34748.	E7179A	05/03/2006	FL	
Greene Medical Imaging, PC, 159 Jefferson Heights, D–106, Catskill, NY 12414.	W25021	05/03/2006	NY	
Caritas PET Imaging, LLC–Norwood Hosp, 70 Walnut Street, Foxboro, MA 02035.	32–7092	05/03/2006	MA	Caritas Norwood Hospital—Foxboro Campus.
Caritas PET Imaging, LLC–New England Medical Center, 750 Washington Street, Boston, MA 02111.	32–7092	05/03/2006	MA	Tufts—New England Medical Center.
Austin, Radiological Assn.—San Marcos, 1348 B Highway 123 South, San Marcos, TX 78666.	74–1597116	05/03/2006	TX	
ARA Imaging—Rock Creek, 2120 N Mays, #220, Round Rock, TX 78664.	20–1651590	05/03/2006	TX	
ARA Imaging—Southwood, 1701 W. Ben White Boulevard, #170, Austin, TX 78704.	20–1651590	05/03/2006	TX	
Elkhart General Hospital, 600 East Boulevard, Elkhart, IN 46514.	15–0018	05/03/2006	IN	
Austin, Radiological Assn.—Midtown, 1301 W. 38th Street, Suite 100, Austin, TX 78705.	74–1597116	05/03/2006	TX	
Caritas PET Imaging, LLC–St. Elizabeth's, 736 Cambridge Street, Boston, MA 02135.	32–7092	05/03/2006	MA	St. Elizabeth's Medical Center.
Global PET Imaging, LLC, 1800 Hollister Drive, Suite G–10, Libertyville, IL 60048.	309590	05/03/2006	IL	Grand Oaks Health Center.
Caritas PET Imaging, LLC–Carney Hospital, 2100 Dorchester Avenue, Dorchester, MA 02124.	32–7092	05/03/2006	MA	Caritas Carney Hospital.
Caritas PET Imaging, LLC–Milton Hospital, 92 Highland Street, Milton, MA 02186.	32–7092	05/03/2006	MA	
Caritas PET Imaging, LLC–St. Anne's Hospital, 795 Middle Street, Fall River, MA 02721.	32–7087	05/03/2006	MA	St. Anne's Hospital.
Caritas PET Imaging, LLC–Good Samaritan, 235 North Pearl Street, Brockton, MA 02301.	32–7087	05/03/2006	MA	Caritas Good Samaritan Medical Center.
Panhandle PET Imaging, 6700 W. 9th Avenue, Amarillo, TX 79106.	TFN0007	05/03/2006	TX	
PET Imaging of San Francisco, 1700 California Street, Suite 480, San Francisco, CA 94109.	ZZZ–223–782	05/03/2006	CA	
PET/CT Imaging of Berkeley, 2855 Telegraph Avenue, Suite 100, Berkeley, CA 94705.	ZZZ–288–837	05/03/2006	CA	
Western Maryland Health System—Sacred Heart Campus, 902 Seton Drive, Cumberland, MD 21502.	210027	05/03/2006	MD	Western Maryland Health System—Sacred Heart Campus.
Desert PET Imaging, LLC, 1180 N. Indian Cyn Drive, Palm Springs, CA 92262.	ZZZ28648Z	05/03/2006	CA	
First PET of Stockton, 4744 Quail Lake Drive, Stockton, CA 95207.	00A484230	05/03/2006	CA	
Utah Cancer Specialist, 3838 South 700 East, Salt Lake City, UT 84106.	57172	05/03/2006	UT	Suite 100.
Washington Radiology Associates, PC, 2121 K Street, NW., Washington, DC 20006.	WA409885	05/03/2006	DC	Suite T–120.
New Rochelle Radiology Associates, PC, 175 Memorial Highway, New Rochelle, NY 10801.	W05571	05/03/2006	NY	

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North Little Rock PET Associates, LLC, 3500 Springhill Drive, North Little Rock, AR 72117.	5F437	05/03/2006	AR	Suite 100.
Advanced Imaging Concepts, PL, 13063 Cortez Boulevard, Brooksville, FL 34613.	94774	05/03/2006	FL	
Mansfield Imaging Center, 536 S. Trimble Road, Mansfield, OH 44906.	MAD10921	05/03/2006	OH	
West Tennessee Imaging Center, 300 Coatsland Drive, Jackson, TN 38305.	44–0002	05/03/2006	TN	
Imaging Center of North Central Indiana, Inc., 2201 W. Boulevard, Kokomo, IN 46902.	224110	05/03/2006	IN	
University of Kansas Hospital, 3901 Rainbow Boulevard, Kansas City, KS 66160.	17–00040	05/03/2006	KS	Division of Nuclear Medicine.
PET Imaging of SWLA, LLC, 600 Bayou Pines East, Lake Charles, LA 70601.	5CK63	05/03/2006	LA	Suite A.
Community Imaging Partners of Frederick, 67 Thomas Johnson Drive, Frederick, MD 21702.	980M	05/03/2006	MD	
Community Imaging Partners of Olney, 18111 Prince Phillip Drive, #T–20, Olney, MD 20832.	409410	05/03/2006	MD	Community Imaging Partners.
The West Clinic, PC, 100 N. Humphreys Boulevard, Memphis, TN 38120.	3704066	05/03/2006	TN	
Imaging Central LLC, 7111 W. Central Avenue, Toledo, OH 43617.	IMID01641	05/03/2006	OH	
Advanced Radiology—Dixon, 291 Stoner Avenue, Westminster, MD 21157.	527L	05/03/2006	MD	
Advanced Radiology—Harford Imaging, 104 Plumtree Road, Bel Air, MD 21015.	527L	05/03/2006	MD	Suite 106.
Advanced Radiology—Cross Roads, 4801 Dorsey Hall Road, Ellicott City, MD 21042.	527L	05/03/2006	MD	Suite 101.
Advanced Radiology—PET Imaging of MD, 1700 Reisterstown Road, Baltimore, MD 21208.	527L	05/03/2006	MD	Suite 119.
Cancer & Blood Disease Center, 521 N. Lecanto Highway, Lecanto, FL 34461.	72840	05/03/2006	FL	
Huntington Outpatient Imaging Center, Inc., 800 S. Fairmount Avenue, Pasadena, CA 91105.	W1575B	05/03/2006	CA	Suite 120.
Universal Imaging, Inc., 4600 Investment Drive, Troy, MI 48083.	ON69130	05/03/2006	MI	
Berger Health System, 1170 North Court Street, Circleville, OH 43113.	360710	05/03/2006	OH	
Contemporary Imaging—Trenton, 1676 Fort Street, Trenton, MI 48183.	0P23200	05/03/2006	MI	
South Tulsa PET, LLC, 7712 S. Yale Avenue, Tulsa, OK 74136.	800522360	05/03/2006	OK	Suite 100.
Cancer Center of the Carolinas, 200 Andrews Street, Greenville, SC 29601.	6526	05/03/2006	SC	Suite 100.
OSF Saint Francis Medical Center, 530 NE Glen Oak Avenue, Peoria, IL 61637.	14–0067	05/03/2006	IL	
Sacred Heart—St. Mary's Hospitals, Inc., 2251 Northshore Drive, Rhinelander, WI 54501.	1100700	05/03/2006	WI	
Capital Region Radiation Therapy & Imaging, 3400 W. Truman Boulevard, Jefferson City, MO 65109.	260047	05/03/2006	MO	PO 150832.
University PET/CT Imaging, 19 Bradhurst Avenue, Hawthorne, NY 10532.	W2Y371	05/03/2006	NY	Suite 1200.
Aztech Radiology—Apache Trail, 1840 W. Apache Trail, Apache Junction, AZ 85222.	Z72398	05/03/2006	AZ	
Aztech Radiology—Casa Grande, 1669 E McMurray Boulevard, Casa Grande, AZ 85222.	Z25341	05/03/2006	AZ	
Missouri Cancer Associates, 105 N. Keene Street, Columbia, MO 65201.	000012700	05/03/2006	MO	Suite 100.
White River Medical Center, 1710 Harrison Street, Batesville, AR 72501.	040119	05/03/2006	AR	
Englewood Hospital & Medical Center, 350 Engle Street, Englewood, NJ 07631.	310045	05/03/2006	NJ	
Regional Imaging & Therapeutic Radiology Services, 360 Bard Avenue, Staten Island, NY 10310.	1023095445	05/03/2006	NY	
Rocky Mountain Cancer Centers—South, 7951 E. Maplewood Avenue, Suite 300, Greenwood Village, CO 80111.	204508	05/03/2006	CO	
Rocky Mountain Cancer Centers—North, 7951 E. Maplewood Avenue, Suite 300, Greenwood Village, CO 80111.	204508	05/03/2006	CO	
Molecular Imaging of Hamilton County—Bethesda, 4197 Fulton Road, NW., Suite C, Canton, OH 44718.	MOID01221	05/03/2006	OH	
Molecular Imaging of Hamilton County—Good Sam, 4197 Fulton Road, NW., Suite C, Canton, OH 44718.	MOID01221	05/03/2006	OH	
Kettering Medical Center, 3535 Southern Boulevard, Kettering, OH 45429.	360079	05/03/2006	OH	

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St. Mary's Hospital, 5801 Bremo Road, Richmond, VA 23226	540793767	05/03/2006	VA	
Columbus Medical Institute of NY, 97–85 Queens Boulevard, Rego Park, NY 11374.	05679	05/03/2006	NY	
Meadville Medical Center, 1034 Grove Street, Meadville, PA 16335.	39–0113	05/03/2006	PA	
Chambersburg Hospital—Radiology, 112 North Seventh Street, Chambersburg, PA 17201.	390151	05/03/2006	PA	
Oregon Advanced Imaging, 881 O'Hare Parkway, Medford, OR 97504.	R114546	05/03/2006	OR	
Singing River Hospital, 2809 Denny Avenue, Pascagoula, MS 39581.	250040	05/03/2006	MS	
East Texas Medical Center—Tyler, 1000 S. Beckham Avenue, Tyler, TX 75701.	4500833	05/03/2006	TX	
Columbia, St. Mary's Hospital, 2025 E. Newport Avenue, Columbia Campus, Milwaukee, WI 53211.	520051	05/03/2006	WI	
Sharon Regional Health System, 740 East State Street,Sharon, PA 16146.	390211	05/03/2006	PA	
Northern Ohio Imaging Center, 1900 West River Road,Elyria, OH 44035.	36–0172	05/03/2006	OH	
Oxford Valley Diagnostic Center, 940 Town Center Drive,Langhorne, PA 19047.	232745550	05/03/2006	PA	Suite F50>.
The Emory Clinic, 1365 Clifton Road,Building C,Room Court 048,Atlanta, GA 30322.	582030692	05/03/2006	GA	
Alegent Health Bergan Mercy Medical Center, 7500 Mercy Road,Omaha, NE 68124.	280060	05/03/2006	NE	
University Center Imaging, 1065 Delaware Avenue,Marion, OH 43302.	20–3873307	05/03/2006	OH	
Elk Regional Health Center, 763 Johnsonburg Road,St Mary's, PA 15857.	39–0154	05/03/2006	PA	
Health Park Hospital, 1636 Higdon Ferry Road,Hot Springs, AR 71913.	04–0142	05/03/2006	AR	
Johnsonburg Health Center, 81 Clarion Road,Johnsonburg, PA 15845.	39–0104	05/03/2006	PA	
Jane Phillips Medical Center, 3500 E. Frank Phillips Boulevard,Bartlesville, OK 74006.	370015	05/03/2006	OK	
North Main Imaging Center, 7650 First Place,Suite B,Oakwood Village, OH 44146.	NEID01521	05/03/2006	OH	
PET Imaging Center of Delaware County—DCMH, 501 North Lansdowne Avenue,Drexel Hill, PA 19026.	390081	05/03/2006	PA	
NEO—PET CRC Imaging, 7650 First Place,Suite B,Oakwood Village, OH 44146.	NEID01521	05/03/2006	OH	
PET Imaging Center of Delaware County—Springfield, 190 West Sproul Road,Springfield, PA 19064.	381080	05/03/2006	PA	
Harper University Hospital, 3990 John R Street,Detroit, MI 48201.	230104	05/03/2006	MI	
Sinai—Grace Hospital, 6071 W. Outer Drive,Detroit, MI 48235.	23–0024	05/03/2006	MI	
Seattle Radiologists APC, 1229 Madison Street,Seattle, WA 98104.	G0001589600	05/03/2006	WA	#900.
Huron Valley—Sinai Hospital, 1 William Carl Drive,Commerce, MI 48382.	23–0277	05/03/2006	MI	
East Memphis PET Imaging, 6005 Park Avenue,Memphis, TN 38119.	3374526	05/03/2006	TN	Suite 101B.
UPMC—PET Imaging Facility, 200 Lothrop Street,Pittsburgh, PA 15213.	390164	05/03/2006	PA	9th Floor, B—Wing PUH.
UPMC—PET Imaging Facility, 300 Halket Street,Pittsburgh, PA 15213.	390114	05/03/2006	PA	
Rhode Island Hospital, 593 Eddy Street,Providence, RI 02903	05–025–8954	05/03/2006	RI	
David C. Pratt Cancer Center, 607 South New Bulbs Road,St Louis, MO 63141.	260020	05/03/2006	MO	
Lewistown Hospital, 400 Highland Avenue,Lewistown, PA 17044.	390048	05/03/2006	PA	
Lawrence Memorial Hospital, 325 Maine Street,Lawrence, KS 66044.	170137	05/03/2006	KS	
Jameson Hospital, 1211 Wilmington Avenue,New Castle, PA 16105.	39–0016	05/03/2006	PA	
Diagnostic Clinic of Houston, 1200 Binz Street,Houston, TX 77004.	76–0203506	05/03/2006	TX	
Arlington Heights Radiology Center, LLC, 121 South Wilke Road,Arlington Heights, IL 60005.	212301	05/03/2006	IL	
Oregon Imaging Center, 1200 Hilyard Street,Eugene, OR 97401.	R0000WCPGH	05/03/2006	OR	#330.
Arlington Heights Radiology Center, LLC, 121 South Wilke Road,Arlington Heights, IL 60005.	212301	05/03/2006	IL	

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Indiana Univ Radiology Assoc PET Imaging Center, 950 W. Walnut Street,Room E124,Indianapolis, IN 46202.	959090	05/03/2006	IN	
Morristown Memorial Hospital, 100 Madison Avenue,Morristown, NJ 07962.	310015	05/03/2006	NJ	
Baton Rouge Radiology Group, 5422 Dijon Drive,Baton Rouge, LA 70808.	5B039	05/03/2006	LA	
North Texas PET Imaging, 3720 South I–35E,Denton, TX 76210.	752131429	05/03/2006	TX	
Children's Hospital of Michigan PET Center, 3901 Beaubien Street,Detroit, MI 48201.	23–3300	05/03/2006	MI	
Winchester Medical Center, 1840 Amherst Street,Winchester, VA 22601.	490005	05/03/2006	VA	
Decatur Health Imaging, LLC, 1123 16th Avenue, SE.,Decatur, AL 35601.	051555161	05/03/2006	AL	
Health Imaging Services, LLC, 1760 Warnke Circle, NE.,Cullman, AL 35058.	051553273HEA	05/03/2006	AL	
PET/CT Imaging of the Mainline, 21 Industrial Boulevard, Suite 103, Paoli, PA 19301.	097715	05/03/2006	PA	
PET Imaging of Brevard, 1430 Pine Street, Melbourne, FL 32901.	39254	05/03/2006	FL	
North Carolina Baptist Hospital, Medical Center Boulevard, Winston Salem, NC 27157.	34–0047	05/03/2006	NC	
St Francis Hospital, 34515 9th Avenue S, Federal Way, WA 98003.	500108	05/03/2006	WA	
Saint Barnabas Outpatient Center, 200 S. Orange Avenue, Livingston, NJ 07039.	440149	05/03/2006	NJ	
PET/CT Imaging of Ramapa Radiology, 972 Route 45, Suite 106, Pomona, NY 10970.	W21711	05/03/2006	NY	
Medical University of South Carolina PET/CT, 169 Ashley Avenue, Charleston, SC 29425.	420004	05/03/2006	SC	
Akron General Medical Center, 300 Wabash Avenue, Akron, OH 44307.	36–0027	05/03/2006	OH	
New England Molecular Imaging—Mercy Hospital, 144 State Road, Portland, ME 04103.	NE327075	05/03/2006	ME	
New England Molecular Imaging—Penobscot Bay, 6 Glenn Cove Drive, Rockport, ME 04856.	NE327076	05/03/2006	ME	
Center for Outpatient Services—St. Joseph, 3900 Hollywood Road, St. Joseph, MI 49085.	23–0021	05/03/2006	MI	
New England Molecular Imaging—Central Maine, 12 High Street, Lewiston, ME 04240.	NE327076	05/03/2006	ME	
Imaging Consultants, Inc.—Berkshire, 8 Conte Drive, Pittsfield, MA 01210.	327085	05/03/2006	MA	
Imaging Consultants, Inc.—Boston Medical, 840 Harrison Avenue, Boston, MA 02118.	327083	05/03/2006	MA	
Imaging Consultants, Inc.—Boston PET, One Brookline, Place, Brookline, MA 02445.	327083	05/03/2006	MA	
Baptist Memorial Hospital PET Center, 6027 Walnut Grove Road, Memphis, TN 38120.	44–0048	05/03/2006	TN	
Southern Oklahoma PET/CT Imaging, 701 E. Robinson Street, Norman, OK 73071.	90015477	05/03/2006	OK	
Ann G. Fetters Diagnostic Imaging Center, 2151 N. Harbor Boulevard, Fullerton, CA 92835.	050168	05/03/2006	CA	
Pitt County Memorial Hospital, 2100 Stantonsburg Road, Greenville, NC 27835.	56–0585243	05/03/2006	NC	
Inland Imaging, LLC, 105 W. 8th Avenue, Spokane, WA 99202.	AB01749	05/03/2006	WA	Suite 100C.
University of Chicago Hospitals, 5758 S. Maryland Avenue, Chicago, IL 60637.	140088	05/03/2006	IL	Room #0150.
Birch Medical Imaging Center, 20162 SW Birch Street, Newport Beach, CA 92660.	W19353	05/03/2006	CA	
Tennessee Oncology PET Services, 2018 Murphy Avenue, Nashville, TN 37203.	3709319	05/03/2006	TN	Suite 200.
Tennessee PET Scan, 1020 N. Highland Avenue, Murfreesboro, TN 37130.	3791187	05/03/2006	TN	Suite A.
Texas Oncology—Harris Center HEB, 1615 Hospital Parkway, Bedford, TX 76022.	00R66C	05/03/2006	TX	Suite 300,
Greater Dayton Cancer Center, 3120 Governor's Place Boulevard, Kettering, OH 45409.	9295791	05/03/2006	OH	
Martha Jefferson Hospital, 459 Locust Avenue, Charlottesville, VA 22902.	490077	05/03/2006	VA	
Modern Diagnostic Imaging, 600 S. Dobson Road, Chandler, AZ 85224.	107628	05/03/2006	AZ	Suite B–16.
Christiana Care Nuclear Medicine/PET, 4755 Ogletown—Stanton Road, Newark, DE 19718.	080001	05/03/2006	DE	

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Advanced Imaging of Port Charlotte, LLC, 2625 Tamiami Trail, Port Charlotte, FL 33952.	K6802	05/03/2006	FL	Suite 1.
St. Joseph's Diagnostic Center—MLK, 3003 Martin Luther King, Jr. Boulevard, Tampa, FL 33067.	97779	05/03/2006	FL	
South Carolina Oncology Associates, 166 Stoneridge Drive, Columbia, SC 29210.	6275	05/03/2006	SC	
South Carolina Oncology Associates, 166 Stoneridge Drive, Columbia, SC 29210.	6276	05/03/2006	SC	
Access Health Imaging, 5257 Highway 82, East, Lake Village, AR 71653.	5M809	05/03/2006	AR	
PET/CT Services of Florida—Beverly Hills, 3404 N. Lecanto Highway, Beverly Hills, FL 34465.	V0103	05/03/2006	FL	Beverly Hills Medical Park.
PET/CT Services of Florida—Ocala, 1541 SW 1st Avenue, Ocala, FL 34474.	V0103	05/03/2006	FL	Suite 101B.
Blanchard Valley Regional Health Center, 145 W. Wallace Street, Findlay, OH 45840.	360095	05/03/2006	OH	
Papastavros Associates Medical Imaging, 1701 Augustine Cut—Off, Wilmington, DE 19803.	1083615561	05/03/2006	DE	
PET Imaging of Willowbrook, 13300 Hargrave Road, Houston, TX 77070.	FTN032	05/03/2006	TX	Suite 130.
PET Imaging of Northern Colorado, 1915 Wilmington Drive, Ft Collins, CO 80528.	804621	05/03/2006	CO	Suite 101.
Temecula Valley Advanced Imaging, 25395 Hancock Avenue, Murrieta, CA 92592.	ZZZ—150752	05/03/2006	CA	Suite 110.
Saint Anthony Memorial Health Center, 301 West Homer Street, Michigan City, IN 46360.	A150015	05/03/2006	IN	
Salina Regional Health Center, 400 S. Santa Fe Avenue, Salina, KS 67401.	170012	05/03/2006	KS	PO Box 5080.
Cancer Center of Kansas, 818 N. Emporia Street, Wichita, KS 67214.	110217	05/03/2006	KS	Suite 100.
Clinton Crossings Imaging, 995 Senator Keating Boulevard, Rochester, NY 14618.	14439A	05/03/2006	NY	
NSMS—Shelby County, 4253 Argosy Court, Madison, WI 53714.	I16068	05/03/2006	WI	
Verrazano Radiology, PC, 256A Mason Avenue, Staten Island, NY 10305.	200011201	05/03/2006	NY	
Imaging Consultants, Inc.—Brockton Hospital, 680 Centre Street, Brockton, MA 02301.	327085	05/03/2006	MA	
Imaging Consultants, Inc.—Cape Cod, 252 Long Pond Drive, Harwich, MA 02645.	327085	05/03/2006	MA	Fontain Medical Center.
Imaging Consultants Inc—Falmouth, 100 Ter Hewn Drive, Falmouth, MA 02540.	327085	05/03/2006	MA	
Imaging Consultants, Inc.—Jordan, 275 Sandwich Street, Plymouth, MA 02360.	327085	05/03/2006	MA	
Imaging Consultants, Inc.—Holyoke, 575 Beech Street, Holyoke, MA 01040.	327085	05/03/2006	MA	
Imaging Consultants, Inc.—Mercy Medical, 271 Carew Street, Springfield, MA 01089.	327085	05/03/2006	MA	
Imaging Consultants, Inc.—Lawrence Memorial, 170 Governors Avenue, Medford, MA 02155.	327083	05/03/2006	MA	
Imaging Consultants, Inc.—Metro West, 115 Lincoln Street, Framingham, MA 01701.	327083	05/03/2006	MA	
Imaging Consultants, Inc.—Milford, 14 Prospect Street, Milford, MA 01757.	327085	05/03/2006	MA	
Imaging Consultants, Inc.—Quincy, 114 Whitwell Street, Quincy, MA 02196.	327083	05/03/2006	MA	
Imaging Consultants, Inc.—Saints Memorial, 2 Hospital Drive, Lowell, MA 01852.	327083	05/03/2006	MA	
Imaging Consultants, Inc.—Truesdale, 1030 Presidents Avenue, Fall River, MA 02720.	327085	05/03/2006	MA	
Imaging Consultants, Inc.—Twin City, 76 Summer Street, Fitenburg, MA 01420.	N/A	05/03/2006	MA	
Imaging Consultants, Inc.—Worcester, 20 Worcester Center Boulevard, Worcester, MA 01608.	327085	05/03/2006	MA	
Sentara Mobile PET/CT—Careplex, 5900 Lake Wright Drive, Suite B, Norfolk, VA 23502.	250605	05/04/2006	VA	
Sentara Mobile PET/CT—Lake Wright, 5900 Lake Wright Drive, Suite B, Norfolk, VA 23502.	250605	05/04/2006	VA	
Sentara Mobile PET/CT—Princess Anne, 5900 Lake Wright Drive, Suite B, Norfolk, VA 23502.	250605	05/04/2006	VA	
Sentara Mobile PET/CT—Williamsburg, 5900 Lake Wright Drive, Suite B, Norfolk, VA 23502.	250605	05/04/2006	VA	
Memorial Hospital of South Bend, 615 N. Michigan Street, South Bend, IN 46601.	150058	05/04/2006	IN	

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NSMS—Belleville, IL, 4253 Argosy Court, Madison, WI 53714	208196	05/04/2006	WI	
NSMS—Flora, IL, 4253 Argosy Court, Madison, WI 53714	208196	05/04/2006	WI	
NSMS—Breese, IL, 4253 Argosy Court, Madison, WI 53714	208196	05/04/2006	WI	
SSM DePaul Health Center, 12303 DePaul Drive, St Louis, MO 63044.	260104	05/04/2006	MO	
Lutheran Hospital, 7950 W. Jefferson Boulevard, Fort Wayne, IN 46804.	150017	05/11/2006	IN	
Memorial MRI and Diagnostic, 1346 Campbell Road, Houston, TX 77055.	00941U	05/11/2006	TX	
Shields Imaging of Eastern Mass, 55 Fogg Road, Weymouth, MA 2190.	327088	05/11/2006	MA	
Baystate MRI and Imaging Center, 3300 Main Street, Springfield, MA 1107.	327039	05/11/2006	MA	
Advanced Imaging Center, 16110 Jog Road, 200, Delray Beach, FL 33446.	U2049	05/11/2006	FL	
UMASS Memorial MRI and Imaging Center, 214 Shrewsburg Street, Worcester, MA 1604.	327040	05/11/2006	MA	
RCOA Imaging Services, 1108 Minnequa Avenue, Pueblo, CO 81004.	475748	05/11/2006	CO	
Adventist Health PET/CT—Hanford, 450 N. Greenfield Avenue, Hanford, CA 93230.	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT—Feather River, 5974 Pertz Road, Paradise, CA 95969.	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT—Sonora, 1000 Greenley Road, Sonora, CA 95370.	ZZZ318852	05/11/2006	CA	
Sarasota Memorial PET, 5350 University Parkway, Sarasota, FL 34238.	U1775	05/11/2006	FL	
Adventist Health PET/CT—Redbud, 18th Ave. at Highway 53, PO Box 6710, Clear Lake, CA 95422.	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT—St. Helena, 10 Woodland Road, St. Helena, CA 94574.	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT—Ukiah, 275 Hospital Drive, Ukiah, CA 95482.	ZZZ318852	05/11/2006	CA	
Mease Outpatient Imaging, 1840 Mease Drive, Safety Harbor, FL 34685.	100265	05/11/2006	FL	
Bardmoor Outpatient Center, 8787 Bryan Dairy Road, Largo, FL 33777.	00594C	05/11/2006	FL	
Trinity Outpatient Center, 2102 Trinity Oaks Boulevard, New Port Richey, FL 34655.	00594D	05/11/2006	FL	
Walnut Creek Imaging Center, 114 La Casa Via, #200, Walnut Creek, CA 94598.	ZZZ13902Z	05/11/2006	CA	
Carlisle Imaging Center, 1240 S. Ft. Harrison, Clearwater, FL 33756.	594	05/11/2006	FL	
Valley Radiology Imaging at Samaritan, 2581 Samaritan Drive, #100, San Jose, CA 95124.	ZZZ139851Z	05/11/2006	CA	
Forest Hills PET Imaging, 102–02 Queens Boulevard, Forest Hills, NY 11375.	06998G	05/11/2006	NY	
Roper LowCountry PET Imaging Center, 316 Calhoun Street, Charleston, SC 29401.	Q326280001	05/11/2006	SC	
Premier PET Imaging of NJ, 119 Cherry Hill Road, Parsippany, NJ 07054.	68433	05/11/2006	NJ	Suite 100.
Methodist Medical Center of Illinois, 221 NE Glen Oak Avenue, Peoria, IL 61636.	370661223	05/11/2006	IL	
Medical Imaging of Baltimore, 6715 N. Charles Street, Baltimore, MD 21204.	258L	05/12/2006	MD	
Yagnesh Oza, MD, 4117 Velerous Memorial Drive, Mt Vernon, IL 62864.	212702	05/12/2006	IL	
Moffitt Cancer Center, 12902 Magnolia Drive, Tampa, FL 33612.	100271	05/12/2006	FL	
PrimeMed Imaging, 5 Morgan Highway, Suite 7, Scranton, PA18505.	260	05/12/2006	PA	Morgan Medical Complex.
Rockville PET Imaging, PC, 119 North Park Avenue, Rockville Centre, NY 11570.	WTC601	05/12/2006	NY	Suite 101.
Porter Adventist Hospital, 2525 South Downing Street, Denver, CO 80210.	60064	05/12/2006	CO	
Rapid City Regional Hospital Medical Imaging Services, 353 Fairmont Boulevard, Rapid City, SD 57701.	43007	05/12/2006	SD	
Advanced Radiology Consultants, 56 Quarry Road, Trumbull, CT 06611.	C02747	05/12/2006	CT	
Northeastern PA Imaging Center, 2601 Stafford Avenue, Scranton, PA 18505–0305.	475385	05/12/2006	PA	PO Box 3305
Billings MRI Center, 1041 North 29th Street, Billings, MT 59101–1075.	81030	05/12/2006	MT	

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Aurora St. Luke's Medical Center, 2900 W. Oklahoma Avenue, Milwaukee, WI 53215.	520138	05/12/2006	WI	Nuclear Medicine Department.
Memorial & St. Elizabeth's Healthcare Services, LLC, 4000 N. Illinois Lane, Swansea, IL 62226.	201339	05/12/2006	IL	PET/CT Imaging Center.
Palm Beach Cancer Institute—West Palm Beach, 1309 North Flagler Drive, West Palm Beach, FL 33401–2710.	34754	05/12/2006	FL	
Overlook Hospital, 99 Beauvoir Avenue, Summit, NJ 07902 ...	8772966189	05/12/2006	NJ	
Ashland Bellefonte Cancer Center, 122 Saint Christopher Drive, Ashland, KY 41101.	2150	05/12/2006	KY	
Bryn Mawr Imaging Center, 101 S. Bryn Mawr Avenue, Bryn Mawr, PA 19010.	473120	05/12/2006	PA	
Oncology Alliance, 1055 N. Mayfair Road, Suite 100, Wauwatosa, WI 53220.	32836000	05/12/2006	WI	
Shared PET Maimonides, 6300 Eighth Avenue, Brooklyn, NY 11220.	97Z661	05/12/2006	NY	
Hoboken Radiology, LLC, 79 Hudson Street, Suite 100, Hoboken, NJ 07030.	80395	05/12/2006	NJ	
Akron City Hospital, 525 E. Main Street, Akron, OH 44309	360020	05/12/2006	OH	
Park Avenue Radiologists, PC, 525 E. Main Street, Rome, GA 30165.	W21771	05/12/2006	NY	
Comprehensive Blood & Cancer Center, 6501 Truxtun Avenue, Bakersfield, CA 93309.	zzz238732	05/12/2006	CA	
Rome Imaging Center, 309 West 10th Street, Rome, GA 30165.	GRP1221	05/12/2006	GA	
Hawaii PET Imaging, 2230 Liliha Street, Honolulu, HI 96817	54537	05/12/2006	HI	
Imaging Consultants, Inc. at Henry Heywood Hospital, 242 Green Street, Gardner, MA 01440.	327085	05/12/2006	MA	
Imaging Consultants, Inc. at Nashoba Valley Medical Center, 200 Groton School Road, Ayer, MA 01432.	327085	05/12/2006	MA	
Rhode Island PET Services at Memorial Hospital, 111 Brewster Street, Pawtucket, RI 02860.	479003556	05/12/2006	RI	
Osceola Cancer Center, 737 W. Oak Street, Kissimmee, FL 34741.	1629034202	05/12/2006	FL	
Valley Radiologists, Ltd.—Paseo II Office, 5605 W. Eugie Avenue, Suite 110, Glendale, AZ 85304.	1902896236	06/13/2006	AZ	
Southeast GYN, Oncology PET, 5210 Belfort Road, Suite 130, Jacksonville, FL 32256.	45542	06/13/2006	FL	
The Johns Hopkins PET Center, 600 N. Wolfe Street, Baltimore, MD 21287.	210009	06/13/2006	MD	Nelson Basement.
Maklansky, Grunter, Kurzban, Cohen, Zimmer, Hyman, 165 East 84th Street, New York, NY 10028.	W20393	06/13/2006	NY	
Methodist Medical Center of Illinois, 112 Crescent Avenue, Peoria, IL 61636.	370661223	06/13/2006	IL	
Phoebe Putney Memorial Hospital, 417 Third Avenue, PO Box 1828, Albany, GA 31702–1828.	110007	06/13/2006	GA	
Eiber Radiology/PET Premier Imaging, 21 West 49th Street, Hialeah, FL 33012.	k3166	06/13/2006	FL	
Botsford Hospital, 28050 Grand River Avenue, Farmington Hills, MI 48336.	230151	06/13/2006	MI	
Middletown Regional Hospital, 105 McKnight Drive, Middletown, OH 45044.	360076	06/13/2006	OH	
Waukesha Memorial Hospital, 725 American Avenue, Waukesha, WI 53188.	390910727	06/13/2006	WI	
Battle Creek Health System, 300 North Avenue, Battle Creek, MI 49016.	230075	06/13/2006	MI	
Orlando Regional Medical Center, 1414 Kuhl Avenue, Orlando, FL 32806.	100006	06/13/2006	FL	
NorthEast Medical Center, 1065 NorthEast Gateway Court, NE., Concord, NC 28025.	340001	06/13/2006	NC	
Premier Medical Imaging, 7651 Stagers Loop, Delaware, OH 43015.	9912921	06/13/2006	OH	
Advanced Radiology Consultants, 15 Corporate Drive, Trumbull, CT 06611.	C02747	06/13/2006	CT	
Advance PET Imaging, 23 Technology Drive, East Setauket, NY 11733.	46a401	06/13/2006	NY	
Premier PET Imaging of Wichita, 500 S. Main Street, Suite B, Wichita, KS 67202.	110682	06/13/2006	KS	
Health Center Northwest, 320 Sunnyview Lane, Kalispell, MT 59901.	270087	06/13/2006	MT	
Olympic Medical Center, 844 N. 5th Avenue, Sequim, WA 98382.	500072	06/13/2006	WA	
Premier PET Imaging of Jacksonville, 5210 Belfort Road, Suite 130, Jacksonville, FL 32256.	K3166	06/13/2006	FL	

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PET/CT Imaging of San Jose, 2211 Moorpark Avenue, Suite 220, San Jose, CA 95128.	ZZZ19866Z	06/13/2006	CA	
The Reading Hospital and Medical Center, 6th and Spruce Streets, West Reading, PA 19611.	390044	06/13/2006	PA	
Julia Rackley Perry Memorial Hospital, 530 Park Avenue East, Princeton, IL 61356.	141337	06/13/2006	IL	
Ashland Bellefonte Cancer Center, 122 Saint Christopher Drive, Ashland, KY 41101.	2150	06/13/2006	KY	
Tower Imaging BBD, 14231 Bruce B Down Boulevard, Tampa, FL 33613.	169	06/13/2006	FL	
VyMed Diagnostic Imaging Tampa, LLC, 10010 N. Dale Mabry, Suite 160, Tampa, FL 33618.	U4068	06/13/2006	FL	
Texas Oncology Cancer Center Sugar Land, 1350 First Colony Boulevard, Sugar Land, TX 77479.	00073F	06/13/2006	TX	
Samaritan North Health Center, 9000 N. Main Street, Dayton, OH 45415.	360052	06/13/2006	OH	
The PET Center of Oxford, 1612 U.S. Highway 78 East, Suite 102, Oxford, AL 36203.	51554888	06/13/2006	AL	
Shared PET Mem Lighthouse, 6901 N. Main Street, Granger, IN 46530.	232800	06/13/2006	IN	
Shared PET Hope Cancer Center, 3702 South Fourth Street, Terre Haute, IN 47802.	201320	06/13/2006	IN	
Athens Regional Medical Center, 1199 Prince Avenue, Athens, GA 30606.	110074	06/13/2006	GA	
Muskogee PET & Nuclear Imaging, 3300 Chandler Road, Suite #106, Muskogee, OK 74403.	400522529	06/13/2006	OK	
Lubbock Imaging Center, 4011 19th Street, Lubbock, TX 79410.	00027K	06/13/2006	TX	
Memorial Medical Center, 701 N. First Street, Springfield, IL 62781.	140148	06/13/2006	IL	
Hamamatsu/Queen's PET Imaging Center, 1301 Punchbowl Street, Honolulu, HI 96813.		06/13/2006	HI	
Aurora BayCare Medical Center, 2845 Greenbrier Road, Green Bay, WI 54308.	520193	06/13/2006	WI	
Medical Center of Plano, 3901 W. 15th Street, Plano, TX 75002.	450651	06/13/2006	TX	
Carolinas Medical Center, 1000 Blythe Boulevard, Charlotte, NC 28203.	340113	06/13/2006	NC	
Redwood Regional Medical Group d.b.a. Santa Rosa Radiology, 121 Sotoyome Street, Santa Rosa, CA 95405.	680344865	06/13/2006	CA	
Boone Hospital Center, 1600 East Broadway, Columbia, MO 65201.	260068	06/13/2006	MO	
River Radiology, 45 Pine Grove Avenue, Kingston, NY 12401	W30681	06/13/2006	NY	
University of Washington Medical Center, 1959 NE Pacific Street, Seattle, WA 98195.	142700	06/13/2006	WA	
Mid American Imaging—Salem, 1987 E. 4th Street, Salem, OH 44460.	ID00804	06/13/2006	OH	
Piedmont Medical Center, 222 S. Herlong Avenue, Rock Hill, SC 29732.	420002	06/13/2006	SC	
Alliance Imaging—Sparks, 1311 South I Street, Fort Smith, AR 72817.	5F463	06/13/2006	AR	
Radiology Imaging Associates, 1825 SE Tiffany Avenue, Suite 104, Port St. Lucie, FL 34952.	52	06/13/2006	FL	
Mount Sinai Medical Center, One Gustave L. Levy Place, New York, NY 10029.	H23620	06/13/2006	NY	
NSMS—Ottawa, IL, 4253 Argosy Court, Madison, WI 53714 ..	208196	06/13/2006	WI	
Center for Diagnostic Imaging, 1550 E. Chestnut Avenue, Vineland, NJ 08360.	53290	06/13/2006	NJ	Bldg 4 Suite A.
St. Mary Mercy Hospital—Livonia, 36475 Five Mile Road, Livonia, MI 48154.	230002	06/13/2006	MI	
Harold Leever Regional Cancer, 1075 Chase Parkway, Waterbury, CT 06708.	470000025	06/13/2006	CT	
Kentucky Metabolic Imaging, 2425 Regency Road, Suite B, Lexington, KY 40503.	9366001	06/13/2006	KY	
Western Baptist Hospital, 2501 Kentucky Avenue, Paducah, KY 42001.	180104	06/13/2006	KY	
St. Anthony Regional Hospital, 311 South Clark Street, Box 628, Carroll, IA 51401.	1720067127	06/13/2006	IA	
Alliance Imaging—Sequoia Hospital, 170 Alameda De Las Pulgas, Redwood City, CA 94062.	ZZZ28890Z	06/13/2006	CA	
Craven Regional Medical Center, 2000 Neuse Boulevard, New Bern, NC 28560.	340131	06/13/2006	NC	
Alliance Imaging—Tri City Medical Center, 4002 Vista Way, Oceanside, CA 92056.	TG281C	06/13/2006	CA	

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Alliance Imaging—Yavapai Del Webb Outpatient Center, Prescott Valley, AZ 86314.	76103	06/13/2006	AZ	3262 Windsong Drive.
Saint Vincent's Comprehensive Cancer Center, 325 West 15th Street, New York, NY 10011.	330290	06/13/2006	NY	
Alliance Imaging—Southwest Medical Imaging, 3104 Stockton Hill Road, Kingman, AR 86401.	76103	06/13/2006	AZ	
Alliance Imaging—North Idaho Imaging, 700 Ironwood Drive, Coeur d'Alene, ID 93814.	1790291	06/13/2006	ID	
Froedtert Hospital, 9200 W. Wisconsin Avenue, Milwaukee, WI 53226.	520177	06/13/2006	WI	
Alliance Imaging—Flagstaff Medical Center, 1200 N. Beaver Street, Flagstaff, AZ 86001.	71855	06/13/2006	AZ	
South Florida Oncology and Hematology Consultants, 4850 W. Oakland Park Boulevard, Lauderdale Lakes, FL 33313.	33873	06/13/2006	FL	Suite A.
Alliance Imaging—Sierra Vista, 300 El Camino Real, Sierra Vista, AZ 85635.	71855	06/13/2006	AZ	
Alliance Imaging—St. Joseph Eureka, 2700 Dolbeer Street, Eureka, CA 95501.	zzz23046z	06/13/2006	CA	
Alliance Imaging—Corvallis Clinic, 3680 NW Samaritan Drive, Corvallis, OR 97330.	132104	06/13/2006	OR	
Bridgeport Hospital, 267 Grant Street, Bridgeport, CT 06610	70010	06/13/2006	CT	
Valley Radiologists, Ltd.—Paseo II Office, 5605 W. Eugie Avenue, Glendale, AZ 85304.	1902896236	06/13/2006	AZ	Suite 110.
Central Texas Medical Center, 1301 Wonder World Drive, San Marcos, TX 78666.	450272	06/13/2006	TX	
Alliance Imaging—Verde Valley Medical Center, 269 S. Candy Lane, Cottonwood, AZ 86326.	76103	06/13/2006	AZ	
Alliance Imaging—Union Hospital Cecil, 106 Bow Street, Elkton, MD 21821.	FMN008	06/13/2006	MD	
St. Joseph Mercy Hospital—Ann Arbor, 5301 E. Huron River Road, Ann Arbor, MI 48106.	230156	06/13/2006	MI	
Alliance Imaging—Navapache, 2200 E. Show Low Lake, Show Low, AZ 85901.	76103	06/13/2006	AZ	
St. Clare Medical Center, 1710 Lafayette Road, Crawfordsville, IN 17933.	150022	06/13/2006	IN	
Boynton Beach EFL Imaging Center, LLC, 2300 S. Congress Avenue, Boynton Beach, FL 33426.	272376000	06/13/2006	FL	#105.
Aurora Medical Center Oshkosh, 855 N. Westhaven Drive, Oshkosh, WI 54904.	590198	06/13/2006	WI	
Southeast GYN, Oncology PET, 5210 Belfort Road, Jacksonville, FL 32256.	45542	06/13/2006	FL	Suite 130.
Stockton MRI & Molecular Imaging Medical Center, 2320 N. California Street, #2, Stockton, CA 95219.	ZZZ290872	06/13/2006	CA.	
South Texas Cancer Center, 2150 N. Expressway 83, Brownsville, TX 78521.	14041756	06/13/2006	TX.	
Southwest Cancer Care Medical Group, 5395 Ruffin Road, San Diego, CA 92123.	W4957B	06/13/2006	CA	#202.
Radiology Associates of Venice and Englewood, PA, 512–516 S. Nokomis Avenue, Venice, FL 34285.	99390	06/13/2006	FL.	
Langlade Memorial Hospital Oncology, 112 E. 5th Avenue, Antigo, WI 54409.	521350	06/13/2006	WI.	
RCOA Imaging Services, 305 South 5th Street, Enid, OK 73701.	400522301	06/13/2006	OK.	
North Shore Hematology Oncology Associates, PC, 235 N. Belle Mead Road, East Setauket, NY 11733.	W04051	06/13/2006	NY.	
Providence Holy Cross Imaging Center, 26357 McBean Parkway, Suite 155, Santa Clarita, CA 91355.	TP129	06/13/2006	CA.	
Alaska Open Imaging Center, LLC, 6911 DeBarr Road, Anchorage, AK 99504.	K153149	06/13/2006	AK.	
Temecula Valley Nuclear Medicine, 25485 Medical Center Drive, Murrieta, CA 92562.	00A417170	06/13/2006	CA	Suite 102.
Hematology Oncology Assoc. of the Treasure Coast, 1801 SE Hillmoor Drive, Port Saint Lucie, FL 34952.	40806	06/13/2006	FL	Suite B–107 (Mobile).
The Center for Cancer and Blood Disorders, 800 W. Magnolia Avenue, Fort Worth, TX 76104.	00L79L	06/13/2006	TX.	
Alliance Imaging—South Coast Medical Center, 31872 Pacific Coast Highway, Laguna Beach, CA 92651.	TG281B	06/13/2006	CA.	
The Medical Center at Bowling Green, 250 Park Street, Bowling Green, KY 42101.	180013	06/13/2006	KY	PET/CT Center.
Johns Hopkins Bayview Medical Center, 4940 Eastern Avenue, Baltimore, MD 21224.	210029	06/13/2006	MD	Imaging Department—Nuclear Medicine.

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University of Michigan, Department of Radiology, 1500 E. Medical Center Drive, Ann Arbor, MI 48109.	230046	06/13/2006	MI	Box 0028, B1H418 University Hospital.
Carmichael Imaging, LLC, 4147 Carmichael Road, Montgomery, AL 36106.	51551742	06/13/2006	AL.	
Clearfield Hospital, 809 Turnpike Avenue, Clearfield, PA 16830.	390052	06/13/2006	PA.	
Clinical Pet of Hernando, 4003 Mariner Boulevard, Spring Hill, FL 34609.	V2683	06/13/2006	FL.	
Booth Radiology, 105 Kings Way, W. Hurffville—Crosskeys Road, Sewell, NJ 08080.	39460	06/13/2006	NJ.	
Clinical PET of Zepherhills, 38044 Daughtery Road, Zephyrhills, FL 33542.	E7179B	06/13/2006	FL.	
Radiology & Diagnostic Imaging, 2200 East Parrish Avenue, Owensboro, KY 42303.	3641	06/13/2006	KY	Building D.
Santa Monica Bay Physicians, 12524 W. Washington Boulevard, Los Angeles, CA 90066.	W14560	06/13/2006	CA.	
Missouri Baptist Medical Center, 3023 N. Ballas Road, St. Louis, MO 63141.	260108	06/13/2006	MO	Suite 150, Building D.
Radiology Associates of Tallahassee, PA, 1600 Phillips Road, Tallahassee, FL 32308.	60	06/13/2006	FL.	
Pacific Imaging—Oakland, 3200 Telegraph Avenue, Oakland, CA 94609.	1265480099	06/13/2006	CA.	
Medical Group of North County, 5395 Ruffin Road, #202, San Diego, CA 92123.	W11609	06/13/2006	CA.	
Somerset Community Hospital, 225 South Center Avenue, Somerset, PA 15501.	390039	06/13/2006	PA.	
Elmbrook Memorial Hospital, 19333 W. North Avenue, Brookfield, WI 53045.	520170	06/13/2006	WI.	
San Luis Diagnostic Medical Associates, 1100 Monterey Street, San Luis Obispo, CA 93401.	W14221	06/13/2006	CA	Suite 210.
Cancer Care Centers of S.Texas, PA (New Braunfels), 1448 Common Street, New Braunfels, TX 78130.	00U40Q	06/13/2006	TX.	
Cancer Care Centers of S.Texas, PA (San Antonio), 8109 Fredericksburg Road, San Antonio, TX 78229.	00U40Q	06/13/2006	TX.	
Cancer Care Centers of S.Texas, PA (Kerrville), 694 Hill Country Drive, Kerrville, TX 78028.	00U40Q	06/13/2006	TX.	
San Antonio Molecular Imaging SAMI, 9102 Floyd Curl Drive, San Antonio, TX 78240.	FTN025	06/13/2006	TX	Suite 193.
Pacific Medical Imaging and Oncology Center, Inc., 707 South Garfield Avenue, Alhambra, CA 91801.	W19267	06/13/2006	CA	Suite B–001.
Northern IL Cancer Treatment Center, 327 IL Route 2, Dixon, IL 61021.	210699	06/13/2006	IL.	
Cancer Care Center, 2210 Green Valley Road, New Albany, IN 47150.	243690	06/13/2006	IN	Suite 1.
Northeast Radiology, 3839 Danbury Road Brewster, NY 10509.	1134118607	06/13/2006	NY.	
New England PET Imaging System, 70 East Street, Methuen, MA 01844.	M20762	06/13/2006	MA.	
Southeast Texas PET Imaging, 690 North 14th Street, Beaumont, TX 77702.	0004CC	06/13/2006	TX.	
Sun City West PET Scan, 14418 W. Meeker Boulevard, Sun City West, AZ 85374.	102496	06/13/2006	AZ	Suite 105.
Butler Memorial Hospital, 911 East Brady Street, Butler, PA 16001.	390168	06/13/2006	PA.	
Diagnos, Inc., d.b.a. Diagnos PET/CT Imaging, 2000 North Loop West, Houston, TX 77018.	ftnx11	06/13/2006	TX	Suite 100.
Alliance Imaging—Washington Hospital, 38950 Civic Center Drive, Fremont, CA 94538.	ZZZ28890Z	06/13/2006	CA.	
Providence Saint Joseph Hospital, 201 S. Buena Vista Street, Burbank, CA 91505.	50235	06/13/2006	CA	#125.
Alliance Imaging—Centinela Freeman, 333 Prairie Avenue, Inglewood, CA 90301.	TG281	06/13/2006	CA.	
Alliance Imaging—Corona Regional Hospital, 800 S. Main Street, Corona, CA 91720.	ZZZ23042Z	06/14/2006	CA	
Alliance Imaging—St. Mary's Regional Medical Center, 235 W. 6th Street, Reno, NV 89503.	37860	06/14/2006	NV	235 W. 6th Street.
Alliance Imaging—Downey Regional Medical Center, 11500 Brookshire Avenue,Downey, CA 90241.	TG490	06/14/2006	CA	
Alliance Imaging—Visalia Medical Clinic, 5400 W. Hillsdale Drive,Visalia, CA 93291.	ZZZ23046Z	06/14/2006	CA.	
Alliance Imaging—Anaheim Memorial Medical Center, 1111 W. La Palma Avenue,Anaheim, CA 92801.	TD017C	06/14/2006	CA	Anaheim Memorial Medical Center.

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Glendale Diagnostic Imaging Network Medical Office, 403 South Glendale Avenue,Glendale, CA 91205.	W19100	06/14/2006	CA.	
Advanced Imaging at Baybrook, 11 Murray Street, Glens Falls, NY 12801.	33554a	06/14/2006	NY	
Elizabethtown Hematology—Oncology PLC, 1107 Woodland Drive, Elizabethtown, KY 42701.	3638	06/14/2006	KY	Suite 105.
Northern Arizona Radiology, 77 W. Forest Avenue, Suite 101, Flagstaff, AZ 86001.	WCGJX	06/14/2006	AZ	
Suburban Imaging—Coon Rapids, 8990 Springbrook Drive, Suite 140, Coon Rapids, MN 55433.	3087	06/14/2006	MN	
Covenant Medical Center, 200 East Ridgeway Avenue, Waterloo, IA 50702.	421264647	06/14/2006	IA	
Mayo Clinic Rochester, 10 3rd Avenue, NW., Rochester, MN 55905.	1922074434	06/14/2006	MN	Charlton Building.
Thousand Oaks Diagnostic Imaging Center, 2180 Lynn Road, Thousand Oaks, CA 91360.	TP118	06/14/2006	CA	
InnerVision Advanced Medical Imaging, 3801 Amelia Avenue, Lafayette, IN 47905.	167840	06/14/2006	IN	
UT—M. D. Anderson Cancer Center—PET Facility, 1220 Holcombe Boulevard, Houston, TX 77030.	450076	06/14/2006	TX	ACB 6th Floor.
Emory University Hospital, 1364 Clifton Road, NE., Atlanta, GA 30322.	110010	06/14/2006	GA	Rm. E121 Nuclear Medicine/PET.
Glendale MRI Institute, 624 S. Central Avenue, Glendale, CA 91204.	HW9951	06/14/2006	CA	
Princeton Radiology, 9 Centre Drive,Jamesburg, NJ 08831	526492	06/14/2006	NJ	
Caromont Imaging Services, 620 Summit Crossing Place, Gastonia, NC 28054.	340032	06/14/2006	NC	Suite 106.
North Central Imaging, 155 Sonterra Boulevard, Suite 100, San Antonio, TX 78258.	00867N	06/14/2006	TX	
Robert L. B. Tobin Diagnostic Imaging Center, 7979 Wurzbach Drive, Suite U113, San Antonio, TX 78229.	00867N	06/14/2006	TX	
Edwards Comprehensive Cancer Center, 1400 Hal Greer Boulevard, Huntington, WV 25701.	510055	06/14/2006	WV	
Home Hospital GLHS, 2400 South Street, Lafayette, IN 47904.	150109	06/14/2006	IN	
St. Luke's North PET, 153 Brodhead Road, Bethlehem, PA 18017.	390049	06/14/2006	PA	
Alamance Regional Medical Center, 1240 Huffman Mill Road, Burlington, NC 27216–0202.	340070	06/14/2006	NC	PO Box 202.
Verrazano Radiology, 256 Mason Avenue, Staten Island, NY 10305.	1698	06/14/2006	NY	
Total Imaging Sun City, 3862 Sun City Center, Sun City Center, FL 33571.	U4840	06/14/2006	FL	
Ortonville Area Health Services, 450 Eastvold Avenue, Ortonville, MN 56278.	241342	06/14/2006	MN	
Merle West Medical Center, 2865 Daggett Avenue, Klamath Falls, OR 97601.	380050	06/14/2006	OR	
Elite Imaging, LLC, 2845 Aventura Boulevard, Aventura, FL 33180.	K3535	06/14/2006	FL	Suite 145.
St. Mary Centralia, 400 N. Pleasant Avenue, Centralia, IL 62801.	140034	06/14/2006	IL	
North Texas Regional Cancer Center, 3705 W. 15th Street, Plano, TX 75075.	00543K	06/14/2006	TX	
Centegra Health System, 4201 Medical Center Drive, McHenry, IL 60050.	140116	06/14/2006	IL	
Boston Diagnostic Imaging, 398 East Altamonte Drive, Altamonte Springs, FL 32701.	77022	06/14/2006	FL	
William W. Backus Hospital, 326 Washington Street, Norwich, CT 06360.	70024	06/14/2006	CT	
NSMS—Sparta, IL, 4253 Argosy Court, Madison, WI 53714 ..	208196	06/14/2006	WI	
LaPorte Hospital & Healthcare Services, 1007 Lincolnway, LaPorte, IN 46350.	150006	06/14/2006	IN	
Skagit Valley Hospital, 1415 E. Kincaid Street, Mt.Vernon, WA 98273.	500003	06/14/2006	WA	
Alliance Imaging—Fairfield Hospital, 303 NW 11th Street, Fairfield, IL 62837.	213393	06/14/2006	IL	
Anderson Hospital, 6800 State Route 162, Maryville, IL 62062.	212761	06/14/2006	IL	
Alliance Imaging—Dean, 1313 Fish Hatchery Road, Madison, WI 53715.	92170	06/14/2006	WI	
Alliance Imaging—Research, 2316 E. Meyer Boulevard, Kansas City, MO 64112.	9004263A	06/14/2006	MO	
Alliance Imaging—St. Joseph, 1000 Carondelet Drive, Kansas City, MO 64114.	9004263A	06/14/2006	MO	

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Beebe Health Campus, d.b.a. Beebe Medical Center, 18941 John J. Williams Highway, Rehoboth, DE 19971.	80007	06/14/2006	DE	
Medical Outsourcing Services, LLC, 1200 Maple Road, Joliet, IL 60432.	211223	06/14/2006	IL	
Silver Spring Radiology, 10801 Lockwood Drive, Silver Spring, MD 20901.	FDX009	06/14/2006	MD	Suite 170.
New England PET of Greater Lowell, 295 Varnum Avenue, Lowell, MA 01854.	327080	06/14/2006	MA	
Stanford University, 900A Blake Wilbur Drive, Stanford, CA 94305.	50441	06/14/2006	CA	
Medical Outsourcing, Services, LLC, 3333 W. DeYoung Street, Marion, IL 62959.	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC, 1700 Clinton Street, Muskegon, MI 49443.	230066	06/14/2006	MI	
Medical Outsourcing Services, LLC, 1001 Bellefontaine Avenue, Lima, OH 45807.	MEID02391	06/14/2006	OH	
Golf Diagnostic Imaging Center, 9680 Golf Road, Des Plaines, IL 60016.	378810	06/14/2006	IL	
Medical Outsourcing Services, LLC, 2816 South Ellis Avenue, Chicago, IL 60616.	211222	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 1100 E. Norris Drive, Ottawa, IL 61350.	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC, 111 E. Spring Street, Streator, IL 61364.	211224	06/14/2006	IL	
Mansfield Imaging Center, 536 S. Trimble Road, Mansfield, OH 44906.	MAD10921	06/14/2006	OH	Suite A.
Manhattan Diagnostic Radiology, 400 East 66th Street, New York, NY 10021.	W23211	06/14/2006	NY	
Riverside Walter Reed Hospital, 7519 Hospital Drive, Gloucester, VA 23061.	490130	06/14/2006	VA	
Good Shepherd Hospital, 450 West Highway 22, Barrington, IL 60010.	140291	06/14/2006	IL	
Alliance Imaging—Presbyterian Intercomm Hospital, 12401 Washington Boulevard, Whittier, CA 90602.	TG281A	06/14/2006	CA	Presbyterian Intercommunity Hospital.
Altru Hospital, 1200 S. Columbia Road, Grand Forks, ND 58201.	350019	06/14/2006	ND	
Mid American Imaging—Union Hospital, 659 Boulevard Street, Dover, OH 44622.	ID00805	06/14/2006	OH	
Gundersen Clinic, 1900 South Avenue, Lacrosse, WI 54601 ..	34217	06/14/2006	WI	
University of Minnesota Medical Center, Fairview 500 Harvard Street, SE., Box 292, Minneapolis, MN 55455.	C02390	06/14/2006	MN	
The Christ Hospital, 2139 Auburn Avenue, Cincinnati, OH 45219.	360163	06/14/2006	OH	
West Michigan Cancer Center, 200 N. Park Street, Kalamazoo, MI 49007.	0N66660	06/14/2006	MI	
Cyrus Diagnostic Imaging, Inc., 165 Waymont Court, Lake Mary, FL 32746.	40586	06/14/2006	FL	
Cancer Centers of Florida, 1561 West Fairbanks Avenue, Winter Park, FL 32789.	K1833	06/14/2006	FL	
Cedars—Sinai Medical Center, 8700 Beverly Boulevard, Adler—Nail PET Center, Los Angeles, CA 90048.	951644600	06/14/2006	CA	S. Mark Taper Foundation Imaging Center.
Cancer Centers of Florida, 52 West Gore Street, Orlando, FL 32806.	K1833	06/14/2006	FL	
Cancer Centers of Florida, 1111 Blackwood Avenue, Ocoee, FL 34761.	K1833	06/14/2006	FL	
Mt. Clemens Regional Medical Center, 1000 Harrington Street, Mt. Clemens, MI 48043.	230227	06/14/2006	MI	
Truxtun Radiology Medical Group, LP, 1818 16th Street, Bakersfield, CA 93301.	ZZZ25213Z	06/14/2006	CA	
Medical Outsourcing Services, LLC, 1515 North Madison Avenue, Anderson, IN 46011.	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC, 1215 Franciscan Drive, Litchfield, IL 62056.	211224	06/14/2006	IL	
Piedmont Medical Center, 1968 Peachtree Road, NW., Atlanta, GA 30305.	110083	06/14/2006	GA	
Medical Outsourcing Services, LLC, 1400 West Park Street, Urbana, IL 61801.	211224	06/14/2006	IL	
Central Indiana PET, LLC, 8301 Harcourt Road, Suite 100, Indianapolis, IN 46260.	201930	06/14/2006	IN	
Medical Outsourcing Services, LLC, 812 North Logan Avenue, Danville, IL 61832.	211224	06/14/2006	IL	

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Queens Medical Imaging, PC, 69–15 Austin Street, Forest Hills, NY 11375.	1023011285	06/14/2006	NY	
NYOH PET/CT Imaging , 43 New Scotland Avenue, Albany, NY 12208.	56917A	06/14/2006	NY	
Conroe Regional Medical Center, 504 Medical Center Boulevard, Conroe, TX 77304.	450222	06/14/2006	TX	
Northeast Georgia Health System, Inc., Northeast Georgia Medical Center, 743 Spring Street, Gainesville, GA 30501.	110029	06/14/2006	GA	
Texas Oncology, PA—Mckinney, 4510 Medical Center Drive, Mckinney, TX 75069.	00543K	06/14/2006	TX	#215.
Medical Outsourcing Services, LLC, 7150 Clearwater Drive, Indianapolis, IN 46256.	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC, 1402 East County Line Road, Indianapolis, IN 46227.	223260	06/14/2006	IN	
Texas Cancer Center—Sherman, 2800 Highway 75 North, Sherman, TX 75090.	00543K	06/14/2006	TX	
Medical Outsourcing Services, LLC, 120 Ralston Avenue, Defiance, OH 43512.	MEID02391	06/14/2006	OH.	
Medical Outsourcing Services, LLC, 2400 N. Rockton Avenue, Rockford, IL 61103.	211224	06/14/2006	IL	
Arlington Cancer Center, 906 W. Randol Mill Road, Arlington, TX 76012.	00LK20	06/14/2006	TX	
Jupiter Medical Center, 2055 Military Trail, Jupiter, FL 33458	100253	06/14/2006	FL	
Cheyenne Radiology Group and MRI, PC, 2003 Bluegrass Circle, Cheyenne, WY 82009.	W309142	06/14/2006	WY.	
Hunterdon Imaging, PA, 2100 Wescott Drive, MRI Suite, Flemington, NJ 08822.	714119	06/14/2006	NJ	
Medical Outsourcing Services, LLC, 200 Berteau Avenue, Elmhurst, IL 60126.	211223	06/14/2006	IL	
Magnolia Regional Center, 611 Alcorn Drive, Corinth, MS 38834.	250009	06/14/2006	MS	
Monroe Clinic, 515 22nd Avenue, Monroe, WI 53566	520028	06/14/2006	WI	
Jupiter Hematology—Oncology Associates, 345 Jupiter Lakes Boulevard, Jupiter, FL 33458.	34922	06/14/2006	FL	Suite 100.
Southwest Regional Cancer Center, 901 West 38th Street, Austin, TX 78705.	0080BY	06/14/2006	TX	
Positron Imaging of Austin, 6101 Balcones Drive, Austin, TX 78731.	00538K	06/14/2006	TX	
Southern Ocean County Hospital, 1140 Route 72 West, Manahawkin, NJ 08050.	310113	06/14/2006	NJ	Radiology.
Medical Outsourcing Services, LLC, 9830 S. Ridgeland Road, Chicago Ridge, IL 60145.	211222	06/14/2006	IL	
Medical Outsourcing Services, LLC, 430 West Votaw Street, Portland, IN 47374.	223260	06/14/2006	IN	
Saint Agnes Medical Center, 1303 E. Herndon Avenue, Fresno, CA 93720.	50093	06/14/2006	CA	
Central Physicians Imaging, 100 Southland Drive, Lexington, KY 40503.	9375001	06/14/2006	KY	Suite B.
NEA Medical Center, 3024 Stadium Boulevard, Jonesboro, AR 72401.	1386699353	06/14/2006	AR	
Northgate Medical Imaging, LLC, 807 Northgate Boulevard, New Albany, IN 47150.	1205894235	06/14/2006	IN	
Ball Memorial Hospital, 2401 University Avenue, Muncie, IN 47303.	150089	06/14/2006	IN	
The MRI Center, 5200 Harroun Road, Sylvania, OH 43560	360074	06/14/2006	OH	Flower Hospital.
St. Joseph Regional Health Center, 2801 Franciscan Drive, Bryan, TX 77802.	450011	06/14/2006	TX	
Steinberg Diagnostic (SDMI), 2850 Siena Heights, Henderson, NV 89052.	WCHCC	06/14/2006	NV	
Raritan Bay Medical Center, 1 Hospital Plaza, Old Bridge, NJ 08857.	310039	06/14/2006	NJ	
MRI Center—St. Anne Mercy Hospital, 3404 W. Sylvania Avenue, Toledo, OH 43623.	360262	06/14/2006	OH	
MRI Center—St. Charles Mercy Hospital, 2600 Navarre Avenue, Oregon, OH 43616.	360081	06/14/2006	OH	
MRI Center—St. Luke's Hospital, 2901 Monclova Road, Maumee, OH 43537.	360090	06/14/2006	OH	
MRI Center—St. Vincent Medical Center, 2213 Cherry Street, Toledo, OH 43608.	360112	06/14/2006	OH	
MRI Center—Toledo Hospital, 2142 N. Cove Boulevard, Toledo, OH 43606.	360068	06/14/2006	OH	
McAlester Regional Health Center, One Clark Bass Boulevard, McAlester, OK 74501.	370034	06/14/2006	OK	

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Express Imaging Center, Ltd., 1987 West Fourth Street, Mansfield, OH 44906.	9299151	06/14/2006	OH	Suite A.
Mercy Regional Medical Center, 375 East Park Avenue, Durango, CO 81301.	60013	06/14/2006	CO	
Texas Oncology—LongviewCancer Center PET, 1300 N. Fourth Street, Longviews, TX 75601.	00T35E	06/14/2006	TX	
UNC Hospitals, 101 Manning Drive, Chapel Hill, NC 27514 ...	3400610	06/14/2006	NC	PET Department. Basement W/C Hospital.
DeKalb Medical Center—Diagnostic Imaging Center, 2701 North Decatur Road, Decatur, GA 30033.	110076	06/14/2006	GA	
Long Island Pet Imaging, 6 Ohio Drive, Lake Success, NY 11042.	W4921	06/14/2006	NY	Suite 101.
Vanderbilt University Medical Center, 1161 21st Avenue South, Nashville, TN 37232.	3284867	06/14/2006	TN	Building 1251 RRB.
Medical Outsourcing Services, LLC, 1800 E. Lakeshore Drive, Decatur, IL 62521.	211224	06/14/2006	IL	
New York PET and CTA Imaging Center, 7404 5th Avenue, Brooklyn, NY 11209.	1083680003	06/14/2006	NY	
Mercy Medical Center—North Iowa, 1000 4th Street, SW., Mason City, IA 50401.	160064	06/14/2006	IA	
Lawrence and Memorial Hospital, 365 Motauk Avenue, New London, CT 06320.	70007	06/14/2006	CT	
Superior Medical Diagnostics II, LLC, 235 Franklin Avenue, Nutley, NJ 07110.	68423	06/14/2006	NJ	
Oncology Specialists, S.C., 7900 N. Milwaukee Avenue, Niles, IL 60714.	587940	06/14/2006	IL	Suite 16.
Hahnemann University Hospital, Broad & Vine, MS300, Philadelphia, PA 19102.	390290	06/14/2006	PA	
Shrewsbury Diagnostic Imaging, LLC, 1131 Broad Street, Shrewsbury, NJ 07702.	24021	06/14/2006	NJ	Suite 110.
Medical Outsourcing Services, LLC, 500 West Court Street, Kankakee, IL 60901.	211224	06/14/2006	IL	
Forsyth Medical Center, 3333 Silas Creek Parkway, Winston Salem, NC 27103.	3400014	06/14/2006	NC	
Medical Outsourcing Services, LLC, 500 John Deere Road, Moline, IL 61265.	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC, 836 W. Wellington Avenue, Chicago, IL 60657.	211222	06/14/2006	IL	
Medical Outsourcing Services, LLC, 1600 West Walnut, Jacksonville, IL 62650.	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC, 1600 23rd Street, Bedford, IN 47471.	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC, 1500 North Ritter Avenue, Indianapolis, IN 46219.	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC, 1221 N. Highland, Aurora, IL 60506.	211223	06/14/2006	IL	
Medical Outsourcing Services, LLC, 1000 Lincoln Health Center Drive, Mattoon, IL 61938.	211224	06/14/2006	IL	
Salinas Valley Memorial Healthcare System, 450 E. Romie Lane, Salinas, CA 93901.	50334	06/14/2006	CA	
Bridgeport Hospital, 267 Grant Street, Bridgeport, CT 06610	70010	06/14/2006	CT	
MRIGP, Inc., d.b.a. Advanced Medical Imaging Diamond H., 2490 W 26th Avenue, Suite 20A, Denver, CO 80211.	H8808	06/14/2006	CO	
RCHO PET Imaging, 5120 Belfort Boulevard, Suite 130, Jacksonville, FL 32256.	40259	06/14/2006	FL	
Presbyterian Hospital, 200 Hawthorne Lane, Charlotte, NC 28204.	560554230	06/14/2006	NC	
Eisenhower Imaging Center, 39000 Bob Hope Drive, Rancho Mirage, CA 92210.	ZZZ91572Z	06/14/2006	CA	Lower Level Lucy Curci Cancer Center.
Mississippi Baptist Medical Center, 501 Marshall Street, Jackson, MS 39202.	250102	06/14/2006	MS	
Texas Oncology—South Texas Cancer Center, 2121 Pease Street, Suite 101, Harlingen, TX 78550.	14041756	06/14/2006	TX	Texas Oncology—South Texas Cancer Center.
Valley Radiologists, Ltd.—Paseo II Office, 5605 W. Eugie Avenue, Suite 110, Glendale, AZ 85304.	WCFHS	06/14/2006	AZ	
Good Samaritan Hospital, 400 15th Avenue, SE., Puyallup, WA 98372.	500079	06/14/2006	WA	
St. John's Mercy Hospital, 851 5th Street, Washington, MO 63090.	260052	06/14/2006	MO	
Memorial Hermann The Woodlands OPID, 9200 Pinecroft Drive, Suite 100, The Woodlands, TX 77380.	741152597	07/14/2006	TX	

Facility name	Provider number	Date approved	State	Other information
St. Luke's Hospital, 232 South Wood's Mill Road, Chesterfield, MO 63017.	260179	07/14/2006	MO	
Lake Vista Cancer Center, 2790 Lake Vista Drive, Lewisville, TX 75067.	00543K	07/14/2006	TX	
Palms Imaging Medical Group, Inc., 1901 Outlet Center Drive, Oxnard, CA 93036.	W19564	07/14/2006	CA	
Houston Medical Imaging, LLC, 3310 Richmond Avenue, Houston, TX 77006.	00137K	07/14/2006	TX	
Alliance Imaging—West Anaheim Medical Center, 3033 W. Orange Avenue, Anaheim, CA 92804.	TD017	07/14/2006	CA	
Winthrop PET Imaging Center, 222 Station Plaza North, Suite 140, Mineola, NY 11501.	330167	07/14/2006	NY	
Greenville Hospital System, University Medical Center, 701 Grove Road, Greenville, SC 29605.	420078	07/14/2006	SC	
High Field Open MRI, 1895 Jefferson Road, Rices Landing, PA 15357.	7885	07/14/2006	PA	
PET/CT Center at St. Anthony's POB, 1201 5th Avenue North, St. Petersburg, FL 33705.	E5753	07/14/2006	FL	Suite 100.
Texas Oncology—Deke Slayton Cancer Center, 501 Medical Center, Webster, TX 77598.	00t40e	07/14/2006	TX	
Invision North Florida Outpatient Imaging Center, 6605 NW 9th Boulevard, Gainesville, FL 32609.	E4639	07/14/2006	FL	
Memorial Hospital of Union County, 500 London Avenue, Marysville, OH 43040.	360092	07/14/2006	OH	
Texas Oncology/South Texas Cancer Center—McAllen, 1901 S. 2nd Street, McAllen, TX 78503.	00N39J	07/14/2006	TX	
Baylor Medical Center at Irving, 1901 North MacArthur Boulevard, Irving, TX 75061.	450079	07/14/2006	TX	
Providence Park Hospital, 47601 Grand River Avenue, Novi, MI 48374.	230019	07/14/2006	MI	
Texas Oncology—Abilene, 1957 Antilley Road, Abilene, TX 79606.	140414748	07/14/2006	TX	
St. Anthony Hospital, 1000 North Lee Street, Oklahoma City, OK 73101.	370037	07/14/2006	OK	
Rice Memorial Hospital, 301 Becker Avenue, SW., Willmar, MN 56201.	240088	07/14/2006	MN	
LDS Hospital Nuclear Medicine, 8th Avenue & C Street, Salt Lake City, UT 84143.	460010	07/14/2006	UT	
RMG First & Laurel Imaging Center, 2466 First Avenue, San Diego, CA 92101.	W14057	07/14/2006	CA	
RMG Gardenview Imaging Center, 1200 Gardenview Road, Encinitas, CA 92024.	W14057F	07/14/2006	CA	Suite 110.
Decatur County Memorial Hospital, 720 North Lincoln Street, Greensburg, IN 47240.	150062	07/14/2006	IN	
Midland Imaging Center, 5001 Andrews Highway, Midland, TX 79703.	00U75H	07/14/2006	TX	
Advanced Imaging, LLC, 3433 NW 56th C–10, Oklahoma City, OK 73112.	400522379	07/14/2006	OK	
University of Iowa Hospitals and Clinics, 200 Hawkins Drive, Iowa City, IA 52242.	160058	07/14/2006	IA.	
AZ Oncology Associates PET/CT & CT Imaging Center, 2070 W. Rudasill Road, Tucson, AZ 85704.	25291	07/14/2006	AZ	Suite 110.
Medical Diagnostic Imaging, 14 Raymond Avenue, Poughkeepsie, NY 12603.	EEN841	07/14/2006	NY	
Shore Memorial Hospital, 10085 William F. Bernart Circle, Nassawadox, VA 23413.	540560500	07/14/2006	VA	
Deaconess Hospital, 600 Mary Street, Evansville; IN 47747 ...	150082	07/14/2006	IN	
Great Neck Imaging, PC, 907 Northern Boulevard, Great Neck, NY 11021.	1487646311	07/14/2006	NY	
FMH Rose Hill, 1562 Opossumtown Pike, Frederick, MD 21702.	KP72	07/14/2006	MD	
Oakwood Annapolis Hospital, 33155 Annapolis Road, Wayne, MI 48184.	230142	07/14/2006	MI	
The Regional Cancer Center, 2500 West 12th Street, Erie, PA 16505.	140052	07/14/2006	PA	
Meritcare Hospital, 801 North Broadway, Fargo, ND 58122	350011	07/14/2006	ND	
Community Hospitals and Wellness Centers, 433 W. High Street, Bryan, OH 43506.	360121	07/14/2006	OH	
Sacred Heart Hospital, 900 W. Clairemont Avenue, Eau Claire, WI 54701.	520013	07/14/2006	WI	
Via Radiology—Meridian Pavilion, 11011 Meridian Avenue, North #101, Seattle, WA 98133.	8859612	07/14/2006	WA	
Medical Outsourcing Services, LLC, 2200 Market Street, Charlestown, IN 47111.	223260	07/14/2006	IN	

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Allegheny General Hospital, 320 East North Avenue, Pittsburgh, PA 15232.	60503	07/14/2006	PA	Division of Nuclear Medicine.
Texas Oncology—12th Avenue, 1001 W. 12th Avenue, Fort Worth, TX 76104.	00R66C	07/14/2006	TX	
Southwest Fort Worth Cancer Center, 6500 Harris Parkway, Fort Worth, TX 76132.	00R66C	07/14/2006	TX	
St. Rita's Medical Center, 730 W. Market Street, Lima, OH 45801.	360066	07/14/2006	OH	
New Mexico Oncology Hematology Consultants, Ltd., 4901 Lang Avenue, NE., Albuquerque, NM 87109.	850367056	07/14/2006	NM	
Emory Eastside Medical Center, 545 Old Norcross Road, Lawrenceville, GA 30045.	110192	07/14/2006	GA	Suite 200.
Riverside Regional Medical Center, 500 J. Clyde Morris Boulevard, Newport News, VA 23601.	490052	07/14/2006	VA	
Connecticut Oncology & Hematology, 220 Kennedy Drive, Torrington, CT 06790.	C00633	07/14/2006	CT	
Chilton Memorial Hospital, 97 West Parkway, Pompton Plains, NJ 07444.	310017	07/14/2006	NJ	
Riverside Diagnostic Center Williamsburg, 120 Kings Way, Williamsburg, VA 23188.	490052	07/14/2006	VA	
Lawrence County MRI & Diagnostic Imaging Center, 2526 Wilmington Road, New Castle, PA 16105.	68617	07/14/2006	PA	
Joint Township District Memorial Hospital, 200 St. Clair Street, Saint Mary's, OH 45885.	360032	07/14/2005	OH	
Radiation Therapy Regional Centers, 3680 Broadway, Fort Myers, FL 33901.	77215	07/14/2006	FL	
Graduate Hospital, 1800 Lombard Street, Philadelphia, PA 19146.	390285	07/14/2006	PA	One Graduate Hospital.
Columbia Diagnostic Center, 1111 Paulison Avenue, Clifton, NJ 07015.	94729	07/14/2006	NJ	
The Nebraska Medical Center, 4250 Dewey Avenue, Omaha, NE 68113.	280013	07/14/2006	NE	
Memorial Hermann Memorial City OPID, 925 Gessner Road, Houston, TX 77024.	741152597	07/14/2006	TX	
Clifton Springs Hospital and Clinic, 2 Coulter Road, Clifton Springs, NY 14432.	330265	07/14/2006	NY	
Monongalia General Hospital, 1200 J. D. Anderson Drive, Morgantown, WV 26505.	510024	07/14/2006	WV	Monongalia General Hospital.
Providence Portland Medical Center, 4805 NE Glisan Street, Portland, OR 97213.	380061	07/14/2006	OR	
Highfield Open MRI, Inc., 995 Green Tree Road, Pittsburgh, PA 15220.	7885	07/14/2006	PA	
Providence St. Vincent Medical Center, 9205 SW Barnes Road, Portland, OR 97225.	380004	07/14/2006	OR	
Conway Regional Imaging Center, 2120 Robinson Avenue, Conway, AR 72034.	40029	07/14/2006	AR	
Martin Memorial Medical Center, 300 Hospital Avenue, Stuart, FL 34994.	100044	07/14/2006	FL	
Northwest Medical Foundation of Tillamook, 1000 Third Street, Tillamook, OR 97141.	381317	07/14/2006	OR	Tillamook County General Hospital.
O'Connor Hospital, 2105 Forest Avenue, San Jose, CA 95128–1471.	50153	07/14/2006	CA	
Midtown Imaging, LLC–Wellington, 440 N. State Road 7, Wellington, FL 33411.	E9133	07/14/2006	FL	
Midtown Imaging, LLC–Jupiter, 345 Jupiter Lakes Boulevard, Jupiter, FL 33458.	E9133	07/14/2006	FL	Suite 100.
MMI/Mid Coast Hospital, 51 U.S. Route 1, Scarborough, ME 04074.	327079	07/14/2006	ME	Suite O.
Molecular Imaging Institute, 5349 Commerce Boulevard, Crown Point, IN 46307.	192870	07/14/2006	IN	
RCOA Imaging Services, 11937 U.S. Highway 271, Tyler, TX 75708.	FTN022	07/14/2006	TX	
MMI/Maine Medical Center, 51 U.S. Route 1, Scarborough, ME 04074.	327079	07/14/2006	ME	Suite O.
Radiology, Ltd., 4640 East Camp Lowell Drive, Tucson, AZ 85712.	WCBBM	07/14/2006	AZ	
Intermed Oncology Associates, S.C., 6701 159th Street, Tinley Park, IL 60477.	610860	07/14/2006	IL	
Lakes Radiology, 450 Canisteo Street, Hornell, NY 14843	1710937727	07/14/2006	NY	
Opelousas PET/CT Imaging Center, 3975 I–49 South Service Road, Suite 100, Opelousas, LA 70570.	5DA11	07/14/2006	LA	
Florida Cancer Institute—BRK, 7154 Medical Center Drive, Spring Hill, FL 34608.	1427017326	08/07/2006	FL	

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Capital Health System, 446 Belleview Avenue, Trenton, NJ 08618.	310044	08/07/2006	NJ	
Hudson Valley Diagnostic Imaging, PLLC, 575 Hudson Valley Avenue, New Windsor, NY 12553.	WBH241	08/07/2006	NY	
St Joseph's Hospital, 3200 Pleasant Valley Road, West Bend, WI 53095.	520063	08/07/2006	WI	
Atlantic Medical Imaging, 30 East Maryland Avenue, Somers Point, NJ 08244.	101024	08/07/2006	NJ	
Providence Imaging Center, 3340 Providence Drive, Anchorage, AK 99508.	2085R0202X	08/07/2006	AK	
Rochester Radiology Associates, PC 1277 Portland Avenue, Rochester, NY 14621.	199726	08/07/2006	NY	
Melbourne Internal Medicine Associates, 1132 South Hickory Street, Melbourne, FL 32901.	77167	08/07/2006	FL	
Highline Imaging, LLC 275 SW 160th Street, Seattle, WA 98166.	8801784	08/07/2006	WA	
Tyler PET, 415 South Fleishel Avenue, Tyler, TX 75702	752131429	08/07/2006	TX	
Lake City Medical Center, 340 NW Commerce Drive, Lake City, FL 32055.	100156	08/07/2006	FL	
Blount Memorial Hospital, 907 East Lamar Alexander Boulevard, Maryville, TN 37804.	440011	08/07/2006	TN	
Texas Cancer Center Mesquite, 4700 North Galloway, Mesquite, TX 75150.	R339	08/07/2006	TX	
Rutland Regional Medical Center: Diagnostic Imaging, 160 Allen Street, Rutland, VT 05701.	470005	08/07/2006	VT	
MDMED, Inc., 155 Calle Portal, Suite 700, Sierra Vista, AZ 85635.	Z68496	08/07/2006	AZ	
Atlantic Medical Imaging Wall Township, 2399 North Highway 34, Manasquan, NJ 08736.	101024	08/07/2006	NJ	Ramshorn Executive Centre Bldg B.
Newport Imaging Center, 455 Old Newport Road, Suite 101, Newport Beach, CA 92660.	W10829	08/07/2006	CA	
Cancer Care and Hematology Specialists(CCHSC), 8915 West Golf Road, Niles, IL 60714–05825.	355030	08/07/2006	IL	
Hematology Oncology Associates of Illinois (HOAI), 715 West North Avenue, Melrose Park, IL 60160.	218860	08/07/2006	IL	
Princeton Community Hospital, 122 12th Street Ext, Princeton, WV 24740.	510046	08/07/2006	WV	PO Box 1369.
TRICAT, LLC at Edison, 3830 Park Avenue, Edison, NJ 08820.	27193	08/07/2006	NJ	Suite 102.
Olathe Medical Center, 20333 W. 151st Street, Olathe, KS 66061.	170049	08/07/2006	KS	
St. Joseph Hospital, 1140 West La Veta Avenue, Orange, CA 92868.	50069	08/07/2006	CA	2nd Floor Nuclear Medicine.
Baptist Health Medical Center, 9601 I630, Exit 7, Little Rock, AR 72205–7299.	40114	08/07/2006	AR	
Florida Cancer Specialists, 3840 Broadway, Fort Myers, FL 33901.	1225064520	08/07/2006	FL	
Pacca PET Imaging, 5210 Belfort Road, Suite 130, Jacksonville, FL 32256.	37572	08/07/2006	FL	
National PET Scan Palm Beach, LLC, 16110 Jog Road, Delray Beach, FL 33484.	1164452405	08/07/2006	FL	Suite 200.
Central Memphis Regional PET Imaging Center, LLC, 1388 Madison Avenue, Memphis, TN 38104.	1295719110	08/07/2006	TN	
Johnston Memorial Hospital, 351 Court Street NE, Abingdon, VA 24210.	490053	08/07/2006	VA	
Lenox Hill Hospital, 100 East 77th Street, New York, NY 10021.	131624070	08/07/2006	NY	
Mercy Medical Center, 411 Laurel Street, Suite 2310, Des Moines, IA 50314.	160083	08/07/2006	IA	
New Orleans Regional PET Center, LLC, 3434 Prytania Street, Suite 120, New Orleans, LA 70115.	1538143474	08/07/2006	LA	
Indiana Regional Medical Center PET Imaging, 835 Hospital Road, Indiana, PA 15701.	390173	08/07/2006	PA	PO Box 788.
Mid American—Defiance Clinic, 1400 E. Second Street, Defiance, OH 43512.	ID00809	08/07/2006	OH	
Total Imaging Robertson, 737 West Brandon Boulevard, Brandon, FL 33511.	k7282	08/07/2006	FL	
New Tampa Imaging Center, 14302 N. Bruce B. Downs Boulevard, Tampa, FL 33613.	k57209	08/07/2006	FL	
Summit Imaging, 12037 Cortez Boulevard, Brooksville, FL 34613.	40986	08/08/2006	FL	
University of NM Cancer Research & Treatment Center, 900 Caminodey Salud, NE, Albuquerque, NM 87131.	400521103	08/08/2006	NM	

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Alliance Imaging—Los Alamitos Med Center, 3751 Katella Avenue, Los Alamitos, CA 90720.	TD017	08/08/2006	CA	
NYU Clinical Cancer Center, Diagnostic Imaging, 160 E. 34th Street, New York, NY 10016.	W1L361	08/08/2006	NY	2nd Floor.
Margaret Mary Community Hospital, 321 Mitchell Avenue, Batesville, IN 47006.	151329	08/08/2006	IN	
Quantum PET—Apple Hill, 37 Monument Road, York, PA 17403.	40635	08/08/2006	PA	
Memorial Hospital, 1204 N. Mound Street, Nacogdoches, TX 75961.	450508	08/08/2006	TX	
BMH—DeSoto, 7601 Southcrest Parkway, Southaven, MS 38671.	250141	08/08/2006	MS	
Riverside Medical Center, 300 Bourbonnais Campus, Bourbonnais, IL 60914.	140186	08/08/2006	IL	Riverside Medical Center.
UCSD Center for Molecular Imaging, 11388 Sorrento Valley Road, Suite 100, San Diego, CA 92121.	TG302	08/08/2006	CA	
Imaging Partners at Valley, LLC, 400 South 43rd Street, Renton, WA 98055.	AB38657	08/08/2006	WA	Olympic Building.
El Paso Cancer Treatment Center, 7848 Gateway East Boulevard, El Paso, TX 79915.	00543K	08/08/2006	TX	
Desert Radiologists, 3930 S. Eastern Avenue, Las Vegas, NV 89119.	VWCCBT	08/08/2006	NV	
Saint Joseph Hospital, 2900 North Lake Shore Drive, Chicago, IL 60068.	140224	08/08/2006	IL	
Midstate Medical Center, 435 Lewis Avenue, Meriden, CT 06451.	60646715	08/08/2006	VT	
Brookville Hospital, 100 Hospital Road, Brookville, PA 15825	391312	08/08/2006	PA	
Suntree Diagnostic Center, 6300 N. Wickham Road, Suite 101, Melbourne, FL 32940.	701	08/08/2006	FL	
Virginia Mason Medical Center, 1100 Ninth Avenue, Seattle, WA 98101.	500005	08/08/2006	WA	
Van Wert County Hospital, 1250 South Washington Street, Van Wert, OH 45891.	360071	08/08/2006	OH	
Manhasset Diagnostic Imaging, PC, 1350 Northern Boulevard, 2nd Floor, Manhasset, NY 11030.	W14841	08/08/2006	NY	
Southern New Mexico Cancer Center, 150 Road Runner Parkway, Las Cruces, NM 88011.	752131429	08/08/2006	NM	
Davis Memorial Hospital, Gorman Avenue and Reed Street, Elkins, WV 26241.	510030	08/08/2006	WV	Gorman Avenue.
Advocate Good Samaritan Hospital, 3815 Highland Avenue, Downers Grove, IL 60515.	140288	08/08/2006	IL	
Benefis Healthcare, 1101 26th Street South, Great Falls, MT 59405.	270012	08/08/2006	MT	
Fort Walton Beach Medical Center, 1032 Mar Walt Drive, Fort Walton Beach, FL 32547.	100223	08/08/2006	FL	
Blessing Hospital, PO Box #7005, Quincy, IL 62305	140015	08/08/2006	IL	
Alliance Imaging—Allen County Hospital, 101 South 1st Street, Iola, KS 53808.	130656	08/08/2006	KS	
Florida Cancer Institute—NPR, 8763 River Crossing Boulevard, New Port Richey, FL 34655.	1427017326	08/08/2006	FL	
Kimball Medical Center, 600 River Avenue, Lakewood, NJ 08701.	315084	08/08/2006	NJ	
Radiology Imaging Associates at Heritage, 8926 Woodyard Road, Clinton, MD 20735.	521454775	08/08/2006	MD	Suite 502.
Immanuel Medical Center, 6901 North 72nd Street, Omaha, NE 68122.	280081	08/08/2006	NE	
North Fork Radiology, 1333 Roanoke Avenue, Riverhead, NY 11901.	w11401	08/08/2006	NY	
South County PET Imaging, LLC, 10010 Kennerly Road, St. Louis, MO 63128.	93053	08/08/2006	MO	
Carolinas Hospital System, 805 Pamplico Highway, Florence, SC 29505.	621587267	08/08/2006	SC	
Radiology Associates of San Luis Obispo, 522 E. Plaza Drive, Santa Maria, CA 93454.	GR0009774	08/08/2006	CA	
Florida Cancer Specialists—Port Charlotte, 22395 Edgewater Drive, Port Charlotte, FL 33980.	1225064520	08/08/2006	FL	
Florida Cancer Specialists—Venice, 901 South Tamiami Trail, Venice, FL 34285.	1225064520	08/08/2006	FL	
Florida Cancer Specialists—Bradenton, 6001 21st Avenue West, Bradenton, FL 34209.	1225064520	08/08/2006	FL	
Nebraska Methodist Hospital, 8303 Dodge Street, Omaha, NE 68114.	280040	08/08/2006	NE	
PET/CT Center of Richardson, 399 Melrose Drive, Richardson, TX 75080.	1740207539	08/08/2006	TX	Suite A.

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Molecular Imaging at Sequoia Imaging Center, 4949 W. Cypress Avenue, Visalia, CA 93277.	ZZZ27463Z	08/08/2006	CA	
Central Jersey Radiologists, 2128 Kings Highway, Oakhurst, NJ 07755.	527995	08/08/2006	NJ	
Claxton—Hepburn Medical Center, 214 King Street, Ogdensburg, NY 13669.	330211	08/08/2006	NY	
Memorial Hermann Southeast, 11800 Astoria Boulevard, Houston, TX 77089.	741152597	08/08/2006	TX	
NSMS—Pine Bluff, AR, 4253 Argosy Court, Madison, WI 53714.	5f168	08/08/2006	WI	
Yuma Regional Medical Center, 2400 S. Avenue A, Yuma, AZ 85364.	866007596	08/08/2006	AZ	
Carle Clinic, 1702 S. Mattis Avenue, Champagne, IL 61820	371188284	08/08/2006	IL	
North Shore—LIJ Center for Advanced Medicine, 450 Lakeville Road, Lake Success, NY 11042.	330106	08/08/2006	NY	North Shore—LIJ Center for Advanced Medicine Diagnostic Imaging Center.
McAlester Diagnostic Imaging, 10 South Third Street, McAlester, OK 74501.	1760411540	08/08/2006	OK	Suite 100.
California Imaging Institute, 1867 E. Fir Avenue, Fresno, CA 93720.	ZZZ03565Z	08/08/2006	CA	
Bon Secours Memorial Regional Medical Center. 8260 Atlee Road, Mechanicsville, VA 23116.	541744931	08/08/2006	VA	
University of Maryland Medical Center, 22 S. Greene Street. Gudelksy 2nd Floor, Baltimore, MD 21201.	210002	08/08/2006	MD	Division of Nuclear Medicine.
Bixby Medical Center, 818 Riverside Avenue, Adrian, MI 49221.	230005	08/08/2006	MI	
Kern Radiology Medical Group, 2301 Bahamas Drive, Bakersfield, CA 93309.	1720023997	08/08/2006	CA	
Bon Secours St. Francis Medical Center, 13710 St. Francis Boulevard, Midlothian, VA 23114.	311716973	08/08/2006	VA	
MMI/Maine General Waterville, 51 U.S. Route 1, Scarborough, ME 04074.	327079	08/08/2006	ME	Suite O.
Mount Adams Imaging Center, 3911 Castlevale Road, Yakimaw, WA 98902.	8857843	08/08/2006	WA	
Carilion Roanoke Memorial Hospital, 2001 Crystal Spring Avenue, Roanoke, VA 24014.	490024	08/08/2006	VA	
Seton Medical Center, Nuclear Medicine Dept., 1900 Sullivan Avenue, Daly City, CA 94015–2229.	50289	08/08/2006	CA	
Arnett Imaging Center, 2403 Loy Drive, Lafayette, IN 47909	224390	08/08/2006	IN	
Advanced Diagnostic Imaging, PC, 1120 Professional Boulevard, Evansville, IN 47630.	639970	08/08/2006	IN	
Queen of Peace Hospital, 301 Second Street, NE, New Prague, MN 56071.	241361	08/08/2006	MN	
Agnesian Health Care, 430 E. Division Street, Fond du Lac, WI 54935.	520088	08/08/2006	WI	
ACMH Hospital, One Nolte Drive, Kittanning, PA 16201	390163	08/08/2006	PA	
Wilshire Oncology Medical Group, Inc., 1280 Corona Pointe Court, Corona, CA 92879.	zzz19568z	08/08/2006	CA	Suite 112.
United Radiology—Laurel, 14201 Laurel Park Drive, Laurel, MD 20707.	2.01558E+11	08/08/2006	MD	Suite 208.
Bay Area Medical Center, 3100 Shore Drive, Marinette, WI 54143.	520113	08/08/2006	WI	
Penn State Milton S. Hershey Medical Center, 500 University Drive, Hershey, PA, 17033.	251854772	08/08/2006	PA	HG380.
Delta St. Joseph's MRI, LLC, 1617 N. Califomia Street, Stockton, CA 95204.	ZZZ19725Z	08/08/2006	CA	Suites 1A and 1B.
United Radiology: Bowie, 16701 Melford Boulevard, Bowie, MD 20715.	2.01558E+11	08/08/2006	MD	
United Radiology Gaithersburg, 702 Russell Avenue, Gaithersburg, MD 20877.	2.01558E+11	08/08/2006	MD	
United Radiology Olney, 18120 Hillcrest Drive, Olney, MD 20832.	2.01558E+11	08/08/2006	MD	Suite A.
FCS/Axcess Diagnosis/Sarasota, 600 N. Cattleman Road, Sarasota, FL 34232.	1225064520	08/08/2006	FL	
NSMS—Greenville, IL, 4253 Argosy Court, Madison, WI 53714.	208196	08/08/2006	WI	
FCS/Axcess Diagnosis/Venice, 842 Sunset Lake Boulevard, Venice, FL 34292.	1225064520	08/08/2006	FL	Suite #301.
Leading Edge Radiation, 8715 5th Avenue, Brooklyn, NY 11209.	WEM111	09/05/2006	NY	

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Rena Tarbet Cancer Center, 4201 Medical Center Drive, Suite 180, McKinney, TX 75069.	oow753	09/05/2006	TX	
McLaughlin & Marte, M.D., LLP, 3850 Tampa Road, Suite 202, Palm Harbor, FL 34684.	1003862079	09/05/2006	FL	
BryanLGH Medical Center, 2300 South 16th Street, Lincoln, NE 68502.	280003	09/05/2006	NE	
Freehold MR Associates, 691 West Main Street, Freehold, NJ 07728.	405856	09/05/2006	NJ	
Franciscan Skemp Healthcare, 700 West Avenue South, La Crosse, WI 54601.	520004	09/05/2006	WI	
Tefon Radiology, 2001 S. Woodruff, Suite 17, Idaho Falls, ID 83404.	1371462	09/05/2006	ID	
Fletcher Allen Health Care, Mobile Pad, 790 College Parkway, Colchester, VT 05446.	1659309615	09/05/2006	VT	790 College Parkway.
University of Penn Imaging Center, 3600 Market Street, 3rd Floor, Silverstein Philadelphia, PA 19104.	764089	09/05/2006	PA	
Sitron—Hammel Radiology Group, 4277 Hempstead Turnpike, Suite 200, Bethpage, NY 11714.	W14891	09/05/2006	NY	
MRI of Saint Louis Obispo, 1064 Murray Avenue, San Luis Obispo, CA 93405.	1881661361	09/05/2006	CA	
Lahey Clinic, 41 Mall Road, Burlington, MA 01805	220171	09/05/2006	MA	
St. Joseph Medical Center, 215 N. 12th Street, Reading, PA 19603.	390096	09/05/2006	PA	
Spartanburg Regional Medical Center, 101 E. Wood Street, Spartanburg, SC 29303.	420007	09/05/2006	SC	
Aurora Sinai Medical Center, 945 N. 12th Street, Milwaukee, WI 53201.	520064	09/05/2006	WI	
FHN Memorial Hospital, 1045 W. Stephenson Street, Freeport, IL 61032.	140160	09/05/2006	IL	
Southwest Washington Medical Center, 400 NE Mother Joseph Place, Vancouver, WA 98668.	500050	09/05/2006	WA	
St. Lukes Center for Diagnostic Imaging, 6 McBride and Sons Corporate Center Drive, Suite 101, Chesterfield, MO 63005.	47006	09/05/2006	MO	
The Stamford Health System, Shelbourn Road & West Broad Street, Stamford, CT 06904.	70006	09/05/2006	CT	
Hagerstown Imaging, LLC, 1150 A Professional Court, Hagerstown, MD 21741.	1518914936	09/05/2006	MD	
GCM Suburban Imaging, 6420 Rockledge Drive, Suite 3100, Bethesda, MD 20817.	409623	09/05/2006	MD	
Alliance Imaging—No. Idaho Imaging, 2003 Lincoln Way, Coeur d'Alene, ID 83814.	1790291	09/05/2006	ID	
HPMA PET Center, 22710 Professional Drive, Suite 104, Kingwood, TX 77339.	0019BY	09/05/2006	TX	
Parma Community General Hospital, 7007 Powers Boulevard, Parma, OH 44129.	360041	09/05/2006	OH	
Pacific Shores Medical Group PET Imaging, 1043 Elm Street #104, Long Beach, CA 90813.	W13494	09/05/2006	CA	
Clark Memorial Hospital, 1220 Missouri Avenue, Jeffersonville, IN 47130.	15009	09/05/2006	IN	
Abilene Imaging Center, LLC, 750 North 18th Street, Abilene, TX 79601.	FTA070	09/05/2006	TX	
DuBois Regional Medical Center, 100 Hospital Avenue, DuBois, PA 15801.	390086	09/06/2006	PA	
Meeker County Memorial Hospital, 612 South Sibley Avenue, Litchfield, MN 55355.	241366	09/06/2006	MN	
Memorial Health, 4700 Waters Avenue, Savannah, GA 31403	110036	09/06/2006	GA	
St. Luke's Regional Medical Center, Ltd., 190 E. Bannock Street, Boise, ID 83712.	130006	09/06/2006	ID	
Radiology Consultants Imaging Center, 400 Avenue K, SE, Winter Haven, FL 33880.	U3944	09/06/2006	FL	
Patient Comprehensive Cancer Center, 4352 North Josey Lane, Carrollton, TX 75010.	0083BY	09/06/2006	TX	
The University of Tennessee Medical Center, 1924 Alcoa Highway, Knoxville, TN 37920.	440015	09/06/2006	TN	
Radiation Therapy Regional Centers—Naples, 800 Goodlette Road, Suite 110 Naples, FL 34102.	77215	09/06/2006	FL	
St. Mary's Medical Center, 2900 First Avenue, Huntington, WV 25702.	510007	09/06/2006	WV	
McKinney Regional Cancer Center, 4601 Medical Center Drive, McKinney, TX 75069.	00711W	09/06/2006	TX	
WCA Hospital, PO Box 840, Jamestown, NY 14701	330239	09/06/2006	NY	207 Foote Avenue.
Grants Pass Imaging and Diagnostic Center, LLC, 1619 NW Hawthorne, Suite 110, Grants Pass, OR 97526.	1659307973	09/06/2006	OR	

Facility name	Provider number	Date approved	State	Other information
Baptist Memorial Hospital—Golden Triangle, 2520 5th Street North, Columbus, MS 39705.	250100	09/06/2006	MS	
Florida Medical Clinic, 13417 U.S. Highway 301, Dade City, FL 33525.	39715	09/06/2006	FL	
Saint Clare's Hospital, 400 West Blackwell Street, Dover, NJ 07801.	310067	09/06/2006	NJ	
Radiation Medicine Associates, 2202 South 77 Sun Shine Strip, Suite E, Harlingen, TX 78550.	00645N	09/06/2006	TX	
The Radiology Clinic, LLC, 208 McFarland Circle North, Tuscaloosa, AL 35406.	13089	09/06/2006	AL	
Bay Area Hospital, 1775 Thompson Road, Coos Bay, OR 97420.	30090	09/06/2006	OR	
MMI/St. Mary's Hospital, 51 U.S. Route 1, Scarborough, ME 04074.	327079	09/06/2006	ME	Suite O.
Gulf Coast Medical Diagnostic Center. 2024 State Avenue, Panama City, FL 32405.	30930	09/06/2006	FL	
Diagnostic Radiology Systems, Inc., 1010 Medical Center Drive, Powderly, KY 42366.	9366001	09/06/2006	KY	
Lewis Gale Medical Center, 1900 Electric Road, Salem, VA 24153.	490048	09/06/2006	VI	
Radiology Diagnostic Center, 1310 Las Tablas Road, Suite 103, Templeton, CA 93465.	W7491	09/06/2006	CA	
Weslaco Nuclear Imaging Center, 913 S. Airport Drive, Weslaco, TX 78596.	1780796219	09/06/2006	TX	
Pioneer PET, LLC, 1930 E. Southern Avenue, Tempe, AZ 85282.	1265401996	12/05/2006	AZ	
Kearney Imaging Center, LLC, 3219 Central Avenue, Suite 109, Kearney, NE 68847.	98950	12/05/2006	NE	
Rose Medical Center, 4567 East 9th Avenue, Denver, CO 80220.	841321373	12/05/2006	CO	
UCSF Medical Center, 185 Berry Street, San Francisco, CA 94107.	50454	12/05/2006	CA	Lobby 7, Suite 180.
Broward General Medical Center, 1500 S. Andrews Avenue, Fort Lauderdale, FL 33316.	100039	12/05/2006	FL	
St. Paul Radiology, PA/Midwest Radiology, 166 Fourth Street East, St. Paul, MN 55101.	CO2661	12/05/2006	MN	
Queen of the Valley Hospital, 1000 Trancas Street, Napa, CA 94558.	941243669	12/05/2006	CA	
Dana—Farber Cancer Institute, 44 Binney Street, Boston, MA 02115.	220162	12/05/2006	MA	
Holmes Regional Medical Center, 1350 South Hickory Street, Melbourne, FL 32901.	100019	12/05/2006	FL	
Niagara County PET Center, Niagara Falls, NY 14302	f27482	12/05/2006	NY	621 Tenth Street Department of Radiology.
Augusta Medical Center, 78 Medical Center Drive, Fishersville, VA 22939.	490018	12/05/2006	VA	
Nevada Cancer Center, 2851 North Tenaya Way, Las Vegas, NV 89128.	VWQBHJ	12/05/2006	NV	#100.
Wellstar Kennestone Hospital Imaging Center, 340 Kennestone Hospital Boulevard, Marietta, GA 30060.	110035	12/05/2006	GA	Suite LL10.
Ashtabula County Medical Center, 2412 Lake Avenue, Ashtabula, OH 44004.	1285607416	12/05/2006	OH	The Regional Cancer Center.
Rowan Regional Medical Center, 514 Corporate Circle, Salisbury, NC 28147.	340015	12/05/2006	NC	
The Pottsville Hospital and Warne Clinic, 420 South Jackson Street,Pottsville, PA 17901.	390030	12/05/2006	PA	
Georgetown Memorial Hospital, 606 Blackriver Road, Georgetown, SC 29442.	1982604021	12/05/2006	SC	
Medical Center of Arlington, 3301 Matlock Road, Arlington, TX 76015.	450675	12/05/2006	TX	
Valley View Regional Hospital, 430 N. Monte Vista, Ada, OK 74820.	370020	12/05/2006	OK	
Montgomery Medical Services, 644 Maysville Road, Suite 10, Mount Sterling, KY 40353.	9141	12/05/2006	KY	
Medical Outsourcing Services, LLC, 5409 N. Knoxville Avenue, Peoria, IL 61614.	211224	12/05/2006	IL	
Medical Outsourcing Services, LLC, 1300 N. Main Street, Rushville, IN 46173.	223260	12/05/2006	IN	
Mayo Clinic Arizona, 13400 E. Shea Boulevard, Scottsdale, AZ 85259.	WCTGB	12/05/2006	AZ	
Door County Memorial Hospital, 323 S. 18th Avenue, Sturgeon Bay, WI 54235.	1093743874	12/05/2006	WI	

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Center for Diagnostic Imaging—Sartell, 166 19th Street S., Sartell, MN 56377.	C01307	12/05/2006	MN	Suite 100.
South Texas Institute of Cancer, 1205 South 19th Street, Corpus Christi, TX 78405.	0065AZ	12/05/2006	TX	
Del Sol Medical Center, 10460 Vista Del Sol, El Paso, TX 79925.	450646	12/05/2006	TX	
University Hospital, 818 St. Sebastian Way, Augusta, GA 30901.	110028	12/05/2006	GA	Suite 103.
St. John Health System—Tulsa, OK, 1923 S. Utica Avenue, Tulsa, OK 74104.	370114	12/05/2006	OK	
Allen Memorial Hospital, 1825 Logan Avenue, Waterloo, IA 50703.	160110	12/05/2006	IA	
Craig General Hospital, 735 North Foreman Street, Vinita, OK 74301.	370065	12/05/2006	OK	
Vision Imaging of Kingston, 517 Pierce Street, Kingston, PA 18704.	86463	12/05/2006	PA	
Lake Hospital Mentor Campus, 9485 Mentor Avenue, Mentor, OH 44060.	360098	12/05/2006	OH	Attn: Suite A.
Excela RCL PET CT Imaging, LLC, 200 Village Drive, Greensburg, PA 15601.	1144260415	12/05/2006	PA	
Kousay Al—Kourainy, MD, 5395 Ruffin Road, #202, San Diego, CA 92123.	A39783	12/05/2006	CA	
Memorial Hermann Northwest Hospital, 1635 North Loop West, Houston, TX 77008.	450184	12/05/2006	TX	
Accu/Site PET/CT Imaging Center, 30 Harrison Street, Johnson City, NY 13790.	DD1474	12/05/2006	NY	Suite #102.
DDIS–Bond, 9 Bond Street, Brooklyn, NY 11201	687s41	12/05/2006	NY	
West Valley Radiology Medical Group, 7301 Medical Center Drive, West Hills, CA 91307.	Hw5870A	12/05/2006	CA	Suite 103.
Westside Diagnostic and Therapeutic Medical Center, LLC, 12524 West Washington Boulevard, Los Angeles, CA 90066.	TG472	12/05/2006	CA	
DDIS–Still 1783 Stillwell Avenue, Brooklyn, NY 11223	687s41	12/05/2006	NY	
Alpena Regional Medical Center, 1501 W, Chisholm Street, Alpena, MI 49707.	386000029	12/05/2006	MI	
Santa Monica Imaging Center, 1245 16th Street, Suite 105, Santa Monica, CA 90404.	1881670248	12/05/2006	CA	
Mercer County Community Hospital, 800 W. Main Street, Coldwater, OH 45828.	360058	12/05/2006	OH	
Johnson Memorial Hospital, 1125 W. Jefferson Street, Franklin, IN, 46131–2675.	150001	12/05/2006	IN	PO Box 549.
St. Mary's Health Center, 100 St. Mary's Medical Plaza, Jefferson City, MO 65101.	260011	12/05/2006	MO	
Eastside PET Center, LLC, 46 Medical Park East Drive, Birmingham, AL 35023.	1619925070	12/05/2006	AL	Suite 224.
United Regional Health Care System, 1600 8th Street, Wichita Falls, TX 76301.	450010	12/05/2006	TX	
Denton Regional Medical Center, 3535 S. I–35, Denton, TX 76210.	450634	12/05/2006	TX	
Canton—Potsdam Hospital, 50 Leroy Street, Potsdam, NY 13676.	161012691	12/05/2006	NY	
St. John Macomb Hospital, 11800 E. 12 Mile Road, Warren, MI 48093.	230195	12/05/2006	MI	
Cleveland Regional Medical Center, 201 East Grover Street, Shelby, NC 28150.	340021	12/05/2006	NC	
Bluefield Regional Medical Center, 500 Cherry Street, Bluefield, WV 24701.	510071	12/05/2006	WV	
Charles Cole Memorial Hospital, 1001 East Second Street, Coudersport, PA 16915.	390246	12/05/2006	PA	
New Jersey State Open MRI, 155 State Street, Hackensack, NJ 07601.	85238	12/06/2006	NJ	
Westcoast Radiology, 501 S. Lincoln Ave., Clearwater, FL 33756.	E4187	12/06/2006	FL	
The Iowa Clinic/PETCO, LLC, 1221 Pleasant Street, Des Moines, IA 50309.	I5819	12/06/2006	IA	
Quantum PET—Holy Spirit Hospital, 890 Poplar Church Road, Camp Hill, PA 17011.	40635	12/06/2006	PA	
Coastal Bend PET Scan, Ltd., 1533 5th Street, Corpus Christi, TX 78404.	FTN014	12/06/2006	TX	
Pottstown Memorial Medical Center, 1600 E. High Street, Pottstown, PA 19464.	390123	12/06/2006	PA	
UTMB PET/CT Imaging Center, UTMB—Rebecca Sealy Hospital, Galveston, TX 77555–0793.	R518	12/06/2006	TX	301 University Blvd.

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Diagnostic Imaging Services, LLC, 11110 Medical Campus Road, Suite 204, Hagerstown, MD 21742.	1114982808	12/06/2006	MD	
North Memorial Medical Center, 3435 West Broadway, Robbinsdale, MN 55422.	1851344907	12/06/2006	MN	
Hays Medical Center, 2220 Canterbury Drive, Hays, KS 67601.	2473	12/06/2006	KS	
St. Patrick Hospital & Health Sciences Center, 500 West Broadway, Missoula, MT 59802.	1023032588	12/06/2006	MT	
Park Ridge Hospital, 100 Hospital Drive, Hendersonville, NC 28792.	340023	12/06/2006	NC	
Fostoria Community Hospital, 610 Plaza Drive, Fostoria, OH 44830.	361318	12/06/2006	OH	
UMDNJ—University Hospital, 30 Bergen Street, Newark, NJ 07101.	221775306	12/06/2006	NJ	ADMC 5 Room 575, P.O. Box 1709.
Metabolic Imaging of Boca, 5458 Town Center Road, Suite 103, Boca Raton, FL 33486.	E5434	12/06/2006	FL	
Olean Open MRI, 413 North 8th Street, Olean, NY 14760	AA0996	12/06/2006	NY	
Mercy Memorial Health Center, 1011 14th Avenue NW, Ardmore, OK 73401.	731500629	12/06/2006	OK	
Pontiac Osteopathic Hospital d.b.a. POH Medical Center, 385 N. Lapeer Road, Oxford, MI 48371.	230207	12/06/2006	MI	
Texas Oncology Ft. Worth, 1450 8th Avenue, Fort Worth, TX 76104.	00R66C	12/06/2006	TX	
West Valley Imaging, 3025 S. Rainbow Boulevard, Las Vegas, NV 89146.	WQBDY	12/06/2006	NV	
Springman Medical Plaza Imaging Center, PO Box 4650, Brownsville, TX 78523.	1912973108	12/06/2006	TX	
EMH Regional Health Care System, 630 East River Street, Elyria, OH 44035.	360145	12/06/2006	OH	
Denfeld Medical Center, 4702 Grand Avenue, Duluth, MN 55807.	C06028	12/06/2006	MN	
Caldwell Memorial Hospital, 321 Mulberry Street, SW., Lenoir, NC 28645.	560554202	12/06/2006	NC	
Belleville, IL (Swansea), 4253 Argosy Court, Madison, WI 53714.	208196	12/06/2006	WI	
Comprehensive Cancer Centers of Nevada—NW Office, 7445 Peak Drive, Las Vegas, NV 89128.	WCHCX	12/06/2006	NV	
Wheaton Franciscan Healthcare—St. Joseph, 5000 W. Chambers Street, Milwaukee, WI 53210.	520136	12/06/2006	WI	
United Hospital Center, Rt. 19 South, Clarksburg, WV 26302–1680.	510006	12/06/2006	WV	#3 Hospital Plaza.
Massena Memorial Hospital, 1 Hospital Drive, Massena, NY 13662.	330223	12/06/2006	NY	
Redlands Community Hospital, 350 Terracina Boulevard, Redlands, CA 92373.	ZZZ01782Z	12/06/2006	CA	
The Valley Hospital, 1 Valley Health Plaza, Paramus, NJ 07652.	310012	12/06/2006	NJ	
Advanced Medical Imaging of Toms River, 1430 Hooper Avenue, Toms River, NJ 08753.	447655	12/06/2006	NJ	Suite 102.
McKenna Memorial Hospital, 598 N. Union Street, New Braunfels, TX 78130.	450059	12/06/2006	TX	
NSMS—Parkland Farmington, Mo, 4253 Argosy Court, Madison, WI 53714.	208196	12/06/2006	WI	
Alton Memorial Hospital, 1 Memorial Drive, Alton, IL 62002 ...	14002	12/06/2006	IL	
Medical City Dallas Hospital, Diagnostic Imaging, Dallas, TX 75230.	20943901	12/06/2006	TX	7777 Forest Lane.
Mercy Medical Center, 301 St. Paul Place, Baltimore, MD 21202.	210008	12/06/2006	MD	
St. Joseph's Medical Center, 503 N. 3rd Street, Brainerd, MN 56401.	240075	12/06/2006	MN	
Covenant Healthcare, 600 Irving Street, Saginaw, MI 48602 ..	1457354318	12/06/2006	MI	
Little Company of Mary Hospital, 2800 West 95th Street, Evergreen Park, IL 60805.	140179	12/06/2006	IL	
Marion General Hospital Progressive Medical Imagine, 830 N. Theatre Drive, Marion, IN 46952.	1457354318	12/06/2006	IN	
Escondido Pulmonary Medical Group, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W301	12/06/2006	CA	
Marshall Medical Center, 1100 Marshall Way, Placerville, CA 95667.	50254	12/06/2006	CA	
Clermont Radiology, 1804 Oakley Seaver Drive, Clermont, FL 34711.	U5066	12/06/2006	FL	Suite B.
Mahoning Valley Imaging, Ltd., 7067 Tiffany Boulevard, Youngstown, OH 44514.	1457354318	12/06/2006	OH	

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Southeastern Ohio Regional Medical Center, 1341 Clark Avenue, Cambridge, OH 43725.	1457354318	12/06/2006	OH	
White County Medical Center, 3214 E. Race Avenue, Searcy, AR 72143.	40014	12/06/2006	AR	
MED Arts JVIC, 9101 Franklin Square Drive, Baltimore, MD 21237.	1932167178	12/06/2006	MD	
Memorial Hermann Southwest OPID, 7797 SW Freeway, Houston, TX 77074.	741152597	12/06/2006	TX	
Twin County Regional Hospital, 200 Hospital Drive, Galax, VA 24333.	1174524094	12/06/2006	VA	
Marion Ancillary Services, LLC, 1040 Delaware Avenue, Marion, OH 43302.	991	12/06/2006	OH	
Owensboro Medical Health Systems, Breckenridge Diagnostics, Owensboro, KY 42301.	180038	12/06/2006	KY	1020 Breckenridge Street
NSMS—Darlington, WI, 209 Limestone Pass, Cottage Grove, WI 53527.	92420	12/06/2006	WI	
Santa Fe Imaging, LLC, 1640 Hospital Drive, Santa Fe, NM 87505.	400521037	12/06/2006	NM	
Suncoast Imaging of Port Orange, 1680 Dunlawton Avenue, Port Orange, FL 32127.	40370B	12/06/2006	FL	
Great Basin Imaging, 2874 N Carson Street, 3rd Floor, Carson City, NV 89706.	WJBDK	12/06/2006	NV	
St. Francis Hospital & Health Centers, 1201 Hadley Road, Mooresville, IN 46158.	1457354318	12/06/2006	IN	
Las Colinas Cancer Center, 7415 Las Colinas Boulevard, Irving, TX 75063.	00J062	12/06/2006	TX	
ADI, 4006 Jonathan Street, Waterloo, IA 50701	I15454	12/06/2006	IA	
St Francis Hospital & Health Centers, South 8111 S. Emerson Avenue, Indianapolis, IN 46237.	1457354318	12/06/2006	IN	
Central Baptist Diagnostic Center, 100 Southland Drive, Lexington, KY 40503.	9375001	06/14/2006	KY	Suite B.
Baptist Health Medical Center–NLR PET/CT, 3500 Springhill Drive, North Little Rock, AR 72117.	5F437	05/03/2007	AR	Suite 100.
Commonwealth Hematology Oncology, 216 Southtown Drive, Danville, KY 40422.	1285687178	03/21/2007	KY	
Commonwealth Hematology Oncology, 95 Bogle Office Park Drive, Somerset, KY 42503.	1285687178	03/21/2007	KY	
UMPC and The Washington Hospital Cancer Center, 155 Wilson Avenue Washington, PA 15301.	105589VXB	03/10/2006	PA	
Lexington Diagnostic Center, 1725 Harrodsburg Road, Suite 100, Lexington, KY 40504.	0406	03/08/2006	KY	
UW PET Imaging Center, 8007 Excelsior Drive, Madison, WI 53717.	1346266319	04/03/2007	WI	
Fort Wayne Medical Oncology and Hematology, 7910 W. Jefferson Boulevard, Suite 107, Ft. Wayne, IN 46804.	055770	04/23/2007	IN	
Danbury Hospital, 24 Hospital Avenue, Danbury, CT 06810 ...	070033	04/23/2007	CT	
Reno Diagnostic Centers, 590 Eureka Avenue,Reno, NV 89512.	1518904994	04/24/2007	NV	
The Kirklin Clinic PET—CT Facility, 2000 6th Ave South,Birmingham, AL 35233.	10933768723	05/07/2007	AL	
PET Imaging Radiology, PSC Paseo San Pablo 100,Bayamon, PR.	0085142	05/15/2007	PR	EDIF Dr. Arturo Cadilla,Suite 208.
Punxsutawney Area Hospital, 81 Hillcrest Drive,Punxsutawney, PA 15767.	390199	05/15/2007	PA	
Princeton Baptist Medical Center, 701 Princeton Avenue, SW.,Birmingham, AL 35211.	35211	05/30/2007	AL	
Medical Arts Radiology Commack, 55 Veterans Memorial Highway,Commack, NY 11725.	W11682	05/31/2007	NY	
Carrol, Sheth & Raghavan, MD, 1460 Bluegrass Avenue,Louisville, KY 40215.	5460	06/05/2007	KY	
Personal Care Molecular Imaging, 1514 Highway 138,Wall, NJ 07719.	109631	06/06/2007	NJ	
Lincoln Radiology Imaging, 7121 Stephanie Lane,Lincoln, NE 68516.	099920	06/06/2007	NE	
Medcenter One, 300 North 7th Street,Bismark, ND 58506–5525.	1538245634	07/24/2007	ND	
Wheaton Franciscan Healthcare—All Saints, 3801 Spring Street,Racine, WI 53405.	520096	08/08/2007	WI	N/A
Diagnostic Centers of America, 6080 Boynton Boulevard,Suite 140,Boynton Beach, FL 33437.	E4439	08/22/2007	FL	N/A
Center for Integrative Cancer Medicine, P.A., 1733 Curie Drive,Suite 305,El Paso, TX 79902.	00315U	08/22/2007	TX	N/A

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St. Luke's Hospital, 1026 A Avenue, NE.,Cedar Rapids, IA 52406–3026.	160045	08/22/2007	IA	N/A
Shared PET Imaging, LLC—Cincinnati OH,Eden Avenue & Albert Sabin Way,Cincinnati, OH 45219.	ID01511	08/22/2007	OH	N/A
Integrated Magnetic Imaging, 7100 University Court,Montgomery, AL 36117.	7811	08/22/2007	AL	N/A
Northwest PET Imaging, 265 N. Broadway Street,Portland, OR 97227.	105512	08/22/2007	OR	N/A
Center for Diagnostic Imaging—St. Louis Park, 5775 Wayzata Boulevard, #190,St. Louis Park, MN 55416.	C01307	08/22/2007	MN	N/A
Ponca City Medical Center, 1900 North 14th Street,Ponca City, OK 74601.	370006	08/22/2007	OK	N/A
Sanford Health, 1305 W. 18th Street,Sioux Falls, SD 57117 ..	430027	08/22/2007	SD	N/A
Central Valley PET Imaging, 4744 Quail Lake Drive,Stockton, CA 95207.	00A484230	08/22/2007	CA	N/A
PET/CT Imaging Center, 4000 N. Illinois Lane,Swansea, IL 62226.	201339	08/22/2007	IL	PET/CT Imaging Center.
Memorial Medical Center, 1105 W. Frank Avenue,Suite 100,Lufkin, TX 75901.	450211	08/22/2007	TX	d.b.a. Temple Imaging Center.
Rockingham Memorial Hospital, 235 Cantrell Ave,Harrisonburg, VA 22801.	490004	08/22/2007	VA	N/A
Regions Imaging Center, 401 Phalen Boulevard, 41101C,St. Paul, MN 55101.	240106	08/22/2007	MN	N/A
Florida Hospital Imaging, LLC, 335 Clyde Morris Boulevard,Suite 250,Ormond Beach, FL 32174.	1104876358	08/22/2007	FL	N/A
Hutchinson Clinic, PA, 2101 North Waldron Street,Hutchinson, KS 67502.	1043298474	08/22/2007	KS	N/A
Parkwest Imaging, 3676 Parker Boulevard,Pueblo, CO 81008	455838	08/22/2007	CO	N/A
St. Clair Hospital/UPMC Cancer Center, PET/CT, 1000 Bower Hill Road,Pittsburgh, PA 15243.	1699708792	08/22/2007	PA	N/A
St. Joseph Mercy Oakland, (SJMO),44405 Woodward Avenue,Pontiac, MI 48341.	1457354318	08/22/2007	MI	N/A
Edward Hospital, 801 S. Washington Street,Naperville, IL 60540.	140231	08/22/2007	IL	N/A
East Montgomery Imaging Center, 6880 Winton Blount Boulevard,Montgomery, AL 36117.	58866	08/22/2007	AL	N/A
Memorial Hospital of Martinsville and Henry County, 320 Hospital Drive,Martinsville, VA 24112.	490079	08/22/2007	VA	N/A
Thomas Hospital, 750 Morphy Avenue,Fairhope, AL 36532 ...	10100	08/22/2007	AL	N/A
Portland Adventist Medical Center, 10123 SE Market Street,Portland, OR 97216.	380060	08/22/2007	OR	N/A
Nash Healthcare System, Inc.,2460 Curtis Ellis Drive,Rocky Mount, NC 27804.	340147	08/22/2007	NC	N/A
North Broward Medical Center, 201 E. Sample Road,Deerfield Beach, FL 33064.	100068	08/22/2007	FL	Radiology
Jennie Stuart Medical Center, 320 West 18th Street,Hopkinsville, KY 42240.	180051	08/22/2007	KY	N/A
Greater Houston Imaging, L.P.,6565 West Loop South,Suite 100,Bellaire, TX 77401.	FTNPX1	08/22/2007	TX	N/A
Sunrise Hospital Medical Center, 3186 South Maryland Parkway, Las Vegas, NV 89109.	290003	08/22/2007	NV	N/A
The Diagnostic and Treatment Center, 3401 Cranberry Boulevard, Weston, WI 54476.	92450	08/22/2007	WI	N/A
Ochsner Medical Center, 1514 Jefferson Highway, New Orleans, LA 70121.	720502505	08/22/2007	LA	N/A
Inland Empire Medical Imaging, 225 W. Hospitality Lane, Suite #100, San Bernardino, CA 92408.	zzz316682	08/22/2007	CA	N/A
Independent Nuclear PET Imaging, 1115 N. Parrott Avenue, Okeechobee, FL 34972.	1922070796	08/22/2007	FL	N/A
Hugh Chatham Memorial Hospital, 180 Parkwood Drive, Elkin, NC 28621.	340097	08/22/2007	NC	N/A
Marian Medical Center/Plaza Diagnostic Imaging, 525 E. Plaza Drive Santa Maria, CA 93454.	50107	08/22/2007	CA	N/A
DDIS–FH, 8002 Kew Gardens Road, Kew Gardens, NY 11415.	687s41	08/22/2007	NY	N/A
NYPH—Weill Cornell, 525 E 68th Street, New York, NY 10021.	131623978	08/22/2007	NY	N/A
Genesys Regional Medical Center, One Genesys Parkway, Grand Blanc, MI 48439–8066.	230197	08/22/2007	MI	N/A
Geisinger Medical Center, 100 North Academy Avenue, Danville, PA 17822.	390006	08/22/2007	PA	N/A
Citrus Diagnostic Center, 922 N Citrus Avenue, Crystal River, FL 34428.	K5374	08/22/2007	FL	N/A

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Middlesex Hospital, 534 Saybrook Road, Middletown, CT 6457.	70020	08/22/2007	CT	N/A
Geisinger Wyoming Valley Medical Center, 1000 East Mountain Drive, Wilkes—Barre, PA 18711.	390270	08/22/2007	PA	N/A
Canton, IL—Northern Shared Medical Services, 209 Limestone Pass, Cottage Grove, WI 53527.	208196	08/22/2007	WI	N/A
Self Regional Healthcare, 102 Academy Street, Greenwood, SC 29646.	420071	08/22/2007	SC	N/A
Bristol Hospital, Brewster Road, Bristol, CT 06011	70029	08/22/2007	CT	P.O. Box 977.
East Texas Hematology & Oncology Clinic, PA, 1202 West Frank Avenue, Lufkin, TX 75904.	00T37K	08/22/2007	TX	N/A
St. John River District Hospital, 4100 River Road, East China, MI 48054.	230241	08/22/2007	MI	N/A
Morgan Hospital, 2209 John R Wooden Drive, Martinsville, IN 46151.	150038	08/22/2007	IN	N/A
Cotton—O'Neil Cancer Center, 1414 SW 8th Street, Topeka, KS 66606.	1811944457	08/22/2007	KS	N/A
Barnes—Jewish West County Hospital, 12634 Olive Boulevard, St Louis, MO 63141.	260162	08/22/2007	MO	N/A
Hardin Memorial Hospital, 913 North Dixie Avenue, Elizabethtown, KY 42701.	180012	08/22/2007	KY	N/A
Cancer Institute of Florida, LLC 894 E. Altamonte Drive, Altamonte Springs, FL 32701.	72793	08/22/2007	FL	N/A
Community Hospital, New Port Richey, 5637 Marine Parkway, New Port Richey, FL 34652.	100191	08/22/2007	FL	N/A
Pulaski Community Hospital, 2400 Lee Highway, Pulaski, VA 24301.	490116	08/22/2007	VA	N/A
Advocate South Suburban Hospital, 17800 S. Kedzie Avenue, Hazel Crest, IL 60429.	3.62169E+11	08/22/2007	IL	N/A
St. Vincent's Medical Center, 2800 Main Street, Bridgeport, CT 6606.	70028	08/22/2007	CT	N/A
Cayuga Medical Center at Ithaca, 3218 Wilkins Road, Ithaca, NY 14850.	330307	08/22/2007	NY	N/A
Immanuel—ST Josephs Mayo Health Stystem, 1025 Marsh Street, Mankato MN 56002–8673.	240093	08/22/2007	MN	PO Box 8673.
Kell West Regional Hospital, 5420 Kell West Boulevard, Wichita Falls, TX 76310.	450827	08/22/2007	TX	N/A
Aurora Medical Center Kenosha, 10400 75th Street, Kenosha, WI 53142.	520189	08/22/2007	WI	N/A
Aurora Lakeland Medical Center, W3985 County Rd Nn, Elkhorn, WI 53121.	520102	08/22/2007	WI	N/A
Munson Medical Center, 1105 Sixth Street, Traverse City, MI 49684.	230097	08/22/2007	MI	N/A
Kansas City Cancer Center—North, 8700 Greenhills Road, Kansas City, MO 64154.	5650000E	08/22/2007	MO	N/A
PET Imaging Center of Maine, 885 Union Street, Suite 115, Bangor, ME 04401.	10211501	08/22/2007	ME	N/A
SMS—Chester, IL, 1900 State Street, Chester, IL 62233	208196	08/22/2007	IL	N/A
PET of Reston, LP, 1800 Town Center Drive Suite 115, Reston, VA 20190.	G01960P03	08/22/2007	VA	N/A
Healthcare Imaging Center, 4334 Central Ave, Riverside, CA 92506.	ZZZ14451Z	08/22/2007	CA	N/A
Robert Wood Johnson University Hospital at Hamilton, 1 Hamilton Health Place, Hamilton, NJ 08690.	310110	08/22/2007	NJ	N/A
Northside Hospital, 1000 Johnson Ferry Road, Atlanta, GA 30342.	110161	08/22/2007	GA	N/A
Aurora Medical Center Kenosha, 10400 75th Street, Kenosha, WI 53142.	520189	08/22/2007	WI	N/A
Partners Imaging Center of Sarasota, 1250 S. Tamiami Trail, Suite 103, Sarasota, FL 34239.	Q0353	08/22/2007	FL	N/A
Memorial Medical Center, 216 Sunset Place, Neillsville, WI 54456.	521323	08/22/2007	WI	N/A
Central Virginia Imaging, LLC, 1900 Tate Spings Road, Suite 21, Lynchburg, VA 24501.	1578594412	08/22/2007	VA	N/A
Los Alamitos Medical Center, 3951 Katella Ave, Los Alamitos, CA 90720.	50551	08/22/2007	CA	N/A
Valley Advanced Imaging, LLC, 2403 Butler Street, Easton, PA 18042.	1417907023	08/22/2007	PA	N/A
Good Samaritan PET/CT and Imaging Services, 1245 Montauk Hwy, West Islip NY 11795.	330286	08/22/2007	NY	N/A
Scotland Memorial Hospital, 500 Lauchwood Drive, Laurinburg, NC 28352.	340008	08/22/2007	NC	N/A
McFarland Clinic, P.C., 1111 Duff Avenue, Ames, IA 50010	1639135643	08/22/2007	IA	N/A

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Providence Hospital, 1150 Varnum Street, NE., Washington, DC 20017.	90006	08/22/2007	DC	N/A
The Angeles Clinic and Research Institute, 11818 Wilshire Boulevard, Suite 200, Los Angeles, CA 90025.	W15185A	08/22/2007	CA	N/A
Rose Radiology Centers, Inc., 5107 N. Armenia Avenue, Tampa, FL 33603.	1629162904	08/22/2007	FL	Bldg B.
Texas Oncology East Houston, 13111 East Freeway, Houston, TX 77015.	1811944101	08/22/2007	TX	N/A
NSMS—St. Joe's—Breese, IL, 9515 Holy Cross Lane, Breese, IL 62230.	208196	08/23/2007	IL	N/A
UT Cancer Institute, 7945 Wolf River Boulevard, Germantown, TN 38138.	3711381	08/23/2007	TN	N/A
Fresno Imaging Center, 6191 N. Rhesta Avenue, Fresno, CA 93710.	N/A	08/23/2007	CA	N/A
Imaging Consultants Inc. at Sturdy Memorial, 211 Park Street, Attleboro, MA 02703.	327085	08/23/2007	MA	N/A
Fairfax PET Imaging Center, LLC, 8503 Arlington Boulevard, Lower level, Fairfax, VA 22031.	1861433674	08/23/2007	VA	N/A
City Hospital, Inc., 2500 Hospital Drive, Martinsburg, WV 25401.	510008	08/23/2007	WV	N/A
White Plains Radiology Associates PET Center, Davis and Post Roads, White Plains, NY 10601.	w11842	08/23/2007	NY	N/A
Lenoir Memorial Hospital, 100 Airport Road, Kinston, NC 28503–1678.	1962446385	08/23/2007	NC	N/A
Sand Lake Imaging, 9350 Turkey Lake Road, Orlando, FL 32819.	34896	08/23/2007	FL	Suite 100.
Advocate Lutheran General Center For Advanced Care, 1800 Luther Lane, Park Ridge, IL 60068.	140223	08/23/2007	IL	N/A
Flower Hospital, 5200 Harroun Road, Sylvania, OH 43560	360074	08/23/2007	OH	N/A
Dekalb Memorial Hospital, 1316 E. 7th Street, Auburn, IN 46706.	N/A	08/23/2007	IN	N/A
St. John Hospital and Medical Center, 1315 Macom Drive, Naperville, IL 60564.	116	08/23/2007	IL	N/A
Bayhealth Medical Center, 540 S. Governors Avenue, Dover, DE 19904.	N/A	08/23/2007	DE	N/A
ImageCare, 713 Troy—Schenectady Road, Suite 124, Latham, NY 12110.	1922048370	08/23/2007	NY	Capital Region Health Park.
Southside Regional Medical Center, 801 South Adams Street, Petersburg, VA 23803.	490067	08/23/2007	VA	N/A
East Alabama Medical Center—Auburn Diagnostic Imaging, 1527 Professional Parkway, Auburn, AL 36830.	29	08/23/2007	AL	N/A
Trover Health System, 900 Hospital Drive, Madisonville, KY 42431.	1457354318	08/23/2007	KY	N/A
Doctors Hospital at Renaissance, Ltd, 5501 S. McColl Road, Edinburg, TX 78359.	450869	08/23/2007	TX	N/A
Twin Lakes Imaging Center, 1890 LPGA Boulevard, Daytona Beach, FL 32117.	1023040870	08/23/2007	FL	Suite 110.
Nathan Littauer Hospital, 99 E. State Street, Gloversville, NY 12078.	330276	08/23/2007	NY	N/A
Altoona Regional Health System, 620 Howard Avenue, Altoona, PA 16601.	390073	08/23/2007	PA	N/A
Warren General Hospital, 2 Crescent Park West, Warren, PA 16365.	390146	08/23/2007	PA	N/A
Reid Hospital Health Care Services, 1401 Chester Boulevard, Richmond, IN 47374.	1457354318	08/23/2007	IN	N/A
Orange City Area Health System, 1000 Lincoln Circle SE, Orange City, IA 51041.	161360	08/23/2007	IA	N/A
Mercy Hospital Clermont, 3000 Hospital Drive, Batavia, OH 45103.	1457354318	08/23/2007	OH	N/A
Arroyo Grande Community Hospital, 345 South Halcyon Road, Arroyo Grande, CA 93454.	50016	08/23/2007	CA	N/A
HealthEast St. John's Hospital, 1575 Beam Avenue, Maplewood, MN 55109.	240210	08/23/2007	MN	N/A
St. Joseph's/Candler Health System, 5353 Reynolds Street, Savannah, GA 31405.	110024	08/23/2007	GA	N/A
NSMS—Pickneyville, IL, 101 North Walnut Street, Pinckneyville, IL 62274.	208196	08/23/2007	IL	N/A
Duke Raleigh Hospital, 3400 Wake Forrest Road, Raleigh, NC 27609.	340073	08/23/2007	NC	N/A
Advanced Radiology Services & The Center for Women 400 Plaza Court, East Stroudsburg, PA 18301.	33012	08/23/2007	PA	Suite C.
Community Hospital, 10020 Donald S. Powers Drive, Munster, IN 46321.	140125	08/23/2007	IN	N/A

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Avant Imaging—Woodland Health Center, 7575 Grand River Avenue, Brighton, MI 48114.	1457354318	08/23/2007	MI	N/A
EVDI Medical Imaging—East Mesa, 6424 E. Broadway Road, Mesa, AZ 85206.	1164434098	08/23/2007	AZ	Suite 101.
NSMS—St. Louis, Mo—ARCH Medical, 209 Limestone Pass, Cottage Grove, WI 53527.	47013	08/23/2007	WI	N/A
CNY PET LLC, 5100 West Taft Road, Liverpool, NY 13088	AA0672	08/23/2007	NY	Suite 2C.
MCMI, 3000 Telegraph Avenue, Oakland, CA 94609	ZZZ27496Z	08/23/2007	CA	N/A
Green Clinic, LLC, 1200 S. Farmerville Street, Ruston, LA 71270.	57387	08/23/2007	LA	N/A
Fayette Memorial Hospital, 3542 North Western Avenue, Connersville, IN 47331.	150064	08/23/2007	IN	N/A
Carolinas Medical Center—Union, 600 Hospital Drive, Monroe, NC 28112.	340130	08/23/2007	NC	Nuclear Medicine Department.
Citrus Medical Imaging Associates, Inc., 1000 Lakes Drive, Suite 170, West Covina, CA 91790.	HW2326	08/23/2007	CA	N/A
Radiation Oncology at WFUBMC, Radiation Oncology, Medical Center Boulevard, Winston—Salem, NC 27152.	340047	08/24/2007	NC	Wake Forest University Baptist Medical Center Comprehensive Cancer Center.
Harrison County Hospital, 245 Atwood Street, Corydon, IN 47112.	151331	08/24/2007	IN	N/A
Thibodaux Regional Medical Center, 602 North Acadia Road, Thibodaux LA 70301.	190004	08/24/2007	LA	N/A
NSMS—Hot Springs, AR, 1600 Higdon Ferry Road, Hot Springs AR 71913.	5F168	08/24/2007	AR	N/A
Pacific Oncology, PC, 15700 SW Greystone Court, Beaverton OR 97006.	1043262116	08/24/2007	OR	N/A
Cancer Care Associates, 1791 E. Fir Avenue, Fresno, CA 93720.	222375652	08/24/2007	CA	N/A
Massatusetts Mobile PET, PC——Newburyport, 25 Highland Avenue, Newburyport, MA 01950.	327086	08/24/2007	MA	N/A
Hematology Oncology Associates of Illinois, 6801 West 34th Street, Berwyn, IL 60402.	218890	08/24/2007	IL	Suite 107.
Massatusetts Mobile PET, PC—Haverhill, 140 Lincoln Avenue, Haverhill, MA 01830.	327086	08/24/2007	MA	N/A
Corinth Medical Group, 4851 I35 East, Suite 101, Corinth, TX 76210.	00K22X 08/24/2007	TX	N/A.	
New England PET Imaging Manchester, One Elliot Way Manchester, NH 03103.	327081	08/24/2007	NH	N/A
The Surgery Clinic, 1026 Goodyear Avenue, Gadsden, AL 35999.	N/A	08/24/2007	AL	Suite B–101.
Boston Medical Center 830 Harrison Avenue, Boston, MA 02118.	220031	08/24/2007	MA	Suite 1600.
Mercy Health Center, 4190 24th Avenue, Fort Gratiot, MI 48059.	1457354318	08/24/2007	MI	N/A
The Cancer Center of Santa Barbara, 300 W. Pueblo Street, Santa Barbara, CA 93105.	W13890	08/24/2007	CA	N/A
Milford Memorial Hospital Bayhealth Medical Center, 21 W. Clarke Avenue, Milford, DE 19963.	N/A	08/24/2007	DE	N/A
North Coast Cancer Care, 417 Quarry Lakes Drive, Sandusky, OH 44870.	NO9915215	08/24/2007	OH	N/A
Palm Beach Gardens Open Imaging Center, 3335 Burns Road, #101, Palm Beach Gardens, FL 33408.	U8767	08/24/2007	FL	N/A
Advanced Medical Imaging, LLC, 1780 NW Myhre Road, Silverdale, WA 98383.	AB24179	08/24/2007	WA	Suite 1220.
Swedish American Hospital, 1401 E State Street, Rockford, IL 61104.	140228	08/24/2007	IL	N/A
Molecular Diagnostics of Eastern Omaha, 117 North 32nd Avenue, Suite 100, Omaha, NE 68131.	99894	08/24/2007	NE	N/A
Kingwood Medical Center, 22999 U.S. Hwy 59, Kingwood, TX 77339.	1811942238	08/24/2007	TX	N/A
Health Village Imaging, 1301 Route 72 West, Manahawkin, NJ 08050.	1194810978	08/24/2007	NJ	Suite 100.
ARH Hazard, 100 Medical Center Drive, Hazard, KY 41701	520795508	08/24/2007	KY	N/A
Central Florida Imaging, Center, Inc., 6801 U.S. 27 N, Suite E–3, Sebring, FL 33870.	1427076769	08/24/2007	FL	N/A
West Texas Cancer Center, 301 N Washington Avenue, Odessa, TX 79761.	00543K	08/24/2007	TX	N/A
Beloit Memorial Hospital, 1969 West Hart Road, Beloit, WY 53511.	520100	08/24/2007	WY	N/A
Pinnacle Imaging Center, 2390 NW 7th Street, Miami, FL 33125.	U5131	08/24/2007	FL	Suite 103.

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PET Imaging of El Paso, 1225 E. Cliff Drive, El Paso, TX 79902.	FTN035	08/24/2007	TX	Building 3, Suite 200.
St. Petersburg General Hospital, 6500 38th Avenue North, St. Petersburg, FL 33710.	N/A	08/24/2007	FL	N/A
St. Mary Medical Center, 1201 Langhorne—Newtown Road, Langhorne, PA 19047.	390258	08/24/2007	PA	N/A
St. Joseph Medical Center, 1401 St. Joseph Parkway, Houston, TX 77002.	1154361475	08/24/2007	TX	N/A
UPMC Northwest, 1671 Allegheny Boulevard, Reno, PA 16343.	390091	08/24/2007	PA	N/A
Mercy Hospital Fairfield, 3000 Mack Road, Fairfield, OH 45014.	1457354318	08/24/2007	OH	N/A
Radiology Associates of West Pasco, 5539 Marine Parkway, New Port Richey, FL 34652.	1558328963	08/24/2007	FL	N/A
St. Dominic Hospital, 969 Lakeland Drive, Jackson, MS 39216.	250048	08/24/2007	MS	N/A
RCOA—Adventist Health—Sequoia, 4949 W. Cypress Avenue, Visalia, CA 93271.	1427198696	08/24/2007	CA	N/A
McKee Medical Center, 2000 Boise Ave, Loveland, CO 80538.	60030	08/24/2007	CO	N/A
Bon Secours Richmond Community Hospital, 1500 North 28th Street, Richmond, VA 23223.	490094	08/24/2007	VA	N/A
West Houston Medical Center, 12141 Richmond Avenue, Houston, TX 77082.	450644	08/24/2007	TX	N/A
Shands Teaching Hospital and Clinics, Inc., 2000 SW Archer Road, Gainesville, FL 32608.	100113	08/24/2007	FL	Radiology, Shands Medical Plaza.
Tanner Medical Center, 119 Ambulance Drive, Carrollton, GA 30117.	110011	08/24/2007	GA	N/A
OU Medical Center, 700 NE 13th Street, Oklahoma City, OK 73104.	1780631390	08/24/2007	OK	N/A
The Medical Center of Aurora, 1400 S. Potomac Street, Aurora, CO 80012.	60100	08/24/2007	CO	#180
AllenRidge Diagnostic Imaging Center, 520 Lecanto Highway, Lecanto, FL 34461.	100023	08/24/2007	FL	N/A
The PET Center at BWMC, 305 Hospital Drive, Baltimore, MD 21061.	1124016696	08/24/2007	MD	Suite 302.
Signet Diagnostic Imaging Services, LLC, 8300 West Sunrise Boulevard, Plantation, FL 33322.	E8667	08/24/2007	FL	N/A
Adams Diagnostic Imaging, 20 Expedition Trail, Gettysburg, PA 17325.	65290	08/24/2007	PA	Suite 102.
Jennie Edmundson Hospital, 933 E. Pierce Street, Council Bluffs, IA 51503.	160047	08/24/2007	IA	N/A
Holy Cross Hospital, 4725 N. Federal Highway, Fort Lauderdale, FL 33308.	100073	08/24/2007	FL	Bienes Diagnostic Imaging Center.
Medical University of Ohio, 3000 Arlington Avenue, Toledo, OH 43614.	1457354318	08/24/2007	OH	N/A
Daviess Community Hospital, 1314 E Walnut Street, Washington, IN 47501.	150061	08/24/2007	IN	Radiology Department.
Jeff Anderson Regional Medical Center, 2124 14th Street, Meridian, MS 39301.	250104	08/24/2007	MS	N/A
Modesto Imaging Center, 157 E. Coolidge Avenue, Modesto, CA 95350.	ZZZ01977Z	08/24/2007	CA	N/A
Sioux Center Commmunity Hospital and Health Center, 605 South Main Ave, Sioux Center, IA 51250.	161346	08/24/2007	IA	N/A
Southern Ohio Medical Center, 1121 Kinneys Lane, Portsmouth, OH 45662.	360008	08/24/2007	OH	N/A
Massachusetts General Hospital, 55 Fruit Street, Boston, MA 02114.	220071	08/24/2007	MA	N/A
Clinton Memorial Hospital Regional Health System, 31 Farquhar Avenue, Wilmington, OH 45177.	316005307	08/24/2007	OH	N/A
CJW Medical Center, 1401 Johnston Willis Drive, Richmond, VA 23235.	34632	08/24/2007	VA	N/A
Texas Oncology Weatherford, 907 Foster Lane, Weatherford, TX 76086.	00539K	08/24/2007	TX	N/A
Sharper Imaging Diagnostic Radiology Center, 3430 Tamiami Trail, Port Charlotte, FL 33952.	1730288515	08/24/2007	FL	Suite B.
Morristown—Hamblin Healthcare System, 908 W. 4th N. Street, Morristown, TN 37814.	1457354318	08/24/2007	TN	N/A
Puget Sound PET Imaging, 6808 220th Street SW, Mountlake Terrace, WA 98043.	115162600	08/24/2007	WA	Suite 150.
Detar Hospital Navarro, 506 E. San Antonio Street, Victoria, TX 77902.	450147	08/24/2007	TX	N/A

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PET Imaging of Chicago, 6801 West 34th Street, Suite 105, Berwyn, IL 60402.	214832	08/24/2007	IL	N/A
Imaging Specialists Group, Ltd., 3101 Churchill Road, Flower Mound, TX 75022.	1417991852	08/24/2007	TX	Suite 100.
OKOmed Downtown Imaging, 2101 Crawford Street, Suite 115, Houston, TX 77002.	1780622464	08/24/2007	TX	N/A
Clear Lake Regional Medical Center, 500 Medical Center Boulevard, Webster, TX 77598.	1063466035	08/24/2007	TX	N/A
Norton Hospital, 315 East Broadway, Louisville, KY 40202	180088	08/24/2007	KY	N/A
Saratoga PET Associates, LLC, 3 Emma Lane, Clifton Park, NY 12065.	1356357172	08/24/2007	NY	N/A
Genesis Health Care System, 2800 Maple Avenue, Zanesville, OH 43701.	1457354318	08/24/2007	OH	N/A
Lake Cumberland Regional Hospital, 27 Imaging Drive, Somerset, KY 42503.	1457354318	08/24/2007	KY	N/A
Saint Francis Cancer Institute, 14 Doctors' Park, Cape Girardeau, MO 63703.	260183	08/24/2007	MO	N/A
American Health Network of IN, LLC—PET/CT, 6820 Parkdale Place, Indianapolis, IN 46254.	1164491775	08/24/2007	IN	Suite #105.
PET CT Nuclear Radiology, Inc., 1501 Edisicio Detantacourt, Suite 302, Fernadez Juncos Santorze, PR 909.	57886	08/24/2007	PR	Fernadez Juncos Santorze.
NSMS—Reedsburg, WI 2000 North Dewey Street, Reedsburg, WI 53959.	1295785079	08/24/2007	WI	N/A
Wayne Memorial Hospital, 2700 Wayne Memorial Hospital, Goldsboro, NC 27534.	340010	08/24/2007	NC	N/A
InMed Diagnostic Services of IL, 10419 Fleming Road, Carterville, IL 62918.	205040	08/24/2007	IL	N/A
Henrico Doctors' Hospital, 1602 Skipwith Road, Richmond, VA 23229.	490118	08/24/2007	VA	N/A
Alliance Imaging—United General Hospital, 2000 Hospital Drive, Sedro Woolley, WA 98284.	8862377	08/24/2007	WA	N/A
Spencer Municipal Hospital, 1200 First Avenue East, Spencer, IA 51301.	1255328621	08/24/2007	IA	N/A
Radiology LTD LaCholla Center—Diagnostic Imaging, 5960 N. LaCholla Avenue, Tucson, AZ 85704.	1841261989	08/24/2007	AZ	N/A
Saint Elizabeth Regional Medical Center, 555 South 70th Street, Lincoln, NE 68510.	280020	08/24/2007	NE	N/A
Bucyrus Community Hospital, 629 N. Sandusky Avenue, Bucyrus, OH 44820.	361316	08/24/2007	OH	N/A
Mercy Hospital of Willard, 110 E. Howard Street, Willard, OH 44890.	361310	08/24/2007	OH	N/A
Lower Columbia Pathologists, 1606 East Kessler Boulevard, Longview, WA 98632.	745800	08/24/2007	WA	4th Floor.
Newton Medical Center, 600 Medical Center Drive, Newton, KS 67114.	170103A	08/24/2007	KS	N/A
Advanced Imaging Partners, 508 Cleveland Street, Great Bend, KS 67530.	1295791325	08/24/2007	KS	N/A
Integrated Medical Imaging, 1040 Greenwood Springs Boulevard, Greenwood, IN 46143.	221970	08/24/2007	IN	N/A
Avera Sacred Heart Cancer Center, 501 Summit Street, Yankton, SD 57078.	430012	08/24/2007	SD	N/A
ValleyCare Medical Center, 5555 W. Las Positas Boulevard, Pleasanton, CA 94588.	50283	08/24/2007	CA	N/A
NSMS—Mena, AR, 311 North Morrow Street, Mena, AR 71953.	1295785079	08/24/2007	AR	N/A
Memorial Hospital Easton, 219 S. Washington Street, Easton, MD 21601.	210037	08/24/2007	MD	N/A
Seattle Cancer Care Alliance, 825 Eastlake Avenue E, Seattle, WA 98109.	500138	08/24/2007	WA	Medical Imaging.
Alliance Imaging—The Vancouver Clinic, 700 NE 87th Avenue, Vancouver, WA 98664.	8864364	08/24/2007	WA	N/A
Martin Center for Diagnostic and Imaging Services, 3901 S. Fremont Avenue, Springfield, MO 65804.	260040	08/24/2007	MO	N/A
Aultman Hospital, 2600 Sixth Street, SW., Canton, OH 44710	1457354318	08/24/2007	OH	N/A
Imaging Consultants, Inc. at Harrington Memorial, 600 Federal Street, Andover, MA 01810.	327085	08/24/2007	MA	N/A
Rhode Island PET Services at Kent County, 600 Federal Street, Andover, MA 01810.	1538113113	08/24/2007	MA	N/A
Imaging Consultants Inc. at Hawthorn, 600 Federal Street, Andover, MA 01810.	1851449078	08/24/2007	MA	N/A
Swedish Covenant Hospital, 5145 N California Avenue, Chicago, IL 60625.	362179813	08/24/2007	IL	N/A
Banner Baywood Medical Center, 6644 E. Baywood Avenue, Mesa, AZ 85206.	30088	08/24/2007	AZ	N/A

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Lourdes Hospital, 1530 Lone Oak Road, Padukah, KY 42003	1346244126	08/24/2007	KY	N/A
St Vincent Oncology Center, 8301 Harcourt Road, Indianapolis, IN 46260.	150084	08/24/2007	IN	N/A
United Hospital System, Inc., 9555 76th Street, Pleasant Prairie, WI 53518.	520021	08/24/2007	WI	N/A
East Tennessee Diagnostic Center, 1450 Dowell Springs Boulevard, Suite 210, Knoxville, TN 37909.	1710932553	08/24/2007	TN	N/A
Nazareth Hospital, 8400 Roosevelt Boulevard, Philadelphia, PA 19152.	390204A	08/24/2007	PA	N/A
Good Samaritan Hospital, 2425 Samaritan Drive, San Jose, CA 95124.	50380	08/24/2007	CA	N/A
MedSpecialists Imaging Center, 1064 Keene Road, Dunedin, FL 34698.	AB585	08/24/2007	FL	N/A
NSMS—Pekin, IL, 2355 Broadway Road, Pekin, IL 61544	1295785079	08/24/2007	IL	N/A
Bluegrass Regional Imaging, LLC 701 Bob—O—Link Drive, Lexington, KY 40504.	1871542670	08/24/2007	KY	Suite 245.
Fairfax PET Imaging Center, 8503 Arlington Boulevard, Fairfax, VA 22031.	1831220714	08/24/2007	VA	Suite 120LL.
Lodi Community Hospital, 225 Elyria Street, Lodi, OH 44254	361303	08/24/2007	OH	N/A
Legacy Meridian Park Hospital, 19260 SW 65th Avenue, Suite 165, Tualatin, OR 97062.	380089	08/24/2007	OR	N/A
Galion Community Hospital, 269 Portland Way South, Galion, OH 44833.	361325	08/24/2007	OH	N/A
Oncology Hematology Associates of Central Illinois, 8940 N. Wood Sage Road, Peoria, IL 61615.	616880	08/24/2007	IL	N/A
Mid Ohio Oncology/Hematology, Inc., 3100 Plaza Properties Boulevard, Columbus, OH 43219.	1376509661	08/24/2007	OH	N/A
Kentucky Imaging Center, 3475 Richmond Road, Lexington, KY 40509.	1992876981	08/24/2007	KY	Suite 150.
Salem Community Hospital, 1995 East State Street, Salem, OH 44460.	1639131535	08/24/2007	OH	N/A
Belmont Community Hospital, 51339 National Road, St. Clairsville, OH 43950.	360153	08/24/2007	OH	N/A
Golder CT and MRI Center, 613 North Golder Avenue, Odessa, TX 79761.	N/A	08/24/2007	TX	N/A
NSMS—Reedsburg, WI 2000 North Dewey Street, Reedsburg, WI 53959.	1295785097	08/24/2007	WI	N/A
MaineGeneral Medical Center, 361 Old Belgrade Road, Augusta, ME 04330.	200039A	08/24/2007	ME	N/A
The Oklahoma PET Center, PLLC 5401 N. Portland Avenue, Suite 330, Oklahoma City, OK 73112.	569959716M	08/24/2007	OK	N/A
NSMS—Blytheville, AR, 1520 North Division Street, Blytheville, AR 72316.	1295785079	08/24/2007	AR	N/A
NSMS—Benton, AR, 1 Medical Park Drive, Benton, AR 72015.	1295785079	08/24/2007	AR	N/A
Mercy Health System, 1000 Mineral Point Avenue, Janesville, WI 53548.	520066	08/24/2007	WI	N/A
WA Foote Memorial Hospital, 205 N. East Avenue, Jackson, MI 49201.	230092	08/24/2007	MI	N/A
Northern Michigan Hospital, 416 Connable Avenue, Petoskey, MI 49770.	230105	08/24/2007	MI	N/A
Anchor Health Centers, 800 Goodlette Road N., Naples, FL 34102.	1174571608	08/24/2007	FL	Suite 130.
New Ulm Medical Center, 1324 5th North Street, New Ulm, MN 56073.	2880	08/24/2007	MN	N/A
Radiology Associates of Brooklyn LLP, 2021 Avenue X, Brooklyn, NY 11235–2905.	1134244916	08/24/2007	NY	N/A
NYOH Mobile PET/CT Hudson, 69 Prospect Road, Hudson, NY 12534.	1609863448	08/24/2007	NY	N/A
Integris Bass Baptist Health Center, 600 South Monroe, Enid, OK 73703.	1144236571	08/24/2007	OK	N/A
Imaging Consultants Inc at Weymouth Woods, 59 Performance Drive, Weymouth, MA 02188.	1487690335	08/24/2007	MA	N/A
St. Vincent Medical Center, 2131 W. Third Street, Los Angeles, CA 90057.	50502	08/24/2007	CA	N/A
Caritas PET Imaging, LLC at Holyoke Medical Center, 575 Beech Street, Holyoke, MA 01040.	327087	08/24/2007	MA	N/A
St. James Healthcare, 400 South Clark, Butte, MT 59701	270017	08/24/2007	MT	N/A
Inglewood Imaging Center, 211 N. Prairie Avenue, Inglewood, CA 90301.	TD097	08/24/2007	CA	N/A
Duncan Regional Hospital, 1700 Whisenant Drive, Duncan, OK 73534.	370023	08/24/2007	OK	PO Box 100.
OhioHealth Ambulatory PET/CT, 500 Thomas Lane, Columbus, OH 43214.	360006	08/24/2007	OH	N/A

Facility name	Provider number	Date approved	State	Other information
Baylor Diagnostic Imaging Center at Junius, 3900 Junius Street, Suite 100, Dallas, TX 75246.	450021	08/24/2007	TX	N/A
PET/CT Imaging at White Marsh, 9900 Franklin Square Drive, Suite D, Nottingham, MD 21236.	FMNX01	08/28/2007	MD	N/A
Central Baptist Diagnostic Center, 100 Southland Drive, Lexington, KY 40503.	9375001	06/14/2006	KY	Suite B.
Baptist Health Medical Center—NLR PET/CT, 3500 Springhill Drive, North Little Rock, AR 72117.	5F437	05/03/2006	AR	Suite 100.
Commonwealth Hematology Oncology, 95 Bogle Office Park Drive, Somerset, KY 42503.	1285687178	03/21/2007	KY	N/A
Commonwealth Hematology Oncology, 216 Southtown Drive, Danville, KY 40422.	1285687178	03/21/2007	KY	N/A
Jefferson Center City Imaging, 850 Walnut Street, Philadelphia, PA 19107.	66277	09/07/2007	PA	N/A
EPIC Imaging Center, 233 NE 102 Avenue, Portland, OR 97220.	0000WCGNQ 09/11/2007	OR	N/A.	
UPMC and The Washington Hospital Cancer Center, 155 Wilson Avenue, Washington, PA 15301.	105589VXB	03/10/2006	PA	N/A
Lexington Diagnostic Center, 1725 Harrodsburg Road, Suite 100, Lexington, KY 40504.	0406	03/08/2006	KY	N/A
UW PET Imaging Center, 8007 Excelsior Drive, Madison, WI 53717.	1346266319	04/03/2007	WI	N/A
NorCal Imaging—Oakland, 3200 Telegraph Avenue, Oakland, CA 94609.	ZZZ05319Z	08/22/2007	CA	N/A
NorCal Imaging—Walnut Creek, 114 La Casa Via, Suite #100, Walnut Creek, CA 94598.	ZZZ05319Z	08/22/2007	CA	N/A

Addendum XIII—Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities [July Through September 2007]

On October 1, 2003, we issued our decision memorandum on ventricular assist devices for the clinical indication of destination therapy. We determined that ventricular assist devices used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.

The following facilities have met the CMS facility standards for destination therapy VADs.

VAD Destination Therapy Facilities

Facility	Provider number	Date approved	State	Other information
Advocate Christ Medical Center, 4440 W 95th Street, Oak Lawn, Illinois ..	140208	12/17/2003	IL	
California Pacific Medical Center, 2333 Buchanan Street, San Francisco, California.	050047	03/19/2004	CA	
Baptist Memorial Hospital, 6019 Walnut Grove Road, Memphis, Tennessee.	440048	04/07/2004	TN	
Duke University Medical Center, DUMC Box 3943, Durham, North Carolina.	340030	10/31/2003	NC	
Fairview-University Medical Center, 2450 Riverside Avenue, Minneapolis, Minnesotta.	240080	10/28/2003	MN	
Allegheny General Hospital, 320 E North Avenue, Pittsburgh, Pennsylvania.	390050	12/10/2003	PA	
Barnes-Jewish Hospital, One Barnes-Jewish Hospital Plaza, Saint Louis, Missouri.	260032	10/27/2003	MO	
Brigham and Women's Hospital, 15 Francis Street, Boston, Massachusetts.	220110	01/09/2004	MA	
Bryan LGH Medical Center East, 1600 S 48 Street, Lincoln, Nebraska	280003	10/23/2003	NE	
Cedars-Sinai Medical Center, 8700 Beverly Boulevard, Los Angeles, California.	050625	12/29/2003	CA	
Clarian Health Partners, Inc., 1701 N. Senate Avenue, Indianapolis, Indiana.	150056	11/25/2003	IN	
Cleveland Clinic, 9500 Euclid Avenue, Cleveland, Ohio	360180	12/03/2003	OH	
Hahnemann University Hospital, Broad and Vine Streets, Philadelphia, Pennsylvania.	390290	12/22/2003	PA	
Hospital of the University of Pennsylvania, 3400 Spruce Street, Philadelphia, Pennsylvania.	390111	10/28/2003	PA	
Henry Ford Hospital, 2799 W. Grand Boulevard, Detroit, Michigan	230053	01/06/2004	MI	
Inova Fairfax Hospital, 3300 Gallows Road, Falls Church, Virginia	490063	03/31/2004	VA	
Jewish Hospital, 200 Abraham Flexner Way, Louisville, Kentucky	180040	11/10/2003	KY	
Jackson Memorial Hospital, 1611 NW 12th Avenue, Miami, Florida	100022	01/12/2004	FL	University of Miami.
LDS Hospital, 8th Avenue and C Street, Salt Lake City, Utah	460010	10/23/2003	UT	

VAD DESTINATION THERAPY FACILITIES—Continued

Facility	Provider number	Date approved	State	Other information
Johns Hopkins Hospital, 600 N. Wolfe Street, Baltimore, Maryland	210009	10/28/2003	MD	
Loyola University Medical Center, 2160 S. 1st Avenue, Maywood, Illinois	140276	01/30/2004	IL	
Lutheran Hospital of Indiana, 7950 W. Jefferson Boulevard, Fort Wayne, Indiana.	150017	10/29/2003	IN	
Massachusetts General Hospital, 55 Fruit Street, Boston, Massachusetts	220071	12/15/2003	MA	
Mayo Clinic, 4500 San Pablo Road, Jacksonville, Florida	100151	11/06/2003	FL	
Medical City Dallas Hospital, 7777 Forest Lane, Dallas, Texas	450647	12/03/2003	TX	
The Methodist Hospital, 6565 Fannin Street, Houston, Texas	450358	11/03/2003	TX	
Montefiore Medical Center, 111 E. 210th Street, Bronx, New York	330059	11/14/2003	NY	
Methodist Specialty and Transplant Hospital, 8026 Floyd Curl Drive, San Antonio, Texas.	450388	11/19/2003	TX	
Newark Beth Israel Medical Center, 201 Lyons Avenue, Newark, New Jersey.	310002	11/14/2003	NJ	
Mount Sinai Medical Center, 1190 5th Avenue, New York, New York	330024	11/25/2003	NY	
New York-Presbyterian Hospital, 177 Fort Washington Avenue, New York, New York.	330101	10/28/2003	NY	Columbia University Medical Center.
Ohio State University Medical Center, 410 W. 10th Avenue, Columbus, Ohio.	360085	11/12/2003	OH	
Oregon Health and Sciences University, 3181 SW Sam Jackson Park Road, Portland, Oregon.	380009	11/21/2003	OR	
OSF St Francis Medical Center, 530 NE Glen Oak Avenue, Peoria, Illinois.	140067	11/12/2003	IL	
Penn State Milton S Hershey Medical Center, 500 University Drive, Hershey, Pennsylvania.	390256	10/29/2003	PA	
Rush-Presbyterian-St Luke Medical Center, 1653 W Congress Parkway, Chicago, Illinois.	140119	11/14/2003	IL	
Sentara Norfolk General Hospital, 600 Gresham Drive, Norfolk, Virginia	490007	11/10/2003	VA	
Sacred Heart Medical Center, 101 W 8th Avenue, Spokane, Washington	500054	01/12/2004	WA	
Seton Medical Center, 1201 W. 38th Street, Austin, Texas	450056	01/13/2004	TX	
Shands at the University of Florida, 1600 SW Archer Road, Gainesville, Florida.	100113	11/26/2003	FL	
Sharp Memorial Hospital, 7901 Frost Street, San Diego, California	050100	12/01/2003	CA	
Stanford University Hospital and Clinics, 300 Pasteur Drive, Stanford, California.	050441	12/22/2003	CA	Stanford University Medical Center.
St Francis Hospital, 6161 S. Yale Avenue, Tulsa, Oklahoma	370091	01/09/2004	OK	
St Luke's Medical Center, 2900 W Oklahoma Avenue, Milwaukee, Wisconsin.	520138	11/03/2003	WI	
St Luke's Episcopal Hospital, 6720 Bertner Avenue, Houston, Texas	450193	10/28/2003	TX	
St Vincent Hospital and Health Services, 2001 W. 86th Street, Indianapolis, Indiana.	150084	01/05/2004	IN	
St Paul Medical Center, 5909 Harry Hines Boulevard, Dallas, Texas	450044	12/10/2003	TX	
Strong Memorial Hospital, 601 Elmwood Avenue, Rochester, New York	330285	10/29/2003	NY	
Tampa General Hospital, 2 Columbia Drive, Tampa, Florida	100128	11/26/2003	FL	
Temple University Hospital, 3401 N. Broad Street, Philadelphia, Pennsylvania.	390027	11/03/2003	PA	
Tufts-New England Medical Center, 750 Washington Street, Boston, Massachusetts.	220116	11/06/2003	MA	
UCLA Medical Center, 10833 Le Conte Avenue, Los Angeles, California	050262	12/10/2003	CA	
University Medical Center, 1501 N. Campbell Avenue, Tucson, Arizona	030064	10/29/2003	AZ	
University of Alabama at Birmingham Health System, 500 22nd Street S, Birmingham, Alabama.	010033	10/29/2003	AL	
University of Colorado Hospital, 4200 E. Ninth Avenue, Denver, Colorado	060024	11/06/2003	CO	9th & Colorado Campus.
The University of Chicago Hospitals and Health System, 5841 South Maryland Avenue, Chicago, Illinois.	140088	02/25/2004	IL	
University of Iowa Hospitals and Clinics, 200 Hawkins Drive, Iowa City, Iowa.	160058	11/12/2003	IA	
University of Maryland Medical Center, 22 S. Greene Street, Baltimore, Maryland.	210002	11/12/2003	MD	
University of Michigan Health System, 1500 E. Medical Center Drive, Ann Arbor, Michigan.	230046	10/27/2003	MI	
University of North Carolina Hospitals, 101 Manning Drive, Chapel Hill, North Carolina.	340061	05/05/2004	NC	
University of Utah Hospital, 50 N Medical Drive, Salt Lake City, Utah	460009	12/22/2003	UT	
University of Virginia Health System, 1215 Lee Street, Charlottesville, Virginia.	490009	01/12/2004	VA	
University of Washington Medical Center, 1959 NE Pacific Street, Seattle, Washington.	500008	01/15/2004	WA	
University of Wisconsin Hospitals and Clinics, 600 Highland Avenue, Madison, Wisconsin.	520098	12/03/2003	WI	
USC University Hospital, 1500 San Pablo, Los Angeles, California	050696	01/09/2004	CA	
UPMC Presbyterian, 200 Lothrop Street, Pittsburgh, Pennsylvania	390164	10/23/2003	PA	

VAD DESTINATION THERAPY FACILITIES—Continued

Facility	Provider number	Date approved	State	Other information
Virginia Commonwealth University Medical Center, 401 North 12th Street, Richmond, Virginia.	490032	04/08/2004	VA	Medical College of Virginia Hospitals.
Vanderbilt University Medical Center, 1161 21st Avenue S, Nashville, Tennessee.	440039	10/28/2003	TN	
Ochsner Clinic Foundation, 1514 Jefferson Highway, New Orleans, Louisiana.	190036	06/29/2004	LA	

Addendum XIV—Lung Volume Reduction Surgery (LVRS) [July Through September 2007]

Three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS): National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs), credentialed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) under their Disease Specific Certification Program for LVRS, and Medicare approved for lung transplants. Only the first two types are in the list.

Facility name	Date approved	State	Type of certification
Baylor College of Medicine, Houston, Texas	N/A	TEXAS	NETT
Brigham and Women's Hospital, Boston, MA	N/A	MASSACHUSETTS	NETT
Cedars-Sinai Medical Center, Los Angeles, CA	N/A	CALIFORNIA	NETT
Chapman Medical Center, Orange, CA	N/A	CALIFORNIA	NETT
Cleveland Clinic Foundation, Cleveland, OH	N/A	OHIO	NETT
Columbia University, New York, NY	N/A	NEW YORK	NETT
Duke University Medical Center, Durham, NC	N/A	NORTH CAROLINA	NETT
Johns Hopkins Hospital, Baltimore, MD	N/A	MARYLAND	NETT
Kaiser Foundation Hospital—Riverside, Riverside, CA	09/20/2006	CALIFORNIA	JCAHO
Long Island Jewish Medical Center, New Hyde Park, NY	N/A	NEW YORK	NETT
Mayo Clinic, Rochester, MN	N/A	MINNESOTA	NETT
Memorial Medical Center, Springfield, IL	12/13/2006	ILLINOIS	JCAHO
National Jewish Medical Center, Denver, CO	N/A	COLORADO	NETT
The Ohio State University Hospital, Columbus, OH	N/A	OHIO	JCAHO
Ohio State University Medical Center, Columbus, OH	N/A	OHIO	NETT
Saint Louis University, Saint Louis, MO	N/A	MISSOURI	NETT
Temple University Hospital, Philadelphia, PA	N/A	PENNSYLVANIA	NETT
UCLA Medical Center, Los Angeles, CA	N/A	CALIFORNIA	NETT
University of California, San Diego, San Diego, CA	N/A	CALIFORNIA	NETT
University of Maryland Medical Center, Baltimore, MD	N/A	MARYLAND	NETT
University of Michigan Medical Center, Ann Arbor, MI	N/A	MICHIGAN	NETT
University of Pennsylvania, Philadelphia, PA	N/A	PENNSYLVANIA	NETT
University of Pittsburgh, Pittsburgh, PA	N/A	PENNSYLVANIA	NETT
University of Washington, Seattle, WA	N/A	WASHINGTON	NETT
Washington University/Barnes Hospital, Saint Louis, MO	N/A	MISSOURI	NETT

Addendum XV—Medicare-Approved Bariatric Surgery Facilities

On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity, and have been previously unsuccessful with medical treatment for obesity.

This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) Certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

The following facilities have met our minimum facility standards for bariatric surgery and have been certified by American College of Surgeons (ACS) or American Society for Metabolic and Bariatric Surgery (ASMBS).

Facility name	Provider No.	Date approved	State	Other information
Evanston Northwestern Hospital, 2650 Ridge Avenue, Suite 1308, Evanston, IL 60201.	140010	01/26/2006	IL	ACS.
Chapman Medical Center, 2601 East Chapman Avenue, Orange, CA 92646.	05–0745	02/21/2006	CA	ASMBS.
St Vincent Carmel Hospital, 13430 Old Meridian Street, Suite 168, Carmel, IN 46032.	15–0157	02/21/2006	IN	ASMBS.
Abbott Northwestern Hospital, 800 E. 28th Street, Minneapolis, MN 55407.	N/A	02/24/2006	MN	ASMBS.

Facility name	Provider No.	Date approved	State	Other information
Alexian Brothers Medical Center, 800 Biesterfield Road, Elk Grove Village, IL 60007.	N/A	02/24/2006	IL	ASMBS.
American Bariatric Institute at Doctors' Hospital, 1130 Louisiana Avenue, Shreveport, LA 71101.	N/A	02/24/2006	LA	ASMBS.
Arnot Ogden Medical Center, 600 Fitch Street, Elmira, NY 14905.	330090	02/24/2006	NY	ASMBS.
AtlantiCare Regional Medical Center, 2500 English Creek Avenue, Egg Harbor Township, NJ 08234.	N/A	02/24/2006	NJ	Center for Surgical Weight Loss and Wellness Salartash Surgical Associates ASMBS.
Atlanta Medical Center, 303 Parkway Drive NE, Atlanta, GA 30312.	N/A	02/24/2006	GA	ASMBS.
Aurora Sinai Medical Center, 945 N. 12th Street, Milwaukee, WI 53211.	N/A	02/24/2006	WI	ASMBS.
Baptist Memorial Hospital North Mississippi, 2301 South Lamar Boulevard, Oxford, MS 38655.	N/A	02/24/2006	MS	ASMBS.
Bellin Health, 215 N. Webster Avenue, Green Bay, WI 54301.	N/A	02/24/2006	WI	ASMBS.
Bon Secours Community Hospital, 160 E. Main Street, Port Jervis, NY 12771.	N/A	02/24/2006	NY	ASMBS.
California Pacific Medical Center, 2333 Buchanan Street, San Francisco, CA 94115.	N/A	02/24/2006	CA	ASMBS.
Cape Fear Valley Health System, 1638 Owen Drive, Fayetteville, NC 28304.	N/A	02/24/2006	NC	ASMBS.
Centennial Center for the Treatment of Obesity, 2300 Patterson Street, Nashville, TN 37203.	N/A	02/24/2006	TN	ASMBS.
Cleveland Clinic Hospital-Weston, 3100 Weston Road, Weston, FL 33331.	N/A	02/24/2006	FL	ASMBS.
Christus Schumpert Health System, 1 Saint Mary Place, Shreveport, LA 71101.	N/A	02/24/2006	LA	ASMBS.
Citizen's Bariatric Center, 2701 Hospital Avenue, Victoria, TX 77901.	N/A	02/24/2006	TX	ASMBS.
Columbia-St. Mary's Bariatric Center, 2025 E. Newport Avenue, Milwaukee, WI 53211.	N/A	02/24/2006	WI	ASMBS.
Community Hospital Monterey Peninsula, 23625 Holman Highway, Monterey, CA 93940.	N/A	02/24/2006	CA	ASMBS.
Crestwood Medical Center, One Hospital Drive, Huntsville, AL 35801.	N/A	02/24/2006	AL	ASMBS.
Cypress Fairbanks Medical Center Hospital, 10655 Steepletop Drive, Houston, TX 77065.	450716	02/24/2006	TX	ASMBS.
Danbury Hospital, 24 Hospital Avenue, Danbury, CT 06810.	N/A	02/24/2006	CT	ACS.
East Texas Medical Center, 1000 S. Beckman Avenue, Tyler, TX 75701.	N/A	02/24/2006	TX	ASMBS.
Eastern Maine Medical Center, 905 Union Street, EMH Mall, Suite 11, Bangor, ME 04401.	200033	02/24/2006	ME	ASMBS.
Elmbrook Memorial Hospital, 19333 W. North Avenue, Brookfield, WI 53045.	N/A	02/24/2006	WI	ASMBS.
Emory Dunwoody Medical Center, 4575 N. Shallowford Road, Atlanta, GA 30338.	N/A	02/24/2006	GA	ASMBS.
Florida Hospital Celebration Health, 400 Celebration Place, Kissimmee, FL 34747.	N/A	02/24/2006	FL	ASMBS.
Florida Medical Center, 4850 W. Oakland Boulevard, Lauderdale Lakes, FL 33313.	N/A	02/24/2006	FL	ASMBS.
Froedtert Memorial Lutheran Hospital, 9200 W. Wisconsin Avenue, Milwaukee, WI 53226.	N/A	02/24/2006	WI	Medical College of Wisconsin ASMBS.
Frye Regional Medical Center, 420 N. Center Street, Hickory, NC 28601.	N/A	02/24/2006	NC	ASMBS.
Geisinger Medical Center, 100 North Academy Avenue, Danville, PA 17822.	390006	N/A	PA	ASMBS.–02/24/2006 ACS–01/26/2007.
Good Samaritan Hospital, 375 Dixmyth Avenue, Cincinnati, OH 45220.	N/A	02/24/2006	OH	ASMBS.
Grandview Medical Center, 405 Grand Avenue, Dayton, OH 45405.	N/A	02/24/2006	OH	ASMBS.
Greater Baltimore Medical Center, 6701 N. Charles Street, Baltimore, MD 21204.	N/A	02/24/2006	MD	ASMBS.
Hamilton Medical Center, 1200 Memorial Drive, Dalton, GA 30720.	N/A	02/24/2006	GA	ASMBS.
Hennepin County Medical Center, 701 Park Avenue, Minneapolis, MN 55415.	N/A	02/24/2006	MN	ASMBS.
Holy Cross Hospital, 4725 N. Federal Highway, Fort Lauderdale, FL 33308.	N/A	02/24/2006	FL	ASMBS.
Hospital of Saint Raphael, 1450 Chapel Street, New Haven, CT 06511.	N/A	02/24/2006	CT	ASMBS.

Facility name	Provider No.	Date approved	State	Other information
Huntington Memorial Hospital, 100 W. California Boulevard, Pasadena, CA 91105.	N/A	02/24/2006	CA	ASMBS.
Jupiter Medical Center, 1210 S. Old Dixie Highway, Jupiter, FL 33458.	N/A	02/24/2006	FL	ASMBS.
King's Daughters Medical Center, 617 23rd Street, Ashland, KY 41101.	N/A	02/24/2006	KY	ASMBS.
Legacy Good Samaritan Hospital and Medical Center, 1015 NW 22nd Avenue, Portland, OR 97210.	N/A	02/24/2006	OR	ASMBS.
Lexington Medical Center, 2720 Sunset Boulevard, West Columbia, SC 29169.	N/A	02/24/2006	SC	ASMBS.
Little Company of Mary, 2800 W. 95th Street, Evergreen Park, IL 60805.	N/A	02/24/2006	IL	ASMBS.
Lutheran Medical Center, 150 55th Street, Brooklyn, NY 11220.	29D361	02/24/2006	NY	ACS.
Medical University of South Carolina, 171 Ashley Avenue, Charleston, SC 29425.	N/A	02/24/2006	SC	ASMBS.
Memorial Hermann Hospital, 6411 Fannin Street, Houston, TX 77030.	N/A	02/24/2006	TX	ASMBS.
Memorial Hospital, 2525 DeSales Avenue, Chattanooga, TN 37404.	N/A	02/24/2006	TN	ASMBS.
Mercy Hospital Miami, 3663 South Miami Avenue, Miami, FL 33133.	N/A	02/24/2006	FL	ASMBS.
Mercy San Juan Medical Center, 6501 Coyle Avenue, Carmichael, CA 95608.	N/A	02/24/2006	CA	ASMBS.
Metabolic Surgery Center at Baptist Hospital, 2011 Church Street, Nashville, TN 37203.	N/A	02/24/2006	TN	ASMBS.
Methodist Dallas Medical Center, PO Box 655999, Dallas, TX 75265–5999.	N/A	02/24/2006	TX	Texas Bariatric Center ASMBS.
Methodist Healthcare System, 8109 Fredricksburg Road, San Antonio, TX 78229.	N/A	02/24/2006	TX	ASMBS.
Methodist Hospital, 6500 Excelsior Boulevard, Saint Louis Park, MN 55426.	N/A	02/24/2006	MN	ASMBS.
Middlesex Hospital, 28 Crescent Street, Middletown, CT 06457.	N/A	02/24/2006	CT	ASMBS.
Methodist Hospital of Southern California, 300 West Huntington Drive, Arcadia, CA 91007.	N/A	02/24/2006	CA	ASMBS.
Mills-Peninsula Health Services, 1783 El Camino Real, Burlingame, CA 94010.	N/A	02/24/2006	CA	ASMBS.
New Hanover Regional Medical Center, 2131 S. 17th Street, Wilmington, NC 28401.	N/A	02/24/2006	NC	ASMBS.
New York Methodist Hospital, 506 Sixth Street, Brooklyn, NY 11215.	N/A	02/24/2006	NY	ASMBS.
North Hills Hospital, 4401 Booth Calloway Road, North Richland Hills, TX 76180.	N/A	02/24/2006	TX	ASMBS.
North Colorado Medical Center, 1801 16th Street, Greeley, CO 80631.	N/A	02/24/2006	CO	ASMBS.
North Vista Hospital, 1409 E. Lake Mead Boulevard, North Las Vegas, NV 89101.	N/A	02/24/2006	NV	ASMBS.
Northeast Georgia Health System, Inc., 743 Spring Street, NE., Gainesville, GA 30501.	N/A	02/24/2006	GA	ASMBS.
NorthEast Medical Center, 920 Church Street N., #302E, Concord, NC 28025.	N/A	02/24/2006	NC	ASMBS.
Northwestern Memorial Hospital, 215 E. Huron Street, NE, Chicago, IL 60611.	N/A	02/24/2006	IL	Northwestern Medical Faculty Foundation ASMBS.
Ocala Regional Medical Center, 1431 SW 1st Street, Ocala, FL 34474.	N/A	02/24/2006	FL	ASMBS.
Palms of Pasadena Hospital, 1501 Pasedena Avenue, St. Petersburg, FL 33707.	N/A	02/24/2006	FL	ASMBS.
Orange Coast Memorial Medical Center, 9920 Talbert Avenue, Fountain Valley, CA 92708.	N/A	02/24/2006	CA	ASMBS.
Parkwest Medical Center, 9352 Park West Boulevard, Knoxville, TN 37923.	N/A	02/24/2006	TN	ASMBS.
Penrose-St. Francis Health Services, 825 E. Pikes Peak Avenue, Colorado Springs, CO 80917.	N/A	02/24/2006	CO	ASMBS.
Poudre Valley Hospital, 1024 S. Lemay Avenue, Fort Collins, CO 80524.	N/A	02/24/2006	CO	ASMBS.
Presbyterian-St. Luke's Medical Center, 1719 E. 19th Avenue, Denver, CO 80218.	N/A	02/24/2006	CO	ASMBS.
Princeton HealthCare System, 253 Witherspoon Street, Princeton, NJ 08540.	N/A	02/24/2006	NJ	ASMBS.
Roger Williams Medical Center, 825 Chalkstone Avenue, Providence, RI 02908.	N/A	02/24/2006	RI	Drs. Lentrichia & Pohl, Inc. ASMBS.
Rose Medical Center, 4545 E. 9th Avenue, #470, Denver, CO 80220.	N/A	02/24/2006	CO	ASMBS.

Facility name	Provider No.	Date approved	State	Other information
Saint Barnabas Medical Center, 94 Old Short Hills Road, Livingston, NJ 07039.	N/A	02/24/2006	NJ	ASMBS.
Saint Francis Hospital, 5959 Park Avenue, Memphis, TN 38119.	N/A	02/24/2006	TN	ASMBS.
St. Francis Hospital—Franciscan Health System, 34515 Ninth Avenue S., Federal Way, WA 98003.	N/A	02/24/2006	WA	N/A
Saint Joseph East Center for Weight Loss, 160 N. Eagle Creek Drive, Lexington, KY 40509.	N/A	02/24/2006	KY	ASMBS.
Saint Mary's Regional Medical Center, 234 W. 6th Street, Reno, NV 89503.	N/A	02/24/2006	NV	ASMBS.
Saint Mary's Hospital, 5801 Bremo Road, Richmond, VA 23226.	N/A	02/24/2006	VA	ASMBS.
Scottsdale Healthcare Shea Campus, 900 E. Shea Boulevard, Scottsdale, AR 85260.	N/A	02/24/2006	AZ	ASMBS.
Scripps Memorial, 9888 Genesee Avenue, La Jolla, CA 90237.	N/A	02/24/2006	CA	ASMBS.
Scripps Mercy Hospital, 4077 Fifth Avenue, San Diego, CA 92103.	N/A	02/24/2006	CA	ASMBS.
Sentara Careplex Hospital, 3000 Coliseum Drive, Hampton, VA 23666.	N/A	02/24/2006	VA	ASMBS.
Sinai Hospital of Baltimore, 2401 W. Belvedere Avenue, Baltimore, MD 21215.	N/A	02/24/2006	MD	Sinai Surgical Associates ASMBS.
Sisters of Charity Hospital, 2130 Main Street, Buffalo, NY 14214.	N/A	02/24/2006	NY	ASMBS.
Sioux Valley Hospital USD Medical Center, 1305 W. 18th Street, Sioux Falls, SD 57105.	N/A	02/24/2006	SD	ASMBS.
Sound Shore Medical Center of Westchester, 16 Guion Place, New Rochelle, NY 10801.	N/A	02/24/2006	NY	ASMBS.
South Nassau Communities Hospital, 1 Healthy Way, Oceanside, NY 11572.	N/A	02/24/2006	NY	ASMBS.
Southwest Healthcare System, 36485 Inland Valley Drive, Wildomar, CA 92595.	N/A	02/24/2006	CA	ASMBS.
Southwest Medical Center, 2810 Ambassador Caffery Parkway, Lafayette, LA 70506.	N/A	02/24/2006	LA	ASMBS.
Spectrum Health Blodgett Campus, 1840 Wealthy Street, SE., Grand Rapids, MI 49506.	N/A	02/24/2006	MI	MMPC Center for Health Excellence ASMBS.
SSM DePaul Health Center, 12303 DePaul Avenue, Bridgeton, MO 63044.	N/A	02/24/2006	MO	ASMBS.
St. Joseph's Area Health Services, 600 Pleasant Avenue, Park Rapids, MN 56470.	N/A	02/24/2006	MN	ASMBS.
St. Vincent Charity Hospital, 2322 E. 22nd Street, #220, Cleveland, OH 44115.	N/A	02/24/2006	OH	ASMBS.
Staten Island University Hospital, 475 Seaview Avenue, Staten Island, NY 10305.	N/A	02/24/2006	NY	ASMBS.
Theda Clark Medical Center, 200 Theda Clark Medical Plaza, Suite 410, Neenah, WI 54956.	000071445	02/24/2006	WI	ACS.
The Ohio State University Hospital, 410 W. 10th Avenue, Columbus, OH 43210.	N/A	02/24/2006	OH	ASMBS.
The Regional Medical Center at Memphis, 877 Jefferson Avenue, Memphis, TN 38103.	N/A	02/24/2006	TN	ASMBS.
Tri-City Regional Medical Center, 21530 Pioneer Boulevard, Hawaiian Gardens, CA 90716.	N/A	02/24/2006	CA	ASMBS.
United Hospital, 333 North Smith Avenue, Saint Paul, MN 55102.	N/A	02/24/2006	MN	ASMBS.
United Regional Health Care System, 1600 19th Street, Wichita Falls, TX 76301.	N/A	02/24/2006	TX	ASMBS.
Unity Hospital, 550 Osborne Road, NE., Fridley, MN 55432.	N/A	02/24/2006	MN	ASMBS.
University of Chicago Hospitals, 5841 S. Maryland Avenue, Chicago, IL 60637.	N/A	02/24/2006	IL	University of Chicago Department of Surgery ASMBS.
University of Minnesota Medical Center, Fairview, 2450 Riverside Avenue, Minneapolis, MN 55454.	24–0080	02/24/2006	MN	ASMBS.
UPMC St. Margaret, 815 Freeport Road, Pittsburgh, PA 15215.	N/A	02/24/2006	PA	ASMBS.
UPMC Horizon, 110 North Main Street, Greenville, PA 16125.	N/A	02/24/2006	PA	ASMBS.
Virginia Commonwealth University Medical Center, Richmond, VA 23284.	N/A	02/24/2006	VA	ASMBS.
Vanderbilt University Medical Center, 1211 22nd Avenue S., Nashville, TN 37232.	N/A	02/24/2006	TN	ASMBS.
Weight Loss Surgery Program at Baylor, 9101 N. Central Expressway, Suite 370, Dallas, TX 75231.	N/A	02/24/2006	TX	ASMBS.
Wellstar Health Systems, 677 Church Street, NE., Marietta, GA 30060.	N/A	02/24/2006	GA	ASMBS.

Facility name	Provider No.	Date approved	State	Other information
White Plains Hospital Center, 190 E. Post Road, White Plains, NY 10601.	N/A	02/24/2006	NY	ASMBS.
York Hospital, 1001 S. George Street, York, PA 17403 ...	N/A	02/24/2006	PA	ASMBS.
Norman Regional Hospital, 901 North Porter, Box 1308, Norman, OK 73070.	370008	03/22/2006	OK	ASMBS.
St. Luke's Medical Center, 1800 E. Van Buren, Suite 307B, Phoenix, AZ 85006.	030037	03/22/2006	AZ	Abdominal Surgeons, Ltd. ASMBS.
Silver Cross Hospital, 1200 Maple Road, Joliet, IL 60432	140213	03/22/2006	IL	Midwest Comprehensive Bariatrics ASMBS.
Tampa General Hospital, 2 Columbia Drive, F145, Tampa, FL 33601.	100128	03/22/2006	FL	University of South Florida ASMBS.
Spartanburg Regional Healthcare System, 101 East Wood Street, Spartanburg, SC 29303.	420007	03/27/2006	SC	ASMBS.
OSF Saint Francis Medical Center, 530 NE Glen Oak Avenue, Peoria, IL 61637.	140067	04/05/2006	IL	ASMBS.
Palmetto Health Baptist, 1850 Laurel Street, Suite 1A, Columbia, SC 29201.	420086	04/05/2006	SC	ASMBS.
Peconic Bay Medical Center, 1300 Roanoke Avenue, Riverhead, NY 11901.	330107	04/06/2006	NY	ASMBS.
Desert Springs Hospital, 2075 East Flamingo, Las Vegas, NV 89119.	290022	04/07/2006	NV	ASMBS.
Palmetto General Hospital, 2001 West 68th Street, Hialeah, FL 33016.	100187	04/11/2006	FL	ASMBS.
Hurley Medical Center, One Hurley Plaza, Flint, MI 48503–5993.	230132	04/14/2006	MI	ACS.
University of California, Davis 2315 Stockton Boulevard, Sacramento, CA 95817.	N/A	04/18/2006	CA	ASMBS.
Russell County Medical, Carroll and Tate Streets, Lebanon, VA 24266.	N/A	04/27/2006	VA	ASMBS.
Western Pennsylvania Hospital, 4800 Friendship Avenue, Pittsburgh, PA 15224.	028672	N/A	PA	ASMBS.–05/01/2006 ACS–10/16/2006
Banner Good Samaritan Bariatric Center, 1300 North 12th Street, Suite 610, Phoenix, AZ 85006.	N/A	05/04/2006	AZ	ASMBS.
Bothwell Regional Health Center, 601 East 14th Street, Sedalia, MO 65301.	N/A	05/17/2006	MO	ASMBS.
Durham Regional Hospital, 3643 N. Roxboro Road, Durham, NC 27704.	N/A	05/17/2006	NC	ASMBS.
Fairview Southdale Hospital, 6405 France Avenue Street, Suite W320, Edina, MN 55435.	N/A	05/17/2006	MN	ASMBS.
Cleveland Clinic, 9500 Euclid Avenue (A80), Cleveland, OH 44195.	360180	N/A	OH	05/24/2006–ASMBS. 12/01/2006–ACS.
St. Agnes Healthcare, 900 Caton Avenue, Baltimore, MD 21229.	210011	05/24/2006	MD	ASMBS.
Sycamore Hospital, 2150 Leiter Road, Miamisburg, OH 45342.	360239	05/24/2006	OH	ASMBS.
Albany Medical Center, 47 New Scotland Avenue, Albany, NY 12208.	330013	06/02/2006	NY	ACS.
Georgetown Community Hospital, 1140 Lexington Road, Georgetown, KY 40324.	180101	06/07/2006	KY	ASMBS.
Fletcher Allen Health Care, 111 Colchester Avenue, Burlington, VT 05401.	N/A	06/09/2006	VT	Hospital: 470003 Group Provider: VN0997 ACS.
New York-Presbyterian Hospital/Columbia University Medical Center, 622 W. 168th Street, New York, NY 10032.	330101	06/14/2006	NY	ACS.
Providence Memorial Hospital, 2001 North Oregon Street, El Paso, TX 79902.	450668	06/15/2006	TX	ASMBS.
UT Southwestern University Hospitals-Zale Lipshy, 5909 Harry Hines Boulevard, Dallas, TX 75390.	450766	06/19/2006	TX	ASMBS.
Cedars-Sinai Medical Center, 8700 Beverly Boulevard, Los Angeles, CA 90048.	N/A	06/20/2006	CA	Thalians-2W ACS.
Community Medical Center-Clovis, 2755 Herndon Avenue, Clovis, CA 93611.	050492	N/A	CA	ACS–06/26/2006 ASMBS–12/07/2006.
Oregon Health & Science University, 3181 SW Sam Jackson Park Road L223A, Portland, OR 97239.	See other information	06/27/2006	OR	OHSU Medical Group-107708 OHSU Hospital-380009 ACS.
Hospital of the University of Pennsylvania, 3400 Spruce Street, 4 Silverstein, Philadelphia, PA 19104.	N/A	07/06/2006	PA	ASMBS.
Swedish Medical Center, 501 East Hampden Avenue, Englewood, CO 80113.	060034	07/06/2006	CO	ASMBS.
Blount Memorial Hospital, 907 East Lamar Alexander Parkway, Maryville, TN 37801.	440011	07/11/2006	TN	ASMBS.
University of Virginia Health System, PO Box 800809, Charlottesville, VA 22908–0809.	490009	07/12/2006	VA	ACS.
Sewickley Valley Hospital, 720 Blackburn Road, Sewickley, PA 15143.	390037	07/13/2006	PA	ASMBS.

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The Christ Hospital, 2139 Auburn Avenue, Cincinnati, OH 45219.	360163	07/17/2006	OH	ASMBS.
Cabell Huntington Hospital, 1340 Hal Greer Boulevard, Huntington, WV 25701.	510055	07/19/2006	WV	ASMBS.
Mount Sinai Hospital, One Gustave L. Levy Place 1190 5th Avenue, New York, NY 10029.	330024	07/25/2006	NY	ASMBS.
UMass Memorial Medical Center-Memorial Campus, 119 Belmont Street, Worcester, MA, 01605.	A22819	07/27/2006	MA	ACS.
Henry Ford Hospital, 2799 West Grand Boulevard, Detroit, MI 48202.	N/A	07/31/2006	MI	ASMMBS
Vista Surgical Hospital, 9094 Perkins Road, Suite B, Baton Rouge, LA 70810.	230053	07/31/2006	LA	ASMBS.
Town & Country Hospital, 6001 Webb Road, Tampa, FL 33615.	100255	08/02/2006	FL	ASMBS.
New York-Presbyterian Hospital/Weill Cornell Medical Center, 630 West 168th Street, New York, NY 10032.	330101	08/04/2006	NY	ACS.
Centinela Freeman Regional Medical Center, 4650 Lincoln Boulevard, Marin del Rey, CA 90292.	050741	08/07/2006	CA	ASMBS.
NYU Medical Center, 560 First Avenue, New York, NY 10016.	330214	08/08/2006	NY	ASMBS.
Regional West Medical Center, 4021 Avenue B, Scottsbluff, NE 69361.	280061	08/08/2006	NE	ASMBS.
Mercy Medical Center, 1000 North Village Avenue, Rockville Centre, NY 11570.	N/A	08/10/2006	NY	ASMBS.
Brigham and Women's Hospital, 75 Francis Street, Boston, MA 02115–6195.	M20830	08/14/2006	MA	ACS.
Highland Hospital, 1000 South Avenue, Rochester, NY 14620.	330164	08/30/2006	NY	ACS.
Inova Fair Oaks Hospital, 3600 Joseph Siewick Drive, Fairfax, VA 22033.	490101	08/31/2006	VA	ASMBS.
Our Lady of Lourdes Medical Center, 1600 Haddon Avenue, Camden, NJ 08104.	613039	08/31/2006	NJ	ASMBS.
FirstHealth Moore Regional Hospital, 155 Memorial Drive, Pinehurst, NC 27374.	340115	09/01/2006	NC	ASMBS.
Hamot Medical Center, 201 State Street, Erie, PA 16550	390063	09/01/2006	PA	ASMBS.
St. Alexius Hospital—NewStart, 3933 South Broadway Street, St. Louis, MO 63118.	260210	09/01/2006	MO	ASMBS.
St. Catherine of Siena Medical Center, 50 Route 25A, Smithtown, NY 11787.	316495	09/01/2006	NY	ASMBS.
Barnes Jewish Hospital, One Barnes-Jewish Hospital Plaza, St. Louis, MO 63110.	260032	09/06/2006	MO	ASMBS.
Baptist Memorial Hospital Memphis, 6025 Walnut Grove Road, Memphis, TN 38120.	440048	09/07/2006	TN	ASMBS.
Norwalk Hospital, 24 Stevens Street, Norwalk, CT 06856	070034	09/07/2006	CT	ASMBS.
North Shore University Hospital at Manhasset, 300 Community Drive, Manhasset, NY 11530.	330106	09/08/2006	NY	ASMBS.
St. Vincent's Medical Center, 2800 Main Street, Bridgeport, CT 06606.	070028	09/08/2006	CT	Level 3-Department of Surgery ASMBS.
Faxton-St. Luke's Healthcare, 1656 Champlin Avenue, Utica, NY 13503.	330044	09/14/2006	NY	ASMBS.
St. Joseph's Hospital, 69 West Exchange, St. Paul, MN 55102.	N/A	09/14/2006	MN	ASMBS.
Johns Hopkins Bayview Medical Center, 4940 Eastern Avenue, Baltimore, MD 21224.	210029	09/15/2006	MD	ASMBS.
University Hospitals of Cleveland, 11100 Euclid Avenue, Cleveland, OH 44106.	N/A	09/15/2006	OH	ASMBS.
Yale-New Haven Hospital, 20 York Street, New Haven, CT 06510.	070022	09/20/2006	CT	ASMBS.
Avera McKennan Hospital, 800 East 21st Street, Box 5045, Sioux Falls, SD 57117–5045.	430016	09/25/2006	SD	ASMBS.
Memorial Hospital Jacksonville, 3625 University Boulevard South, Jacksonville, FL 32216.	100179	09/26/2006	FL	ASMBS.
Fountain Valley Regional Hospital, 17100 Euclid Street, Fountain Valley, CA 92708.	050570	09/27/2006	CA	ASMBS.
Sentara Norfolk General Hospital, 600 Gresham Drive, Norfolk, VA 23507.	4900073	09/29/2006	VA	ACS.
St. Mary's Medical Center, 450 Stanyan Street, San Francisco, CA 94117.	050457	10/02/2006	CA	ASMBS.
Trinity Medical Center, 800 Montclair Road, Birmingham, AL 35213.	010104	10/03/2006	AL	ASMBS.
MeritCare Health System, 720 4th Street North, Fargo, ND 58122.	350011	10/11/2006	ND	ASMBS.
St. Lukes's/Roosevelt, 1090 Amsterdam Avenue, New York, NY 10025.	330046	10/11/2006	NY	10th Floor ACS.

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Benefis Healthcare, 1101 26th Street South, Great Falls, MT 59405.	270012	10/13/2006	MT	ASMBS.
Mason General Hospital, 901 Mountain View Drive, Shelton, WA 98584.	501336	10/13/2006	WA	ASMBS.
Norton Hospital, 200 East Chestnut, Louisville, KY 40202	180088	10/16/2006	KY	ASMBS.
Port Huron Hospital, 1221 Pine Grove Avenue, Port Huron, MI 48060.	230216	10/16/2006	MI	ASMBS.
Harper University Hospital, 3990 John R. Street, Detroit, MI 48201.	230104	10/17/2006	MI	ASMBS.
St. Luke Hospital, 7380 Turfway Road, Florence, KY 41042.	180045	10/18/2006	KY	ASMBS.
Twelve Oaks Medical Center Hospital, 4200 Twelve Oaks Drive, Houston, TX 77027.	N/A	10/18/2006	TX	ASMBS.
Cleveland Clinic Florida, 3100 Weston Road, Weston, FL 33331–3602.	100289	10/19/2006	FL	ACS.
Grinnell Regional Medical Center, 210 Fourth Avenue, Grinnell, IA 50112.	N/A	10/19/2006	IA	Provider Numbers: Hospital: 160147, Surgical Group: 03108 ACS.
Conway Medical Services, 300 Singleton Ridge Road, Conway, SC 29528.	420049	10/20/2006	SC	ASMBS.
Alta Bates Medical Center, 350 Hawthome Avenue, Oakland, CA 94609.	050043	10/23/2006	CA	ASMBS.
Massachusetts General Hospital, 55 Fruit Street, Boston, MA 02114–2696.	220071	10/23/2006	MA	ACS.
Mayo Clinic-Saint Mary's Hospital, 200 First Street SW., Rochester, MN 55905.	N/A	10/23/2006	MN	SMH: 24–0010 Part B General Medical: C01384 ACS.
Saint Francis Hospital, 6465 South Yale Avenue, #900, Tulsa, OK 74136.	372308	10/23/2006	OK	ACS.
Newton-Wellesley Hospital, 2014 Washington Street, Newton, MA 02462.	220101	10/26/2006	MA	ACS.
Mobile Infirmary Medical Center, 5 Mobile Infirmary Circle, Mobile, AL 36007.	010113	10/27/2006	AL	ASMBS.
Maine Medical Center, 22 Bramhall Street, Portland, ME 04102.	200009	11/06/2006	ME	ASMBS.
Magee Womens Hospital of UPMC, 3000 Halket Street, Pittsburgh, PA 15213.	390114	11/13/2006	PA	ASMBS.
Saint Francis Hospital and Medical Center, 114 Woodland Street, Hartford, CT 06105.	070002	11/15/2006	CT	ASMBS.
South Jersey Healthcare-Regional Medical Center, 1505 West Sherman Avenue, Vineland, NJ 08360.	310032	11/20/2006	NJ	ASMBS.
Overlook Hospital, 99 Beauvoir Avenue, Summit, NJ 07902.	310051	11/21/2006	NJ	Nursing Administration Office ASMBS.
Cedars Medical Center, 1400 Northwest 12th Avenue, Miami, FL 33136.	100009	11/23/2006	FL	ASMBS.
Memorial Hermann Memorial City Hospital, 921 Gessner Road, Houston, TX 77024.	450610	11/27/2006	TX	ASMBS.
Tufts-New England Medical Center, 750 Washington Street, Boston, MA 02111.	220116	11/27/2006	MA	ASMBS.
Allegheny General Hospital, 320 East North Avenue, Pittsburgh, PA 15212.	390050	11/30/2006	PA	Fifth Floor, South Tower ASMBS.
Northwest Medical Center, 2801 North State Road 7, Margate, FL 33063.	100189	11/30/2006	FL	ASMBS.
Potomac Hospital, 2300 Opitz Boulevard, Woodbridge, VA 22191.	490113	11/30/2006	VA	ASMBS.
Baptist Health Medical Center—Little Rock, 9601 I–630, Exit 7, Little Rock, AR 72205.	040114	12/01/2006	AR	ASMBS.
University of Washington Medical Center, 1959 NE Pacific Street, PO Box 356151, Seattle, WA 98195–6151.	1326002049	12/05/2006	WA	ACS.
St. Luke's Regional Medical Center, 333 North 1st Street, Suite 120, Boise, ID 83702.	130006	12/06/2006	ID	ASMBS.
University of Alabama at Birmingham Hospital, 1530 3rd Avenue South, Kracke Building 404, Birmingham, AL 35294–0016.	010033	12/07/2006	AL	ACS.
Hackensack University Medical Center, 30 Prospect Avenue, Hackensack, NJ 07601.	310001	12/08/2006	NJ	ACS.
Hialeah Hospital, 651 East 25th Street, Hialeah, FL 33013.	100053	12/13/2006	FL	ASMBS.
Sts. Mary and Elizabeth Hospital, 1850 Bluegrass Avenue, Louisville, KY 40215.	180040	12/15/2006	KY	Bariatric Office ASMBS.
Bon Secours Surgical Weight Loss-Maryview Medical Center, 3636 High Street, Portsmouth, VA 23707.	490017	12/18/2006	VA	ASMBS.
Pomerado Hospital, 15615 Pomerado Road, Poway, CA 92064.	050636	12/18/2006	CA	ASMBS.
Boston Medical Center, 88 E. Newton Street, D507-Department of Surgery, Boston, MA 02118.	220031	12/19/2006	MA	ACS.

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Medcenter One, Inc., 300 North 7th Street, Bismarck, ND 58501.	350015	12/19/2006	ND	ASMBS.
Meriter Hospital, 202 South Park Street, Madison, WI 53715.	520089	12/19/2006	WI	ASMBS.
University of Wisconsin Hospital & Clinics, 600 Highland Avenue, Madison, WI 53792.	520098	12/19/2006	WI	ASMBS.
Women and Children's Hospital, 4200 Nelson Road, Lake Charles, LA 70605.	190201	12/19/2006	LA	ASMBS.
Mount Carmel West Hospital, 793 West State Street, Columbus, OH 43222.	360035	12/20/2006	OH	ASMBS.
Southcoast Hospitals Group-Tobey Hospital, 43 High Street, Wareham, MA 02571.	220074	12/21/2006	MA	ASMBS.
Carilion Roanoke Memorial Hospital, 1906 Belleview Avenue, Roanoke, VA 24014.	N/A	12/26/2006	VA	ASMBS.
Mercy General Health Partners, 1500 Sherman Boulevard, Muskegon, MI 49444.	230004	12/26/2006	MI	ASMBS.
Mountainside Hospital, 1 Bay Avenue, Montclair, NJ 07042.	310054	12/26/2006	NJ	ASMBS.
Park Plaza Hospital, 1313 Hermann Drive, Houston, TX 77004.	450659	01/09/2007	TX	ASMBS.
Renaissance Hospital Houston, 2807 Little York, Houston, TX 77093.	450795	01/12/2007	TX	ASMBS.
Penn State Milton S. Hershey Medical Center, 500 University Drive, Hershey, PA 17033.	390256	01/18/2007	PA	ASMBS.
Shawnee Mission Medical Center, 9100 West 74th Street, Shawnee Mission, KS 66204.	170104	01/24/2007	KS	ASMBS.
Morristown Memorial Hospital, 100 Madison Avenue, Morristown, NJ 07962.	31–0015	01/25/2007	NJ	ACS.
Alvarado Hospital, 6655 Alvarado Road, San Diego, CA 92120.	050583	01/26/2007	CA	Alvarado Surgical Weight-Loss Program ASMBS.
St. Francis Hospital, 7th and Clayton Streets, Wilmington, DE 19805.	080003	01/29/2007	DE	ASMBS.
Sacred Heart Medical Center, 101 West 8th Avenue, Spokane, WA 99220.	500054	02/05/2007	WA	ASMBS.
Ochsner Clinic Foundation, 1514 Jefferson Highway, New Orleans, LA 70121.	190036	02/06/2007	LA	ASMBS.
Northwest Specialty Hospital, 1593 East Polston Avenue, Post Falls, ID 83854.	130066	02/07/2007	ID	ASMBS.
Sacred Heart Hospital, 421 Chew Street, Allentown, PA 18102.	390197	02/07/2007	PA	ASMBS.
Rio Grande Regional Hospital, 101 East Ridge Road, McAllen, TX 78503.	450711	02/12/2007	TX	ASMBS.
Gundersen Lutheran Medical Center, 1900 South Avenue, La Crosse, WI 54601.	520087	02/13/2007	WI	ASMBS.
Kettering Medical Center, 3535 Southern Boulevard, Kettering, OH 45429.	360079	02/16/2007	OH	ASMBS.
Beth Israel Deaconess Medical Center, 330 Brookline Avenue, Boston, MA 02215.	N/A	02/17/2006	MA	ACS.
Shady Grove Adventist Hospital, 9901 Medical Center Drive, Rockville, MD 20850.	210057	02/19/2007	MD	ASMBS.
Pitt County Memorial Hospital, 2100 Stantonsburg Road, Greenville, NC 27835.	340040	02/20/2007	NC	ASMBS.
St. Cloud Hospital, 1406 Sixth Avenue, North, St. Cloud, MN 56303.	240036	02/23/2007	MN	ASMBS.
Virginia Mason Medical Center, 1100 Ninth Avenue, Seattle, WA 98101.	500005	03/01/2007	WA	ASMBS.
Southeast Georgia Health System, 2415 Parkwood Drive, Brunswick, GA 31520.	110025	03/06/2007	GA	ASMBS.
Baystate Medical Center, 759 Chestnut Street, Springfield, MA 01199.	220077	03/13/2007	MA	ACS.
PinnacleHealth Community Campus, 4300 Londonderry Road, c/o PO Box 8700, Harrisburg, PA 17109.	390067	03/29/2007	PA	ASMBS.
The Valley Hospital, 223 North Van Dien Avenue, Ridgewood, NJ 07450.	310012	03//2007	NJ	ASMBS.
Charleston Area Medical Center, 800 Pennsylvania Avenue, Charleston, WV 25302.	510022	04/16/2007	WV	ASMBS.
Presbyterian Hospital of Dallas, 8200 Walnut Hill Lane, Dallas, TX 75231.	450462	04/16/2007	TX	ASMBS.
Dekalb Medical Center, 2701 North Decatur Road, Decatur, GA 30033.	110076	04/26/2007	GA	ASMBS.
St. Francis Health Center, 1700 SW 7th Street, Topeka, KS 66606.	170016	04/26/2007	KS	ASMBS.
St. Mark's Hospital, 1200 East 3900 South, Salt Lake City, UT 84124.	47007	04/26/2007	UT	ASMBS.

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George Washington University Hospital, 9000 23rd Street NW., Washington, DC 20037.	090001	08/14/2006	DC	ASMBS.
William Beaumont Hospital—Royal Oak, 3601 West Thirteen Mile Road, Royal Oak, MI 48073–6769.	230130	04/20/2007	MI	ACS.
University Medical Center at Princeton, 253 Witherspoon Street, Princeton, NJ 08542.	N/A	02/24/2006	NJ	ASMBS.
Winchester Hospital, 41 Highland Avenue, Winchester, MA 01890.	220105	05/31/2007	MA	ASMBS.
Lawrence Memorial Hospital—Hallmark Health System, 170 Governors Avenue, Medford, MA 02155.	220070	05/31/2007	MA	ASMBS.
The Methodist Hospital, 6565 Fannin, NB1–001, Houston, TX 77030.	450358	03/22/2007	TX	ACS.
ValleyCare Health System, 1111 East Stanley Boulevard, Livermore, CA 94550.	050283	06/07/2007	CA	ASMBS.
The Presbyterian Hospital, 200 Hawthorne Lane, Charlotte, NC 28204.	340053	06/06/2007	NC	ASMBS.
Nix Hospital, 414 Navarro Street, San Antonio, TX 78205	450130	06/08/2007	TX	ASMBS.
Huntsville Hospital, 101 Sivley Road, Huntsville, AL 35801.	010039	05/11/2007	AL	ASMBS.
The Jewish Hospital, 4777 Galbraith Road, Cincinnati, OH 45236.	360016	06/07/2007	OH	ASMBS.
UCI Medical Center, 101 The City Drive South, Orange, CA 92868.	050348	05/25/2007	CA	ACS.
Kaiser Permanente Medical Center, Richmond, 901 Nevin Avenue, Richmond, CA 94801.	050075	05/24/2007	CA	ACS.
Green Hospital, 12395 El Camino Real, San Diego, CA 92130.	050424	06/21/2007	CA	ASMBS.
Sutter Roseville Medical Center, One Medical Plaza, Roseville, CA 95661.	050309	06/22/2007	CA	ASMBS.
Munroe Regional Medical Center, 1500 Southwest 1st Avenue, Ocala, FL 34471.	100062	06/05/2007	FL	ASMBS.
Enloe Medical Center, 251 Cohasset Road, Chico, CA 95926.	050039	06/11/2007	CA	ASMBS.
St. Francis Hospital & Health Centers, 1600 Albany Street, Beech Grove, IN 46107.	150033	06/15/2007	IN	ASMBS.
Southern Surgical Hospital, 1700 West Lindberg Drive, Slidell, LA 70458.	190270	06/21/2007	LA	ASMBS.
Creighton University Medical Center, 601 North 30th Street, Omaha, NE 68131.	280030	06/20/2007	NE	ASMBS.
Peninsula Regional Medical Center, 100 East Carroll Street, Salisbury, MD 21801.	210019	06/20/2007	MD	ASMBS.
Wadley Regional Medical Center, 1000 Pine Street, Texarkana, TX 75501.	450200	06/08/2007	TX	ASMBS.
Vista Medical Center Hospital, 4301 Vista Road, Pasadena, TX 77504.	450831	06/22/2007	TX	ASMBS.
St. David's Medical Center, 919 East 32nd Street, Austin, TX 78705.	450531	06/22/2007	TX	ASMBS.
Sanford USD Medical Center, 1305 West 18th Street, Sioux Falls, SD 57117.	430027	01/17/2006	SD	ASMBS.
Weight Loss Surgery Program at Baylor, 3600 Gaston Avenue, Suite 360 Wadley Tower, Dallas, TX 75246.	N/A	06/20/2007	TX	ASMBS.
Shelby Baptist Medical Center, 1000 First Street N., Alabaster, AL 35007.	010016	05/18/2007	AL	ACS.
Lehigh Valley Hospital and Health Network, Cedar Crest & I–78, PO Box 689, Allentown, PA 18105–1556.	390133	05/29/2007	PA	ACS.
West Hills Hospital, 7300 Medical Center Drive, West Hills, CA 91307.	050481	06/27/2007	CA	ASMBS.
Adirondack Medical Center, 2233 State Route 86, Saranack Lake, NY 12983.	330079	06/26/2007	NY	ASMBS.
Middletown Regional Hospital, 105 McKnight Drive, Middletown, OH 45044.	360076	06/25/2007	OH	ASMBS.
Kaleida Health, Buffalo General, 100 High Street, Buffalo, NY 14203.	300005	06/25/2007	NY	ASMBS.
Miami Valley Hospital, One Wyoming Street, Dayton, OH 45409.	N/A	06/25/2007	OH	ASMBS.
Minimally Invasive Surgery Hospital, 11217 Lakeview Avenue, Lenexa, KS 66219.	N/A	06/25/2007	KS	ASMBS.
Saint Agnes Medical Center, 1303 E. Herndon Avenue, Fresno, CA 93720.	05–0093	07/24/2007	CA	ASMBS.
Sartori Memorial Hospital, 515 College Street, Cedar Falls, IA 50613.	160040	07/17/2007	IA	ASMBS.
Maimonides Medical Center, 948 48th Street, 2nd floor, Brooklyn, NY 11219.	33–0194	07/10/2007	NY	ASMBS.

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Westchester Medical Center, 95 Grasslands Road, Valhalla, NY 10595.	330234	07/17/2007	NY	ASMBS.
Deaconess Hospital, 311 Straight Street, Cincinnati, OH 45219.	36–0038	07/17/2007	OH	ASMBS.
Northern Ohio Bariatric Center at Parma Hospital, 6305 Powers Boulevard, Parma, OH 44129.	360041	07/10/2007	OH	ASMBS.
Einstein at Elkins Park, 60 E. Township Line Road, Elkins Park, PA 19027.	390142	07/10/2007	PA	ASMBS.
Lahey Clinic Medical Center, 41 Mall Road, Burlington, MA 01805.	220171	06/22/2007	MA	ACS.
St. Francis Hospital, 34515 Ninth Ave South, Federal Way, WA 98003.	500141	07/26/2007	WA	ACS.
California Foundation for Health, 1401 Garces Highway, Delano, CA 93215.	050608	07/10/2007	CA	d.b.a. Delano Regional Medical Center; ASMBS.
Northeast Alabama Regional Medical Center, 400 East 10th Street, Anniston, AL 36207.	010078	07/30/2007	AL	ASMBS.
Trinity Medical Center, 4343 N. Josey Lane, Carrollton, TX 75010.	45–0730	07/30/2007	TX	ASMBS.
Gratiot Medical Center, 300 E. Warwick Drive, Alma, MI 48801.	23–0030	07/30/2007	MI	ASMBS.
Cuyuna Regional Medical Center, 320 East Main Street, Crosby, MN 56441.	241353	08/20/2007	MN	ASMBS.
Valley Medical Center, 400 South 43rd Street, Renton, WA 98055.	500088	07/30/2007	WA	ASMBS.
Renaissance Hospital Dallas, 427 W. 20th Street, Suite 300, Houston, TX 77008.	670002	08/08/2007	TX	ASMBS.
UPMC Presbyterian Shadyside, 5230 Centre Avenue, Pittsburgh, PA 15232.	39–0114	08/20/2007	PA	ASMBS.
Clarian North Medical Center, 6625 Network Way, Suite 100, Indianapolis, IN 46202.	15–0161	08/20/2007	IN	ASMBS.
Genesis Medical Center, 1227 East Rusholme Street, Davenport, IA 52803.	160033	08/08/2007	IA	ASMBS.
University General Hospital, 7501 Fannin Street, Houston, TX 77054.	670019	08/08/2007	TX	ASMBS.
Ellis Hospital, 1101 Nott Street, Schenectaday, NY 12308	330153	06/19/2007	NY	ASMBS.
University of Texas Medical Branch, 301 University Boulevard, Galveston, TX 77555–1168.	450018	08/16/2007	TX	ACS.
Christiana Care Health Services, 4755 Ogletown—Stanton Road, Newark, DE 19718.	080001	08/29/2007	DE	ASMBS.
Stanford Hospital and Clinics, 300 Pasteur Drive, Stanford, CA 94305.	050441	09/13/2007	CA	ACS.
Summa Health Systems Hospital, 95 Arch Street, Suite 240, Akron, OH 44304.	360020	09/21/2007	OH	ASMBS.
Memorial Regional Hospital, 3500 Johnson Street, Hollywood, FL 33021.	100038	09/11/2007	FL	ASMBS.
Temple University Hospital, 3401 North Broad Street, Philadelphia, PA 19140.	390027	09/21/2007	PA	ASMBS.
Good Samaritan Hospital, 2425 Samaritan Drive, San Jose, CA 95124.	50380	09/21/2007	CA	ASMBS.
Johnson City Medical Center, 400 North State of Franklin Road, Johnson City, TN 37604.	HSP440063	09/27/2007	TN	ASMBS.
Providence Saint Joseph Medical Center, 201 South Buena Vista Street, Suite 425, Burbank, CA 91505.	50235	N/A	CA	ASMBS—09/17/2007; ACS—09-05/2007.
Baptist Bariatric Center of Excellence, 1000 West Moreno Street, Pensacola, FL 32501.	10–0093	09/27/2007	FL	ASMBS.

Addendum XVI—FDG–PET for Dementia and Neurodegenerative Diseases Clinical Trials

In a National Coverage Determination for fluorodeoxyglucose positron emission tomography (FDG–PET) for Dementia and Neurodegenerative Diseases (220.6.13) we indicated that an FDG–PET scan is considered reasonable and necessary in patients with mild cognitive impairment or early dementia only in the context of an approved clinical trial that contains patient safeguards and protections to ensure proper administration, use, and evaluation of the FDG–PET scan.

Facility name	Provider number	Date approved	State	Name of trial	Principal investigator
UCLA Medical Center, 10833 Le Conte Avenue, Los Angeles, CA 90095.	HW13029	06/07/2006	CA	Early and Long-Term Value of Imaging Brain Metabolism.	Dr. Daniel Silverman.
Santa Monica–UCLA Medical Center, 1245 16th Street, Suite 105, Santa Monica, CA 90404.	W11817A	01/12/2007	CA	N/A	N/A.

Facility name	Provider number	Date approved	State	Name of trial	Principal investigator
University of Buffalo 3435 Main Street, Buffalo, NY 14214.	14414A	03/12/2007	NY	Metabolic Cerebral Imaging in Incipient Dementia (MCI–ID).	Dr. Daniel Silverman.

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Friday,
December 28, 2007

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0083; FRL–8509–5]

RIN 2060–AM71

National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emission standards for electric arc furnace steelmaking facilities that are area sources of hazardous air pollutants. The final rule establishes requirements for the control of mercury emissions that are based on the maximum achievable control technology and requirements for the control of other hazardous air pollutants that are based on generally available control technology or management practices.

DATES: This final rule is effective on December 28, 2007. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of December 28, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0083. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities Docket at the EPA Docket and Information Center in the EPA Headquarters Library, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Sector Policies and Program Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5289; fax number (919) 541–3207, e-mail address: *mulrine.phil@epa.gov*.

SUPPLEMENTARY INFORMATION: *Outline.* The information presented in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

The regulated category and entities potentially affected by this final action include:

Category	NAICS code[1]	Examples of regulated entities
Industry	331111	Steel mills with electric arc furnace steelmaking facilities that are area sources.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.10680 of subpart YYYYY (National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 26, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal

proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

II. Background Information for the Final Rule

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 hazardous air pollutants (HAP), which, as the result of emissions of area sources,[1] pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy, EPA identified the 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "Urban HAP." See 64 FR 38715, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 Urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the Urban HAP emissions in the Integrated Urban Air Toxics Strategy.[2] Sierra Club sued EPA, alleging a failure to complete standards for the area source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B) within the time frame specified by the statute. See *Sierra Club* v. *Johnson*, No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3). Among other things, the court order, as amended on October 15, 2007, requires that EPA complete standards for 9 area source categories by December 15, 2007. On September 20, 2007 (72 FR 53814), we proposed NESHAP for the electric arc furnace (EAF) steelmaking area source category. Other final NESHAP will complete the required regulatory action for the remaining area source categories.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." As explained in the preamble to the proposed NESHAP, we are issuing standards based on GACT for the control of the Urban HAP arsenic, cadmium, chromium, lead, manganese, and nickel from area source EAF steelmaking facilities.

Section 112(c)(6) requires EPA to list, and subject to standards pursuant to section 112(d)(2) or (d)(4), categories of sources accounting for not less than 90 percent of emissions of each of seven specific HAP: Alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,9-tetrachlorodibenzofurans, and 2,3,7,8-tetrachloridibenzo-p-dioxin. Standards established under CAA section 112(d)(2) must reflect performance of MACT. On September 20, 2007 (72 FR 53817), we added EAF steelmaking facilities that are area sources to this list of source categories under CAA section 112(c)(6) solely on the basis of mercury emissions. As discussed in the preamble to the proposed NESHAP, we are issuing MACT standards pursuant to CAA section 112(d)(2) for mercury emissions from all EAF steelmaking facilities that are area sources of HAP. The notice also announced a revision to the area source category list developed under our Integrated Urban Air Toxics Strategy pursuant to CAA section 112(c)(3). The revision changed the name of the listed area source category "Stainless and Nonstainless Steel Manufacturing Electric Arc Furnaces (EAF)" to "Electric Arc Furnace Steelmaking Facilities."

III. Summary of Final Rule and Changes Since Proposal

A. Applicability and Compliance Date

The final NESHAP applies to each new or existing EAF steelmaking facility that is an area source of HAP. The owner or operator of an existing area source that does not have to install or modify emissions control equipment to meet the opacity limit for fugitive emissions must comply with all applicable rule requirements no later than June 30, 2008. The owner or operator of an existing area source that must install or modify emission control equipment to meet the opacity limit for fugitive emissions may request a compliance date for the opacity limit that is no later than December 28, 2010 and must demonstrate to the satisfaction of the permitting authority that the additional time is needed. We revised the compliance date from 2 years to 3 years if a facility can demonstrate the additional time is needed to install controls after considering comments on the upgrades that some facilities may need to meet the opacity limit. The owner or operator of a new affected source must comply with all applicable rule requirements by December 28, 2007 (if the startup date is on or before December 28, 2007) or upon startup (if the startup date is after December 28, 2007).

B. Final MACT Standards for the Control of Mercury

The final standards for mercury are based on pollution prevention and require an EAF owner or operator who melts scrap from motor vehicles either to purchase (or otherwise obtain) the motor vehicle scrap only from scrap providers participating in an EPA-approved program for the removal of mercury switches or to fulfill the alternative requirements described below. EAF facilities participating in an approved program must maintain records identifying each scrap provider and documenting the scrap provider's participation in the EPA-approved mercury switch removal program. A compliance option requires the EAF facility to prepare and operate pursuant to an approved site-specific plan that includes specifications to the scrap

[1] An area source is a stationary source of hazardous air pollutant (HAP) emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

[2] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, EPA has revised the area source category list several times.

provider that mercury switches must be removed from motor vehicle bodies at an efficiency comparable to that of the EPA-approved mercury switch removal program (see below). An equivalent compliance option is provided for facilities that do not utilize motor vehicle scrap that contains mercury switches. We have added a new provision to the final rule for scrap that does not contain motor vehicle scrap to require certification and records documenting that the scrap does not contain motor vehicle scrap.

We expect most facilities that use motor vehicle scrap will choose to comply by purchasing motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator. The NVMSRP [3] is an approved program under this final standard. In response to comments, we are also identifying the Vehicle Mercury Switch Removal Program mandated by Maine State law as an EPA-approved program. Facilities choosing to use an EPA-approved program as a compliance option are required to assume all of the responsibilities for EAF steelmakers as described in the NVMSRP MOU. The NVMSRP is described in detail in section III.D.1 of the preamble to the proposed rule. In response to comments, we are including in the final rule provisions for EPA-approved programs that specify certain responsibilities that the EAF steelmaking industry agreed to in signing the MOU, including developing a plan that demonstrates how the facility is participating in the program, documenting communication and outreach to scrap providers, and corroboration to ensure mercury switches are being removed.

EAF facilities may also obtain scrap from scrap providers participating in other programs if they obtain EPA approval of the program. To do so, the facility owner or operator must submit a request to the Administrator for approval to comply by purchasing scrap from scrap providers that are participating in another switch removal program and demonstrate to the Administrator's satisfaction that the program meets the following specified criteria: (1) There is an outreach program that informs automobile dismantlers of the need for removal of mercury switches and provides training and guidance on switch removal, (2) the program has a goal for the removal of at least 80 percent of the mercury switches, and (3) the program sponsor must submit annual progress reports on the number of switches removed and the estimated number of motor vehicle bodies processed (from which a percentage of switches removed is derivable).

EAF facilities that purchase motor vehicle scrap from scrap providers that do not participate in an EPA-approved mercury switch removal program have to prepare and operate pursuant to and in conformance with a site-specific plan for the removal of mercury switches. The facility's scrap specifications must include a requirement for the removal of mercury switches, and the plan must include provisions for obtaining assurance from scrap providers that mercury switches have been removed. The plan must be submitted to the permitting authority for approval and demonstrate how the facility will comply with specific requirements that include: (1) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper disposal of the mercury switches, (2) provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the facility meets the scrap specifications, (3) provisions for periodic inspection, or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap, (4) provisions for taking corrective actions if needed, and (5) requiring each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to the facility during the previous year and the basis for the estimate. The permitting authority may request documentation or additional information from the owner or operator at any time. The site-specific plan must establish a goal for the removal of at least 80 percent of the mercury switches. All documented and verifiable mercury-containing components removed from motor vehicle scrap counts towards the 80 percent goal. We have clarified in the final rule that the owner or operator must operate according to the plan during the review and approval process, must address any deficiencies noted by the permitting authority within 60 days, and may request changes to the plan.

An equivalent compliance option is provided for EAF owners or operators who do not utilize motor vehicle scrap that contains mercury. The option requires the facility to certify that the only materials they are charging from motor vehicle scrap are materials recovered for their specialty alloy, such as chromium in certain exhaust systems.

C. Final GACT Standards for EAF and AOD Vessels

The final rule requires the owner or operator to install, operate, and maintain capture systems for EAF and AOD vessels that convey the collected emissions to a venturi scrubber or baghouse for the removal of PM. We are establishing separate emissions limits for new and existing EAF steelmaking facilities that produce less than 150,000 tpy of stainless or specialty steel, and for larger, non-specialty EAF steelmaking facilities. The small facilities are required to comply with a PM emissions limit of 0.8 pounds of PM per ton (lb/ton) of steel for each control device serving an EAF or AOD vessel. Alternatively, small specialty producers may elect to comply with a PM limit of 0.0052 grains per dry standard cubic foot (gr/dscf). The final rule also includes an opacity limit of 6 percent for melt shop emissions. All other EAF steelmaking facilities (both existing and new) are required to meet a PM limit of 0.0052 grains per dry standard cubic foot (gr/dscf) for emissions from a control device for an EAF or AOD vessel. The opacity of emissions from melt shops from these sources is limited to 6 percent. We have clarified in the final rule that the emission limits apply to AOD vessels and do not apply to ladle metallurgy operations.

Performance tests are required for each emissions source to demonstrate initial compliance with the PM and opacity limits. Provisions are included in the rule for conducting the tests. The owner or operator of an existing EAF steelmaking facility is allowed to certify initial compliance with the emissions limits if a previous test was conducted during the past 5 years using the methods and procedures in the rule and either no process changes have been made since the test, or the owner or operator can demonstrate that the test results, with or without adjustments, reliably demonstrate compliance despite process changes.

All EAF steelmaking facilities are required to have or obtain a title V permit. We have clarified in the final rule that sources that already have a title V permit are not required to obtain a new title V permit as a result of this area source rule. However, sources that already have a title V permit must include the requirements of this rule through a permit reopening or at

[3] Additional details can be found at *http://www.epa.gov/mercury/switch.htm* and in section IV.D.1 of this preamble. In particular, see the signed Memorandum of Understanding.

renewal according to the requirements of 40 CFR part 70 and the title V permit program. See 40 CFR 70.7(f). The final rule requires each EAF steelmaking facility to monitor the capture system, PM control device, and melt shop; maintain records; and submit reports according to the CAM requirements in 40 CFR part 64. The existing part 64 rule requires the owner or operator to establish appropriate ranges for selected indicators for each emissions unit (i.e., operating limits) such that operation within the ranges will provide a reasonable assurance of compliance with the emissions limitations or standards.

The CAM rule requires the owner or operator to submit certain monitoring information to the permitting authority for approval. This information includes: (1) The indicators to be monitored; (2) the ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions will be established; (3) performance criteria for the monitoring; and if applicable, (4) the indicator ranges and performance criteria for a CEMS, COMS, or predictive emissions monitoring system. The owner or operator also must submit a justification for the proposed elements of the monitoring control device (and process and capture system, if applicable) and operating parameter data obtained during the conduct of the applicable compliance or performance test.

If monitoring indicates that the unit is operating outside of the acceptable range established in its permit, the owner or operator must return the operation to within the established range consistent with 40 CFR 64.7(d).

D. Final GACT Standards for Scrap Management

In addition to meeting PM and opacity limits reflecting GACT, we are also requiring EAF facilities to restrict the use of certain scrap or follow a pollution prevention plan for scrap inspection and selection that minimizes the amount of specific contaminants in the scrap.

The requirements are based on two pollution prevention approaches depending on the type of scrap that is used, and a facility may have some scrap subject to one approach and other scrap subject to the other approach. One provision is for scrap that does not contain certain contaminants and simply prohibits the processing of scrap containing these contaminants (restricted scrap). Compliance is demonstrated by a certification that the scrap does not contain the contaminants. This scrap management approach is expected to be most useful to stainless and specialty steel producers with stringent scrap specifications that do not permit the use of motor vehicle scrap and scrap containing free organic liquids. The other approach for scrap that may contain certain contaminants is more prescriptive and requires a pollution prevention plan, scrap specifications, and procedures for determining that these requirements are met. This pollution prevention approach was developed primarily for carbon steel producers that accept motor vehicle scrap and many other types of ferrous scrap.

Under the restricted scrap provision, the plant owner or operator must agree to restrict the use of certain scrap, including metallic scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers and capacitors containing polychlorinated biphenyls (PCBs), lead-containing components, chlorinated plastics, or free organic liquids. The restriction on lead-containing components does not apply to the production of leaded steel (where lead is obviously needed for production).

The other scrap management provision requires the plant owner or operator to prepare a pollution prevention plan for metallic scrap selection and inspection to minimize the amount of chlorinated plastics, lead (except for the production of leaded steel), and free organic liquids. This plan must be submitted to the permitting authority for approval. The owner or operator is required to keep a copy of the plan onsite and train plant personnel with materials acquisition or inspection duties in the plan's requirements.

The plan must include specifications for scrap materials to be depleted (to the extent practicable) of lead-containing components (except for the production of leaded steel), undrained used oil filters, chlorinated plastics, and free organic liquids. The plan must also contain procedures for determining if these requirements are met (e.g., visual inspection or periodic audits of scrap suppliers) and procedures for taking corrective actions with vendors whose shipments are not within specifications.

E. Recordkeeping and Reporting Requirements

Area sources subject to the requirements for EAF and AOD vessels are subject to the recordkeeping and reporting requirements of the part 64 CAM rule. The general recordkeeping requirements of the part 64 rule directs the owner or operator to comply with the recordkeeping requirements for title V operating permits in 40 CFR 70.6(a)(3)(ii), which require records of analyses, measurements, and sampling data. The part 64 rule also requires the owner or operator to maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan (QIP), any activities undertaken to implement a QIP, and other supporting information required by the part 64 rule (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).

The general reporting requirements of part 64 require the owner or operator to submit monitoring reports to the permitting authority in accordance with the requirements for facilities with title V operating permits. The title V reporting requirements in 40 CFR 70.6(c)(1) and 40 CFR 71.6(c)(1) include a 6-month monitoring report, deviation reports, and annual compliance certifications. The part 64 reporting requirements specify that the 6-month monitoring report include: (1) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken; (2) summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and (3) a description of the actions taken to implement a QIP during the reporting period. Upon completion of a QIP, the owner or operator must include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

All EAF steelmaking facilities subject to this NESHAP are also subject to certain specified requirements of the NESHAP general provisions (40 CFR part 63, subpart A). The general provisions include requirements for initial notifications; startup, shutdown, and malfunction records and reports; recordkeeping; and semiannual excess emissions and monitoring system performance reports. The information required in these records and reports is similar to the information required by the CAM rule (40 CFR part 64) and the operating permits rules (40 CFR parts 70 and 71).

The NESHAP also includes specific recordkeeping and reporting requirements for area source facilities subject to requirements for control of contaminants from scrap. The area

source facilities are required to keep records to demonstrate compliance with the requirements for their pollution prevention plan for minimizing the amount of chlorinated plastics, lead, and free organic liquids charged to a furnace or for the use of only restricted scrap and the site-specific plan for mercury or any of the mercury compliance options.

As noted above, facilities subject to the site-specific plan for mercury are required to keep records and submit semiannual reports on the number of mercury switches removed by the scrap providers or the weight of mercury recovered from those switches, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were managed at RCRA-permitted facilities. We have clarified that the requested information can be aggregated in the semiannual report and does not have to reported separately for every scrap shipment. Facilities participating in an EPA-approved program for switch removal must keep records that identify their scrap providers and document that they participate in an approved switch removal program. The final rule requires more extensive records for a site-specific plan than for an approved program because extensive recordkeeping, reporting, and measurement of success are already required for approval of such a removal program, the NVMSRP being the prime example.

All facilities subject to the requirements for the control of contaminants from scrap are required to submit semiannual reports according to the requirements in § 63.10(e) of the general provisions. The report must identify any deviation from the rule requirements and the corrective action taken.

IV. Summary of Comments and Responses

We received a total of 20 comments on the proposed NESHAP from two trade associations representing the steelmaking industry, two trade associations representing the scrap recycling industry, two associations representing State agencies, six environmental groups, four State agencies, two companies, a consultant, and one private citizen during the public comment period. Sections IV.A through IV.E of this preamble provide responses to the significant public comments received on the proposed NESHAP.

A. Basis for Area Source Standards

Comment: One commenter stated that EPA's decision to issue GACT standards for mercury pursuant to section 112(d)(5), instead of MACT standards pursuant to section 112(d)(2) and (d)(3), is arbitrary and capricious because EPA provided no rationale for its decision to issue GACT standards. The commenter further stated that EPA's proposed GACT for mercury emissions from EAFs does not satisfy section 112(d)(5) of the CAA because EPA is relying on a voluntary program to keep switches that contain mercury out of the EAF rather than evaluating potential reduction measures that are commercially available.

Response: The commenter evidently misread the proposed rule. The proposed standard for mercury is based on MACT and is not based on GACT. As we explained at proposal (72 FR 53816), EAF steelmaking facilities were listed under CAA section 112(c)(6) solely on the basis of mercury emissions, and we proposed standards for mercury under CAA section 112(d)(2) that reflect the performance of MACT. We identified the MACT floor (72 FR 53822) as the pollution prevention approach of using scrap only from scrap providers that are first removing mercury switches pursuant to an EPA-approved program. We also evaluated more stringent beyond-the-floor options for MACT (72 FR 53824). Additional discussion of our MACT determination is provided in section IV.B.1 of this preamble. Since the commenter did not address any aspect of the actual proposal, further response is unnecessary.

If, against all natural readings, the comment is construed as stating that EPA must first provide a rationale as to why it is not issuing a MACT standard before it can issue a GACT standard under CAA section 112(d)(5) for HAP other than mercury, we disagree with the commenter for the reasons set forth in the final rules for Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving (72 FR 38880, July 16, 2007). We reiterate that we do not view the commenter as having raised an issue with respect to GACT vs. MACT for HAP other than mercury; however, we provide this response in an abundance of caution to the extent the comment is, in some way, construed in this manner.

B. Proposed MACT Standard for Mercury

We determined at proposal that the MACT floor and MACT for mercury emissions was the pollution prevention practice of removing mercury switches from end-of-life vehicles before the vehicles were crushed and shredded for use in EAFs. MACT would be implemented by EAF owners or operators purchasing scrap only from scrap providers that were participating in an EPA-approved program for switch removal, operating pursuant to an EPA-approved site-specific plan (of equal effectiveness to an EPA-approved program) that ensured scrap providers had removed mercury switches, or by not melting scrap from end-of-life vehicles. We further proposed that the National Vehicle Mercury Switch Recovery Program (NVMSRP) met the requirements of an EPA-approved program. However, we received several comments questioning how the effectiveness of an EPA-approved program would be ensured and suggestions for improving aspects of the rule related to program transparency, enforceability, and implementability. We have incorporated several of these suggested improvements into the final rule, and we address these comments and describe these improvements in detail in section IV.B.3 of this preamble. The improvements include developing and maintaining a plan showing how the facility is participating in the approved program, documentation of communication to suppliers of the need for them to remove mercury switches, or other means of corroboration by the facility to ensure suppliers are implementing switch removal procedures. We note here that the Administrator is committed to evaluating the effectiveness of the approved program on a continuing basis and is a party to the agreement that established the NMVSRP. The parties (including the Administrator) recently reviewed the program's effectiveness after 1 year. The 1-year review showed reasonable progress, with recycling programs now available in every State. The national program was slightly ahead of the schedule projected for start-up. We now expect switch removals to steadily increase over the next year as these programs begin to fully operate. If the Administrator finds the program to be ineffective at the next scheduled review under the MOU, or at any time as provided in the rule, the Administrator may disapprove the program in whole or in part (e.g., for a particular State), and participation in the program would no longer be a

compliance option, leaving EAF owners or operators obliged to develop site-specific programs for EPA approval in order to meet the requirements of this rule. Under the site-specific program, it would fall on the EAF owner or operator to provide a detailed accounting of switches removed and vehicles processed from all of their scrap providers to enable the Administrator or permitting authority to evaluate whether the facility is in compliance with the switch removal requirements. The somewhat lower documentation feature of the NVMSRP provides a strong incentive to all of the parties involved in switch removal to make every effort to ensure the NVMSRP is effective on a continuing basis. However, if the national program were to prove unsatisfactory and be subsequently disapproved as a compliance option, the burden would be on the EAF owner or operator to implement a site-specific approach. In either case (whether a national program or site-specific program), we have codified an approach that provides accountability and measures of effectiveness as described in detail in section IV.B.3 of this preamble.

We also considered a standard based on the performance of activated carbon injection (ACI) with continuous monitoring for mercury as a beyond-the-floor option, and as we discuss in detail in section IV.B.1 of this preamble, we rejected this option for several reasons. In summary, ACI has not been demonstrated for EAFs, its effectiveness is highly uncertain due in large part to the extreme variability in mercury loading from this batch operation (e.g., it is difficult to design and estimate the capacity of the ACI system that would be needed to handle the highly variable loading of mercury), and it would likely result in the landfilling of large quantities of hazardous waste (EAF dust) that is currently recycled (pursuant to RCRA subtitle C standards) to recover its zinc content. In addition, it would be costly, and the continuous monitoring that would be needed to assess the effectiveness of ACI is not feasible for the majority of EAF facilities because they have baghouses without stacks. (See 72 FR 53817.)

1. Emission Controls and an Emission Limit for Mercury

Comment: One commenter stated that the proposed standard for mercury does not satisfy the requirements of section 112(d)(5) of the CAA because EPA is relying solely upon a voluntary program to keep switches from cars out of the EAF rather than evaluating the potential reduction measures that are commercially available. One commenter noted that EPA's calculated cost effectiveness of $11,000/pound (lb) of mercury for ACI is similar to the cost effectiveness anticipated by EPA for municipal waste combustors and medical waste incinerators, and it is well below the control costs expected from implementation of the utility boiler Clean Air Mercury Rule—all rules where a technology-based standard for mercury is based upon performance of ACI. The commenter notes that without further analysis to determine the non-air quality health and environmental impacts and energy requirements, it appears that ACI is a cost effective control for mercury emissions and was rejected by EPA prematurely. Several commenters recommended that EPA require controls beyond the vehicle switch removal program. One of these commenters stated that ACI is widely used on other combustion sources (e.g., municipal waste combustors, medical waste incinerators, and hazardous waste incinerators) and that ACI has already been successfully applied to iron and steel melters in Europe. The commenter stated that coal-fired boilers use ACI successfully, and no circumstances specific to EAFs have been identified that would indicate that EAFs could not use the same technology efficaciously. The commenter noted that the State of New Jersey estimated the cost to implement source separation and to install ACI on an existing baghouse to be less than $1.80 per ton of scrap processed. The commenter claimed that the cost of compliance is minimal compared to the price of a ton of steel ($360 to $780/ton) or a ton of scrap ($300/ton) and is not expected to cause any facility to close. The commenter believes these cost estimates indicate that add-on controls for mercury for EAFs are cost effective when the impacts of mercury emissions on human health and the environment are weighed.

Several commenters requested that EPA include a mercury emission limit and monitoring strategy for EAFs rather than relying solely on a voluntary program. Three commenters said it is important to establish an emission limit and require testing for mercury because 40 to 50 percent of the mercury comes from non-automobile sources and would not be removed by the switch removal program. One commenter requested that EPA establish a mercury emission limit, require appropriate testing to verify compliance, and require add-on emission controls if the emission limit is not met. Another commenter suggested that EPA set a mercury emission standard that uses a tiered approach towards demonstrating compliance, e.g., sources that emit less than a certain amount of mercury per year may be allowed to comply with the pollution prevention standard along with a mercury emissions monitoring requirement. The commenter continues by stating that more stringent mercury monitoring should be required for more significant mercury emitters with the understanding that if a certain level is not reached within a given time frame (e.g., three years), the source must install mercury emissions controls and implement associated monitoring. Another commenter requested a protective backstop for the MACT requirement, including advanced mercury emissions removal technology and continuous emission monitoring systems (CEMS) for facilities that do not meet the mercury pollution prevention standards.

One commenter stated that two EAFs in Michigan have mercury emission limits and must perform stack testing. This commenter asks that if EPA determines that an emission limit is not practical for the area source standard, EPA should consider a percent reduction standard similar to what is required in the State of New Jersey (75 percent). The commenter asks that measures and targets be established and consequences identified if targets are not achieved. The commenter said measures and targets include an estimate of mercury-containing devices collected, inlet and outlet stack testing, and baghouse dust analysis to confirm reduced mercury inputs and emissions. The commenter stated that identifying spikes in the mercury concentration of baghouse dust provides information to conduct additional quality control on scrap shipments.

Two commenters claimed that ACI is not a demonstrated technology for EAFs and that there is a great deal of uncertainty about its potential effectiveness due in large part to the high variability of mercury emission levels. The commenters also stated that the use of ACI would have a negative effect on recycling EAF dust because the mercury in the dust makes it necessary to landfill the dust instead of recycling it. The commenters agreed with EPA's pollution prevention approach and stated that EPA properly explained the technological and economic feasibility difficulties associated with developing and enforcing a mercury emission limit for EAFs, including the fact that continuous monitoring for mercury from EAFs is impractical.

Response: At proposal, we determined that the MACT floor for

mercury was a pollution prevention approach based on preventing mercury switches from entering the EAF. We also explained at proposal that standards requiring pollution prevention were not work practices under section 112(h), and even assuming for the sake of argument that they were work practices, it is not feasible to prescribe or enforce an emissions limit for mercury within the meaning of section 112(h) (72 FR 53817). We received no adverse comments on or challenges to our MACT floor determination or our conclusion that pollution prevention standards were not work practices under section 112(h).

We evaluated ACI as a beyond-the-floor control option for mercury emissions and rejected the option for several reasons (72 FR 53824). We also considered the feasibility of establishing an emission limit for mercury and explained in detail why we chose instead an approach based on a pollution prevention standard (72 FR 53816). We disagree that the proposed standard for mercury relies solely on a voluntary program to keep mercury switches out of the scrap supply. First, there is nothing voluntary about the obligations of EAF owners or operators under the rule. They are not in compliance with the rule unless they obtain scrap from dealers participating in an effective program to remove mercury switches. Moreover, the standard contains detailed requirements for preparing and operating a pollution prevention plan that must be approved by the Administrator, specific criteria that will be used by the Administrator to review and approve plans, criteria for approval of switch removal programs to ensure they are effective, and reporting and recordkeeping requirements (including progress reports). The Administrator can evaluate the success of an approved switch removal program based on progress reports that provide the number of mercury switches removed, the estimated number of vehicles processed, and the percent of switches removed. Based on this evaluation, the Administrator may subsequently disapprove a previously approved switch removal program or a site-specific plan. An example of an existing switch recovery program that has been documented as successful is the one implemented by the State of Maine, which was one of the first such programs and was in place in advance of the NVMSRP. The Maine program is now fully operational and reported a recovery rate of over 90 percent for mercury switches in 2006.

The commenters provided no new information or additional facts with respect to ACI that were not considered and addressed at proposal when we evaluated it as a beyond-the-floor option (72 FR 53824, 53825) and concluded that:

> Based on the fact that activated carbon injection is not a demonstrated-mercury control technology for EAF facilities, the uncertainty in design and performance of the add-on controls and hence of the actual mercury emission reductions for EAF facilities, the cost impacts per ton of emission reduction, and the adverse energy and solid waste impacts, we determined that control beyond the floor is not warranted for mercury. Therefore, we are proposing that the removal of mercury switches from the scrap before it is melted in the EAF represents MACT for mercury for new and existing EAF facilities.

We emphasize again that ACI was not rejected as a beyond-the-floor option solely on the basis of cost effectiveness. We concluded that ACI has not been demonstrated for EAFs and that there is a great deal of uncertainty in design (e.g., the carbon capacity that would be needed to treat a highly variable inlet loading of mercury) and potential performance (i.e., how much mercury would actually be removed), and hence of the actual mercury emission reductions that might be achieved. We also considered and discussed the adverse energy and solid waste impacts.

2. Monitoring for Mercury

Comment: Several commenters stated that stack monitoring for mercury emissions from EAFs was needed to assess the effectiveness of the NVMSRP and other programs. These commenters believe it is important to have information on the actual emissions, the emissions impact of pollution prevention measures, and an indication of need for additional actions that may be needed to further reduce mercury emissions. One commenter stated that CEMS are essential to establish that the voluntary switch removal program reduces emissions. Another commenter requested that the monitoring program include a requirement to test emissions within 6 months of publication of the final rule to establish a baseline for each facility.

One commenter stated that although the proposal states that no feasible methods of emissions testing exist for any EAF facility (e.g., continuous emissions monitoring), there are monitoring technologies that are adaptable for use by any facility in this industry. The commenter noted that batch process emissions are tested and monitored in many industrial sectors, and EPA has established emission standards for many batch processes without requiring the use of continuous monitors, including Pesticide Active Ingredient Manufacturing and Miscellaneous Organic Chemical Manufacturing. The commenter also noted that EPA has recently promulgated the "sorbent tube" method for sampling stack gases at coal-fired power plants (40 CFR part 75, appendix K). The commenter believes that because this method of monitoring mercury is capable of sampling flue gases over any period of time (hours or even days), there appears to be little impediment to using this method to sample "batch" processes like those at an EAF. Another commenter also noted that CEMS are available and in use at other types of mercury-emitting facilities.

One commenter stated that data from frequent monitoring will be essential to determine if actual reductions in mercury emissions have been achieved in order to determine whether the "sunset" of the pollution prevention standard in 2017 should be allowed to occur. One commenter was concerned that if there are no mercury emission standards, it may be very difficult for EPA to conduct its residual risk determination. The commenter wonders how EPA will calculate residual risk when there has been no attempt to establish a baseline of mercury emissions, determine the effectiveness of the switch removal program, or measure emissions after controls are implemented. One commenter stated that at least one steel mill of which they are aware has reported higher levels of mercury emissions since starting to participate in the NVMSRP. The commenter notes that frequent monitoring is needed to determine whether the program is effective.

One commenter suggested that EPA require facilities to keep records of the sources of scrap metal entering the facility in a manner that allows correlation of scrap sources with elevated mercury emissions and that these records be available to the Agency and accessible for public review.

Response: At proposal, we considered the use of CEMS for mercury (72 FR 53817):

> We therefore examined the technological and economic feasibility of continuous monitoring for mercury from these sources. We note first that mercury CEMS are not demonstrated for EAF, raising a threshold question of their technical feasibility for all EAF. Furthermore, most EAF discharge emissions from positive pressure baghouses without stacks. Continuous mercury monitoring would not be technically feasible for these EAF (i.e., stackless EAF), even assuming that mercury CEMS were otherwise

demonstrated for EAF. This is because volumetric flow rate and concentration would need to be determined by CEMS to measure the mass emission rate of mercury, and without a stack, it is nearly impossible to obtain an accurate measurement of volumetric flow rate or to obtain representative measurements of mercury concentration in the discharged emissions. Indeed, EPA has previously determined that the use of continuous opacity monitoring systems (COMS) was not feasible for positive pressure baghouses without stacks for this reason.

The commenters did not address any of these points that we made at proposal. After further consideration of CEMS, we continue to believe that CEMS are not feasible for monitoring baghouses without stacks.

One commenter stated that batch processes such as EAF steelmaking could be monitored for mercury emissions using the sorbent tube method. We agree that there are monitoring methods for mercury that can be used for batch processes; however, the problem with applying CEMS or the sorbent tube method is because of baghouses without stacks, not because steelmaking is a batch process. We received no other comments that addressed, much less refuted, EPA's view of the fundamental shortcomings of applying mercury CEMS to EAFs without stacks that were discussed at proposal.

We discuss in much greater detail in section IV.B.3 of this preamble the monitoring requirements of the rule and how they are used to determine the effectiveness of the standard. We have developed monitoring requirements that are appropriate for the pollution prevention standard, and since we have concluded it is not necessary or appropriate to establish a mercury stack emission limit, it is not appropriate and in most cases it is infeasible to require monitoring for mercury emissions.

The lack of a mercury emission standard will not affect our ability to conduct a residual risk assessment in the future. We will by that time have historical data on the effectiveness of the MACT standard, and mass balance approaches as well as innovative methods for sampling and analysis of sources or ambient air concentrations may provide additional data.

We cannot directly address the commenter who claimed that one plant's mercury emissions had increased since joining the NVMSRP because the commenter provided no details to substantiate the claim. However, there is no doubt that removal of mercury switches before motor vehicle scrap is melted will reduce mercury emissions, whether the removal takes place under the NVMSRP or under other switch removal programs.

3. Effectiveness of the Pollution Prevention Standard for Mercury

Comment: Several commenters stated that requirements to verify the effectiveness of the NVMSRP and other switch removal programs are needed and that accountability is not adequately addressed. The commenters claimed that there are no enforceable mechanisms to ensure effective participation in or compliance with the switch removal programs and identified the need for increased recordkeeping and reporting beyond just participation in a switch removal program. One commenter requested that EPA include enforceable measures of accountability that include consequences if the programs do not meet their goals. Two commenters requested that quantifiable performance measures be included to verify the effectiveness of mercury reduction programs. One commenter requested written documentation and audits of program participation of suppliers, evaluation of switch recovery rates, and mercury emissions testing and monitoring requirements. Another commenter suggested incorporating verifiable measurement and accountability systems and using some of the specific language from the MOU to make the scrap plans accountable and enforceable. This commenter also requested that EPA revise the rule to include enforceable scrap specification requirements and binding contracts with scrap suppliers (rather than a "means of communicating") and require recordkeeping, reporting, and certification to assure that scrap meets specifications, as well as contract termination in the event of deviations. This commenter also states that the switch removal requirements must be more than a "goal"; they must be achieved through binding contracts establishing removal requirements and effective tracking, recordkeeping, and reporting requirements. Two commenters noted that since there are no effective performance measures, goals, or consequences for failure to remove switches, there is no strong incentive for the NVMSRP to continue after the initial funding has been expended.

Two commenters requested achievement of specific switch recovery percentages as the rule is implemented. They suggest a ramped capture rate of 30 percent for year one, 50 percent for year two, and 80 percent in year three. The commenters believe it is essential that the rule require increasing mercury switch capture rates so that a rate of 80 percent or more is achieved within two to three years.

One commenter stated that two studies of switch removal and mercury emission reductions do not constitute evidence of a cause and effect relationship between removal of switches and mercury reductions. The commenter believes that documentation based on a large number of studies can determine the cause and effect relationship. The commenter further states that because no monitoring or testing of mercury emissions are required by the proposed rule, no evidence of correlation between amounts of mercury emitted and the quality of scrap can be demonstrated, and there would be no evidence that the switch removal program is working to reduce mercury emissions.

Several commenters noted that the proposed rule is silent on what happens if the 80 percent switch removal goal is not met. One commenter believes the rule should include a final date when the goal is to be met and identify emission standards to be met as an alternative to the 80 percent removal goal.

One commenter was concerned about using an estimate of the percentage of mercury switches removed to determine whether an approved plan should continue to be approved because the estimate of the percentage of mercury switches removed is highly uncertain and dependant on many assumptions. The commenter stated that determining the effectiveness of site-specific mercury switch removal programs by comparing uncertain statistics with an aggressive removal goal (80 percent) may cause effective programs to have their approval revoked.

Response: The NVMSRP resulted from a two-year process of collaboration and negotiation among a diverse group of stakeholders to create a dedicated nationwide effort to remove mercury-containing switches from end-of-life vehicles. The stakeholders included EPA, automakers, steel manufacturers, environmental groups, automobile scrap recyclers, and State agency representatives. These stakeholders signed an MOU detailing their respective responsibilities and commitments in the national switch recovery effort. This effort will result in substantial reductions in mercury emissions from EAFs by removing the majority of mercury from metal scrap. In addition, it will have environmental benefits from reducing mercury emissions from sources other than EAFs and will reduce mercury releases to media other than air. We disagree with

the commenter that without testing for mercury emissions, there would be no evidence that the switch removal program is working to reduce mercury emissions. Many States have implemented switch removal programs, and major environmental groups have participated in and signed agreements supporting the programs, both of which are indications of the participants' belief in the ability of such programs to reduce mercury emissions. EPA recounts this history not to show that the Agency is blindly accepting the negotiated agreement, but that EPA has examined the agreement anew in light of the requirements of section 112(d) and finds that the program resulting from that agreement meets the statutory requirements. The success of the program has been documented by direct measurements of mercury in switches removed, and as of November 28, 2007, over 843,000 switches with 1,855 pounds of mercury have been recovered.

As we stated in detail at proposal, this pollution prevention approach was determined to be the MACT floor and MACT for reducing mercury emissions from EAFs. Emissions of mercury result from the melting of scrap metal that contains mercury components. When these components are removed prior to charging the scrap to an EAF, the mercury emissions are prevented.

Thousands of automobile recyclers have already joined the NVMSRP, although not all members have yet sent in recovered switches. (As we discuss in more detail below, there is a lag time as dismantlers accumulate enough switches to fill a shipping container.) Information on the program, including scrap suppliers who have joined and the number of switches they have turned in to date, can be found on the End of Life Vehicle Solutions Web site (*http://www.elvsolutions.org*).

As we discussed at proposal, there are many elements in the NVMSRP that are designed to measure success and to evaluate its effectiveness. One year following the effective date of the MOU and each year thereafter, the parties or their designees and EPA agreed to meet to review the effectiveness of the program at the State level based upon recovery and capture rates. The parties to the agreement will use the results to improve the performance of the program and to explore implementation of a range of options in that effort. Two and one-half years from the inception of the program, the parties agreed to meet and review overall program effectiveness and performance. This review will include analysis of the number of switches that have been collected and what factors have contributed to program effectiveness. The Administrator is one of the parties committed to this review and assessment of effectiveness, and the Administrator may disapprove the program as a compliance option (in whole or in part) at any time based on the assessment of effectiveness.

A key element of measuring the success of the program is maintaining a database of participants that includes detailed contact information; documentation showing when the participant joined the program (or started submitting mercury switches); records of all submissions by the participant including date, number of mercury switches; and confirmation that the participant has submitted mercury switches as expected. Another important element is aggregated information to be updated on a quarterly basis, including progress reports, summaries of the number of program participants by State, individual program participants, and records of State and national totals for the number of switches and the amount of mercury recovered. The program is also estimating the number of motor vehicles recycled. The NVMSRP will issue reports quarterly during the first year of the program, every six months in the second and third year of the program, and annually thereafter. The reports prepared by ELVS will include the total number of dismantlers or other potential participants identified; the total number of dismantlers or others contacted; and the total number of dismantlers or others participating. The annual report will include the total mercury (in pounds) and number of mercury switches recovered nationwide; the total pounds of mercury recovered and number of mercury switches by State; and an estimated national capture rate. Other information includes the total number and identity of dismantlers or others dropped due to inactivity or withdrawal from the program. Mercury switch removal is already underway—more than 1,855 pounds of mercury from over 843,000 switches have been recovered to date by program participants. This represents almost 20 percent of our estimated reduction in mercury emissions of 5 tons per year once the final rule and NVMSRP are fully implemented.

The commenters make valid points that the effectiveness of the rule could be improved by incorporating certain elements that the steel manufacturers have already agreed to in the MOU. We have revised the proposed rule to provide more specificity to the EAF owner or operator responsibilities and to improve the effectiveness of EPA-approved programs, which may include programs other than the NVMSRP. In addition, we are including these same requirements in the option for developing a site-specific plan for switch removal. The rule changes include:

- EAF owners or operators must develop and maintain onsite a plan demonstrating the manner through which their facility is participating in the EPA-approved program. The plan must include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.
- EAF owners or operators must provide in the plan documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need for the removal of mercury switches from end-of-life vehicles. Upon the request of the permitting authority, the owner or operator must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols.
- EAF owners or operators must conduct periodic inspections or provide other means of corroboration to ensure that suppliers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles.

One commenter claimed that because no monitoring or testing for mercury is required, there is no way to determine if the pollution prevention approach is reducing mercury emissions. We strongly disagree because the number of switches or weight of mercury recovered is a direct measure of the amount of mercury prevented from entering the environment. As we explained at proposal and in an earlier comment response, it is not feasible to require continuous emission monitoring at EAFs with baghouses without stacks, and because of the variability in mercury emissions from this batch process, periodic manual sampling is inadequate and provides only a snapshot in time of the emissions.

Commenters also asked what happens if the 80 percent goal is not met. Another stated that there is a great deal of uncertainty in estimating the percent of switches removed and that the use of this uncertain statistic could cause effective switch removal programs to have their approval revoked. We addressed these issues at proposal (72 FR 53824) and we note again that the 80 percent minimum recovery rate is a goal that all parties to the MOU agreed to work toward. We recognize that 80

percent recovery will not be achieved in the first year or two; however, the parties to the MOU agreed to aim for collection of at least four million switches in the first three years of the NVMSRP and agreed to exceed this amount if possible. We believe that recovery of four million switches (approximately 4.4 tons of mercury at 1 gram per switch) in the first three years is a good beginning for working toward recovery of 80 percent of mercury switches. It is necessary to acknowledge that there will be an initial delay in many States that have recently joined the NVMSRP while individual dismantlers accumulate sufficient switches to make a shipment for recovery. It has been estimated that it may take from 6 to 12 months to fill a switch collection bucket (e.g., according to the ELVS Web site at *http://www.elvsolutions.org*, switches are typically collected in 3.5 gallon buckets that can hold up to 450 mercury pellets from switch assemblies).

Furthermore, the goal of removing 80 percent of the mercury switches is not the only criteria used to evaluate the success of a program. In the proposed rule, we explained that the Administrator can evaluate the success of an EPA-approved program at any time, identify States where improvements might be needed, recommend options for improving the program in a particular State, and if necessary, disapprove the program as implemented in a State from being used to demonstrate compliance with the rule based on an assessment of this performance. The evaluation would be based on progress reports submitted to the Administrator that provide the number of mercury switches removed, the estimated number of vehicles processed, and percent of mercury switches recovered. The Administrator can assess the information with respect to the program's goal for percent switch recovery and trends in recovery rates. For example, as the NVMSRP has ramped up, switch recovery rates have increased from 241,000 switches in 2006 to 602,000 through the first 10 months of 2007.

Comment: One commenter noted that in the NVMSRP MOU, funding was negotiated with the understanding that the EAF rule would provide strong incentives for switch removal after the incentive fund was depleted. The commenter states that the proposed rule does not appear to provide such incentives because there are no performance measures, goals, or consequences for failing to remove switches. The commenter further states that to provide accountability and enhance effectiveness, the rule should stipulate enforceable consequences for the EAF sector in the event that the pollution prevention approach is not sufficient to achieve necessary emission reductions. The commenter suggests that if existing and proposed programs are not successful, then additional emission control and monitoring requirements and/or further EAF financial support to the NVMSRP should be required.

Response: The rule provides a strong incentive for EAF owners or operators to continue their support for the NVMSRP even after the incentive fund is depleted. Facilities that do not participate in an EPA-approved program must develop and operate by site-specific switch removal plans that may prove to be more burdensome than that of participating in the NVMSRP. The rule requires that metal scrap purchased for use in an EAF be procured from a supplier that removes mercury convenience light switches. If an EAF owner or operator fails to meet the requirements related to audits of suppliers, reporting, recordkeeping or any other rule provisions, then the owner or operator is at risk of being found in violation of the rule. If the facility is at risk of non-compliance because of the actions of a scrap provider, then it is in the interest of the owner or operator to take corrective actions and fix the problem with the scrap provider or to terminate the scrap purchasing contract because of failure to meet scrap specifications.

Comment: One commenter stated that a review of the End of Life Vehicle Solutions (ELVS) database indicates a number of cases where individual dismantlers are participants in the NVMSRP, but have yet to submit collected switches.

Response: The ELVS Web site, which provides information on the NVMSRP and its members, includes the date when a particular automobile or scrap recycler joined the program. As the facility-specific data show, some recyclers joined the program during its first year of implementation or even earlier. We do not believe that this should cause undue concern at this time. Some States had instituted statutorily mandated programs prior to the establishment of the national program and, therefore, have been operating for a longer period of time. Automobile and scrap recyclers in these States have had more of incentive to participate early on in the program. It is possible that automobile and scrap recyclers in those States have already submitted switches to be recycled, some of which may have been stored in anticipation of a future opportunity to dispose or recycle them. States that have just joined the national program are clearly in a ramp-up phase. There will be an initial delay associated with many new programs while individual dismantlers accumulate sufficient switches to make a shipment for recovery. It has been estimated that it may take from 6 to 12 months to fill a switch collection bucket that typically holds about 400 mercury pellets from switches. The same type of lag time in shipping was noted when one of the first switch removal programs in the country was initiated by the State of Maine.

The data show that during its first full year, the program has made significant progress, and as we pointed out earlier, over 1,855 pounds of mercury has been recovered, and this represents almost 20 percent of our estimated annual reduction in mercury emissions (5 tons per year) once the rule is fully implemented. The second year of the program will shift from roll-out to ramping up participation and collection rates. We should see significant progress toward achieving 80 percent recovery of switches in the third year of program implementation.

Comment: One commenter questioned the meaning of "80 percent" in the reduction of mercury switches: Does it refer to the convenience switches in one automobile, the total weight of mercury in switches in a vehicle being turned into scrap, the total number of switches and other sources of mercury in one vehicle, or none of the above.

Response: "80 percent" switch recovery is the goal, and the percent of switches recovered (the capture rate as defined in the MOU) is the number of mercury switches removed from end-of-life vehicles divided by the total mercury switch population in end-of-life vehicles in a given time period (e.g., each year of the program) times 100.

Comment: One commenter objected to the credit allowed in calculating the 80 percent mercury switch removal goal for site-specific plans. The commenter objected to the credit because it allows counting of mercury removed from components other than convenience lighting while the approved plan requires only the removal of mercury switches from convenience lighting. The commenter stated that the provision is not consistent with the MOU, which states that only mercury switches used for convenience lighting will be counted for purposes of measuring program performance. The commenter argued that site-specific plans should not be held to a higher standard than the NVMSRP.

Response: While it is true that only switches from convenience lighting apply to the 80 percent minimum goal of the NVMSRP, ELVS accepts all automobile mercury switches (including those from anti-lock brake systems (ABS)), and the automobile or scrap recyclers that remove them are paid the incentive fee of $1.00 per switch. We believe that this provides an incentive to remove switches from other systems as well as for convenience lighting. In the requirements for site-specific plans, other sources of mercury are included in determining the 80 percent goal, such as ABS, security systems, active ride control, and other applications. Inclusion of these other components in the site-specific programs provides an incentive for their removal. These mercury-containing components contribute less mercury (13 percent compared to 87 percent from convenience light switches), and they are more difficult to locate, identify, and remove. Mercury-containing components in ABS will be the components other than convenience light switches that are most often removed. The removal of these components requires removing the rear seat and dismantling the ABS. We believe that if a dismantler chooses to take the time to remove and recover mercury components from ABS or other components, they should receive some type of credit for doing so, thus they can include them in their 80 percent minimum recovery goal.

Comment: One commenter stated that at least two EAF facilities are exempt from the proposed rule because they are collocated with major source integrated iron and steel manufacturing facilities. The commenter noted that if these facilities are not covered by the rule and choose not to participate in the voluntary NVMSRP, then these facilities and their suppliers will enjoy at least two competitive advantages over the 91 facilities that will have to comply with the rule: They will have lower costs and they will be free of any legal requirement to address mercury in the scrap that they receive, generate, and or use as feedstock. The commenter also stated that scrap from any supplier who chooses to ignore mercury will preferentially flow to these facilities because there will be no legal or voluntary obligation for that supply chain to address mercury.

Response: As we stated at proposal, we plan to list EAFs as a major source category and develop MACT standards for HAP emissions, including mercury.

Comment: One commenter noted that the criteria by which the Administrator will evaluate semiannual reports are not specified for the option of a site-specific plan for switch removal. The commenter went on to state that there is no incentive to meet the requirements and no penalty for failing to do so. Another commenter is concerned about the proposed rule's mechanism for approval of alternative switch recovery programs since States vary in their level of participation in the NVMSRP and have a variety of statutory and regulatory requirements, State level MOUs, State incentive funds, and other program components. The commenter said that to ensure consistency and enforceability, clear criteria and procedures that ensure any program's effectiveness need to be specified in the rule. One commenter suggested the Administrator specifically consider the participation rate of scrap suppliers to an area steel mill and the collection rate of the largest scrap suppliers to the facility prior to approving the goals. One of the commenters noted that as proposed, the rule directs the Administrator to determine if NVMSRP or alternative programs are adequately recovering switches, but provides no quantitative requirements.

Response: As we discussed above, the Administrator will evaluate the number of mercury switches removed, the estimated number of vehicles processed, and percent of mercury switches recovered. (See § 63.10685(b)(1)(v) and (b)(2)(iii)). The Administrator can assess the information with respect to the program's goal for percent switch recovery and trends in recovery rates. The criteria are not hard and fixed because flexibility is needed to consider potentially lower recovery rates as the program is established and higher rates as the number of participants peaks. We have described earlier the database used for documenting and measuring mercury switch recovery. We believe that this database provides sufficient transparency to ensure that the program is making measurable program progress and assuring accountability while at the same time remaining flexible.

We have provided sufficient detail in the rule for the criteria used to approve State and other switch removal programs: (1) There is an outreach program that informs automobile dismantlers of the need for removal of mercury switches and provides training and guidance on switch removal, (2) the program has a goal for the removal of at least 80 percent of the mercury switches, and (3) the program sponsor must submit annual progress reports on the number of switches removed and the estimated number of motor vehicle bodies processed.

4. Other Sources of Mercury in Scrap

Comment: Several commenters claimed that a significant amount of mercury comes from sources other than automobile scrap, including household and commercial appliances, heating and air conditioning units, and industrial equipment. Some of these commenters suggested addressing these sources of mercury by expanding the NVMSRP. One commenter stated that the mercury from sources other than automobiles was on the order of 40 to 50 percent of the mercury in scrap. Another commenter noted that the counteracting effect of increased use of ABS, more mercury containing electronic devices in cars, and other mercury-containing items, could conceivably lead to a net increase in the mercury in scrap processed by steel mills.

One commenter stated that the rule should address these mercury sources to scrap metal by incorporation into the NVMSRP or through the establishment and funding (by mercury product manufacturers and the EAF sector) of collection programs targeting other products that contribute to scrap metal. The commenter suggested as an example a possible requirement that mercury thermostat manufacturers and the EAF sector could fund an expansion of the Thermostat Recycling Corporation (TRC) program, a voluntary end-of-life mercury thermostat collection initiative supported by thermostat manufacturers. The commenter stated that the TRC is a well-established program but provides no recovery incentives and has achieved a poor national recovery rate.

Response: At proposal, we considered the removal of other mercury-containing components in automobiles, such as switches in ABS, and determined the option was not justified as a beyond-the floor standard (72 FR 53824). These sensors are considerably more difficult and time consuming to remove than are convenience light switches, and they contribute much less mercury (e.g., 87 percent of the mercury in end-of-life vehicles comes from convenience light switches). The commenters provided no data or rationale to support that the removal of other sources of mercury from the scrap supply was economically and technologically feasible as a beyond-the-floor option.

We have no data or documentation that non-automobile sources contribute 40 to 50 percent of the mercury as the commenters claim, and we have some indications their estimate is quite high. For example, a report (available at *http://www.epa.gov/region5/air/mercury/appliancereport.html*) prepared for the State of Massachusetts

stated that mercury switches in obsolete appliances accounted for less than 1 percent of the mercury in the solid waste stream. Most mercury-containing components in appliances were phased out several years ago, and any that might remain would contribute very little mercury to the scrap supply compared to switches in automobiles. In addition, end-of-life vehicles contribute approximately 7 times more in tons of total metal to the scrap supply than do obsolete appliances; consequently, these factors suggest that end-of-life vehicles are the primary contributor to mercury in the scrap supply. While some ABS contained mercury sensors as we noted at proposal, these too have been phased out and were much less common and contained less mercury than convenience light switches.

5. Role of State Agencies

Comment: One commenter claimed that State agencies would have little or no say in approving site-specific pollution prevention plans and that State and/or local agencies should have more authority over such approvals. Another commenter noted that part of the approval process can be delegated to the permitting authority, but there may be many varying programs and elements of programs that individual companies or facilities may wish to implement, some of which States do not have any experience with. The commenter recommends that EPA retain the responsibility for approving programs and provide clear criteria for an acceptable program, and use these criteria to approve existing State programs that are not part of the NVMSRP.

Two commenters were concerned about the ability of air agencies to enforce a pollution prevention program that will, in many cases, be overseen by solid and hazardous waste programs. The commenters noted that the requirements of the switch removal program must be incorporated into air permits, and the provisions must be clearly understood and enforceable by State air agencies in cooperation with their counterparts in other media programs. The commenters are concerned that if these provisions are not explicit in the program, this pollution prevention approach will not be effective.

One State agency commenter asked that EPA approve the vehicle mercury switch recovery program mandated by Maine State law as an EPA-approved program under the rule. The commenter noted that the Maine program has been the most successful switch recovery program to date, with a 2006 recovery rate of over 90 percent for all mercury switches—not just convenience light switches. The commenter further added that the program meets or exceeds all of the criteria that are identified in the proposed rule as necessary to effect mercury reductions from EAFs.

One commenter recommended that EPA grant pre-approval of existing State programs. The commenter argued that pre-approval of the eight existing State programs (which account for about 1,900 participants), would eliminate the need for scrap providers participating in those programs to obtain EPA approval of their site-specific plans.

Response: We agree that State agencies should be involved in reviewing and approving or disapproving site-specific pollution prevention plans. We expect that the State permitting authority will have a better understanding of the facilities in their State and their site-specific operating conditions and any special circumstances. We are clarifying that the rule delegates to the States the authority to implement and enforce those requirements in the rule dealing with contaminants from scrap except for the approval of national, State, or local agency programs under the option for approved mercury programs. We believe that such broad programs should require EPA approval and that it is not appropriate for a State agency to evaluate and approve a national program or their own program. The rule should be implemented by State air programs and not by solid and hazardous waste programs.

We are also identifying the mercury switch recovery program mandated by State law in Maine as an EPA-approved program because they submitted documentation that the requirements are equivalent to (or more stringent than) the approved national program. The program in Maine represents MACT, and we explained at proposal that MACT is a national, State, local or facility-specific switch recovery program that meets specific criteria. No other States made such requests or submitted information showing equivalency; consequently, we are not currently identifying other State programs as EPA-approved in the final rule.

6. Comments on Specific Rule Changes

Comment: One commenter stated that in § 63.10685(b)(1)(i) and (ii), the requirement for removal of mercury switches from vehicle bodies used to make scrap does not seem to recognize the possibility of inaccessible switches. The commenter suggests replacing "mercury switches" with "accessible mercury switches."

Response: We have defined mercury switch to include only those switches that are part of a convenience light switch mechanism. Our information indicates that these switches are accessible and are easily removed, and it is important to the success of the pollution prevention program that they be removed. Consequently, we are not adding the additional requirement that they be "accessible," which would introduce additional uncertainty because of the judgment that must be made as to what is accessible.

Comment: One commenter stated the requirement in § 63.10685(b)(1)(B) for assurances from scrap providers that scrap meets specifications does not seem to allow for uncertainty or error. The commenter suggested that the language read "Provisions for obtaining assurance from scrap providers that to the best of their knowledge, motor vehicle scrap provided to the facility meets the scrap specification".

Response: We disagree that the change recommended by the commenter is necessary because the phrase "to the best of their knowledge" is subjective and likely creates confusion rather than clarity. The EAF owner or operator must obtain assurance to their satisfaction that the scrap meets specifications.

Comment: One commenter said the requirement in § 63.10685(b)(1)(ii)(C) for a means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap should be replaced with appropriate steps "to encourage the removal of accessible mercury switches from motor vehicles to be shredded."

Response: We disagree because corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap is necessary to ensure the effectiveness and credibility of the pollution prevention requirements.

Comment: One commenter expressed concern that the requirements in § 63.10685(b)(1)(ii)(C), (b)(1)(iii), and (b)(1)(v) may require scrap providers to divulge confidential business information (CBI) or to provide sensitive information to EAF operators to comply.

Response: It is in the interest of both the scrap provider and EAF operator to provide the information required by the rule and to establish procedures if necessary to protect confidential information. The requirements cited by the commenter refer to: (1) Periodic

inspections of scrap providers and dismantlers to ensure appropriate steps are being taken to remove mercury switches; (2) estimates of the number of switches removed; and (3) semiannual progress reports that provide the number of switches or weight of mercury removed, number of vehicles processed, estimate of the percent of switches removed, and certification of proper disposal of the switches. This information is an essential monitoring component of the rule to measure the effectiveness of a facility's pollution prevention program. The information on number of vehicles processed can be aggregated for a facility if it is important not to reveal the number of vehicles processed by a given scrap provider. We do not see nor did the commenter identify exactly what component of the requested information would be CBI; however, if the case can be made that there is CBI involved, EPA and the permitting authorities have established procedures for managing and safeguarding CBI and will, of course, utilize them.

Comment: One commenter objected to the requirement in § 63.10685(b)(1)(iii), which effectively compels scrap providers to collect switch removal information from all upstream sources of end-of-life vehicles. The commenter stated that to impose such burdensome requirements on the suppliers of the regulated entity far exceeds the Agency's regulatory authority.

Response: The burden imposed by the Agency is on the EAF owner or operator to obtain switch removal information because it is a critical monitoring component of the rule. The EAF owner or operator in turn must require this information from scrap providers, and if such information is not obtained, the EAF owner or operator could be found in violation of the rule.

Comment: One commenter objected to the proposed requirement for EPA approval of the scrap pollution prevention plan and mercury switch removal plan if prior approval is needed before the plan can be implemented or a change made. The commenter argued that prior approval would require all EAF operations to be shut down from the effective date of the rule until the plan is approved (unless EPA can approve all plans in the limited time available), that the need to respond to scrap that is presently available precludes the ability of the facility to seek prior approval of changes, and that it is unclear that EPA can provide meaningful review of scrap plans. The commenter suggested language that would require facilities to keep a copy of the plan onsite and update the plan to address any deficiency within 90 days of receiving a written notice from the Administrator. The commenter stated that recordkeeping and compliance certification requirements should be added consistent with the requirement.

Response: We continue to believe that the pollution prevention plans must be submitted to the permitting authority for review and approval to ensure they adequately address the requirements in the rule. We are clarifying in the final rule that the owner or operator must operate according to the plan as submitted during the review and approval process, operate according to the approved plan at all times after approval, and address any deficiency identified by the permitting authority within 60 days following disapproval of a plan. We are also clarifying that the owner or operator may request approval to revise the plan and may operate according to the revised plan unless and until the revision is disapproved by the permitting authority.

Comment: One commenter pointed to the provision in § 63.10685(b)(2)(iii) which allows the Administrator to revoke approval for all or part of the NVMSRP based on review of the reported data. The commenter asked if the 90-day period between the revocation notice and the effective date of the revocation provide sufficient time for the Administrator to approve 100 site-specific plans under § 63.10685(b)(1) and if there was a process in place for seeking reconsideration of revocation.

Response: We are clarifying in the final rule that the authority for the approval of site-specific plans is delegated to the permitting authority. This is what the proposed rule allowed because this authority was not among those listed in the rule as not being delegated. We believe the 90-day period is adequate for the approval process. The rule has no formal process for seeking reconsideration of revocation.

Comment: One commenter recommended that the proposed definition of "scrap provider" be revised because the definition includes brokers who have no oversight over scrap preparation and delivery. According to the commenter, a revised definition should allow brokers to be considered "scrap providers" as a contractual matter. The commenter suggested that EPA define "scrap provider" to mean "the final preparer of scrap delivered to a steel mill, or a broker when a brokered transaction specifies that the broker provide information to the steel mill from the scrap processors participating in the brokered transaction."

Response: We disagree because the definition as proposed allows a broker to be considered a scrap provider. The EAF owner or operator must ensure that the broker receives scrap only from suppliers participating in an EPA-approved program, and we have clarified this in the final rule. For the site-specific option, the EAF owner or operator must obtain assurance from all scrap providers that mercury switches have been removed and provide an accounting of the number of switches removed and vehicles processed for all scrap providers, along with all of the other requirements in the site-specific plan.

Comment: One commenter recommended that the proposed definition of "motor vehicle scrap" be revised to refer to shredded scrap that contains shredded end-of-life vehicles. The commenter explained that shredded scrap typically includes shredded end-of-life or obsolete appliances as well as other materials. Alternatively, the commenter suggested replacing the definition of "motor vehicle scrap" with a definition of "shredded scrap", which would contain some fraction of shredded end-of-life vehicles.

Response: The definition of motor vehicle scrap is specific to vehicles processed in a shredder. We do not see a need to revise the definitions as suggested by the commenter.

Comment: One commenter recommended that EPA revise § 63.10685(b) to clarify that scrap that does not contain motor vehicle scrap does not need to meet one of the three compliance options for mercury. The commenter suggested using the term "motor vehicle scrap provider" instead of "scrap provider." Otherwise, the commenter asked that EPA add a fourth compliance option under § 63.19685(b) for scrap that contains no motor vehicle scrap and require certification to that effect for the scrap provider, contract for scrap, or scrap shipment. The commenter stated that recordkeeping and compliance certification requirements should be added consistent with the requirement.

Response: We have clarified in the final rule that the mercury switch removal provisions and three compliance options apply to scrap that contains motor vehicle scrap. In addition, we have added a new provision to the rule for scrap that does not contain motor vehicle scrap to require a certification and documentation through records that the scrap does not contain motor vehicle scrap.

Comment: One commenter objected to the requirement for facilities to submit a semiannual report of all scrap shipments received under the site-specific compliance option. The commenter recommended that EPA review scrap management records to determine compliance. The commenter provided recommended language for a semiannual report containing a certification of compliance, along with records of how each motor vehicle scrap provider, contract, or shipment complies with the rule.

Response: We continue to believe that an accounting of mercury switches and estimated number of vehicles processed must be submitted in semiannual reports because it is an important monitoring provision that is necessary to determine if the site-specific plan is being implemented and to assess its effectiveness. However, we are clarifying that the information can be submitted in aggregate form and does not have to be submitted for each shipment, which could include hundreds of records for some large facilities. However, the owner or operator must maintain records for each motor vehicle scrap provider, contract, or shipment (as the commenter suggests) sufficient to demonstrate compliance with the rule and must make these records available upon the request of the permitting authority.

Comment: One commenter stated that the scrap specification requirements for mercury switches make unrealistic and unenforceable demands of metal purchasers. The commenter notes that steel mill staff are required to assure that the scrap is clean by visiting suppliers (who may be hundreds of miles away) by doing visual inspection of their facilities and treated scrap. The commenter further notes that suppliers change frequently, they buy from middlemen, and they ship scrap from combined sources. The commenter believes this shifts responsibility of "ensuring" quality of scrap to the steelmakers and makes no requirements of the steelmakers themselves, but asks them to inspect members of an independent industry at large cost in staffing and travel when it is unlikely to be effective.

Response: The rule applies to owners or operators of EAF steelmaking facilities, and it is the responsibility of these facilities to comply with the rule. Among other things, the final rule requires that EAF owners or operators conduct periodic inspections or provide other means of corroboration to ensure that suppliers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles. Periodic audits or inspections of scrap suppliers or dismantlers are one means of complying with this requirement. Although there are certainly other means to comply with this requirement, we note that periodic audits or inspections of scrap suppliers or dismantlers are consistent with the agreement reached in the NVMSRP among many stakeholders, including the scrap providers. Some EAF facilities already perform inspections of suppliers, and EAF facilities have historical experience in ensuring the quality of the scrap they receive because of safety concerns (e.g., radiation or explosion hazards) and the direct effect of scrap quality on steel quality.

The corroboration requirement in the final rule, as described above, is an important element of assuring program effectiveness and achieving the pollution prevention objective of section 112(d)(2)(A). EPA is thus adopting the requirement as an exercise of independent judgment, not simply because it is in the agreement.

C. Proposed GACT Standard for Metal HAP Other Than Mercury

1. Opacity Limit for the Melt Shop

Comment: Two commenters stated that a subcategory for older non-NSPS facilities is justified by the fact that the non-NSPS status of these facilities has a direct bearing on the technical and economic feasibility of retrofitting to achieve the six percent opacity standard during charging and tapping. According to the commenters, these facilities, by virtue of their design, are of a different class and type from the NSPS facilities. The commenters concluded that the alternative standard described in the proposal preamble with an opacity standard of six percent and an allowance of 20 percent opacity during charging and tapping was appropriate for these non-NSPS facilities. The commenters provided a discussion of EPA's authority to establish such a subcategory and information they claimed indicated that EPA's estimates of the costs to retrofit the non-NSPS facilities was understated. The commenters also argued that applying the NSPS to the non-NSPS facilities was not justified because the proposed standard was not as cost effective as EPA had estimated, and in addition, the cost effectiveness for HAP was much higher than what EPA had determined to be unacceptable in other rulemakings.

The commenters noted that CAA section 112 grants the EPA authority to categorize and subcategorize based on class, type, and size of source. According to the commenters, the Administrator "may distinguish among classes, types, and sizes of sources within a category or subcategory" under section 112(d)(l), and similarly, section 112(c) authorizes EPA to establish categories and subcategories of major and area sources in a manner that is consistent with the list of categories and subcategories under Section 111. The commenters also indicated that section 111(b)(2) provides EPA with authority to "distinguish among classes, types, and sizes within categories," and section 112 further provides that "(n)othing in the preceding sentence (referring to the desire to maintain consistency between source categories under Sections 111 and 112) limits the Administrator's authority to establish subcategories under this section, as appropriate."

The commenters pointed out that in the preamble to the proposed rule (72 FR 53826), EPA stated that it may be appropriate to consider a separate subcategory of facilities based on the technical and economic feasibility of retrofitting pre-1983 (non-NSPS) facilities. According to the commenters, such subcategorization is not new and falls within the Agency's discretion to create subcategories. The commenters continued by stating that while age is not specifically identified as a criterion for subcategorizing under Section 112, age may have a direct correlation to the design of a facility, the production and air pollution control equipment used by the facility, and other factors that allow for "class, type, or size" subcategory distinctions within an industry. The commenters stated that courts have confirmed this relationship between age and allowable subcategorization factors where there is a meaningful, discernable relationship between the age of the facility and the basis for subcategorization (e.g., the cost or feasibility of retrofitting or the effectiveness of anti-pollution devices on emissions) and cited *American Iron and Steel Inst.* v. *EPA*, 568 F.2d 244, 298 (3rd Cir. 1977) ("AISI") (also cited by EPA in the preamble to the proposed rule). The commenters claimed that the courts have recognized that age may play a direct role in a facility's ability to install anti-pollution devices (i.e., retrofitting costs) and on the effectiveness of reducing emissions (citing *American Iron and Steel Inst.* v. *EPA*, 526 F.2d 1046, 1048 (3rd Cir. 1975) (also cited by EPA), recognizing the "special problem" in requiring a one-size-fits-all anti-pollution device in industries where there is considerable variation in the age of facilities).

The commenters stated that they are not seeking subcategorization based strictly on the age of the facility, but rather to recognize that non-NSPS facilities (those that were constructed prior to 1983 and not subsequently modified) face design and equipment challenges in achieving the opacity standards that more modern facilities are engineered to meet. According to the commenters, non-NSPS facilities are a different "class" or "type" of facility from NSPS facilities, and consistent with the cases cited, the non-NSPS status of certain EAF steelmaking facilities bears directly on the technical and economic feasibility of reducing fugitive emissions and warrants a separate subcategory. The commenters claimed that non-NSPS facilities vary substantially in design and compliance requirements, but in almost all cases the buildings are not fully closed and the furnace design and emission capture systems are such that modifications are required to achieve the NSPS standards. According to the commenters, these design and equipment differences are reasonable bases on which to justify a non-NSPS subcategory.

The commenters provided information concerning the modifications and retrofitting that would be required at the non-NSPS facilities to meet the six percent opacity limit. In addition, the commenters submitted estimates of the costs and identified additional non-NSPS facilities not previously included in EPA's analysis of impacts. The commenters noted that there are 11 non-NSPS facilities that cannot currently meet the NSPS opacity limit (rather than the six identified at proposal) and estimated that the capital cost to meet the standard as $85 to $99 million instead of EPA's estimate at proposal of $29 million. Among the plants identified by the commenter was one plant that the commenter stated could meet the opacity limit 99 percent of the time, but the commenter claimed that costs would be incurred to address trivial and infrequent excursions to ensure the facility could meet the limit 100 percent of the time.

The commenters stated that applying the NSPS opacity limit to the non-NSPS plants was less cost effective than EPA's estimates at proposal because costs were underestimated and emission reductions were overestimated. The commenters cited the higher capital costs described above and also stated that other costs, such as lost revenue due to downtime to perform upgrades and annual operating costs (including increased power consumption and maintenance labor) had not been included in EPA's estimates. In addition, the commenters claimed that EPA's estimates of emission reductions were overstated because some of the dust assumed to be collected by the improved capture system would have settled within the melt shop rather than being emitted as fugitive emissions through the melt shop roof. The commenter also stated that the improved capture efficiency estimated for three facilities (from 85 percent to 95 percent) assumed an open roof monitor; however the improvement in capture is more likely from 90 percent to 95 percent because these facilities do not have open roofs. The commenter believes that the emission reductions for these facilities is about half of that estimated by EPA.

The commenter also stated that EPA's cost effectiveness estimate of $160,000/ton of HAP was higher than what had been accepted in other rulemakings: $6,800/ton chlorine rejected and $1,100/ton chlorine accepted (hazardous waste combustors); $45,000/ton hydrogen chloride rejected (industrial boilers); $90,000/ton acrylonitrile rejected (acrylic and modacrylic fibers); $724 to $9,000/ton of organic HAP accepted (halogenated solvent cleaning); and $300 to $10,000/ton of organic HAP accepted (gasoline distribution). The commenters stated that it was inappropriate to compare the particulate matter (PM) cost effectiveness of the proposed rule with that of mobile source programs because those programs were geared towards addressing PM while the area source rule is focused on HAP emissions. The commenters believe the proper comparison is with respect to the cost effectiveness of HAP emission reductions as described above.

Response: We proposed a standard of six percent opacity for the EAF melt shop for all plants in the source category (i.e., no subcategories) as GACT because about 90 percent of the existing facilities are subject to and achieve this level of control, and the technology used by these facilities is generally available. We requested comment on an alternative based on a subcategory for older facilities and an alternative standard of six percent opacity except for 20 percent opacity during charging and tapping (72 FR 53826). We also requested supporting documentation in sufficient detail to allow characterization and representativeness of the data.

The commenters claimed that there are meaningful differences between plants that are subject to the NSPS and those that are not subject to it, although they correctly acknowledged that age can only be a proxy for some process difference (i.e., age in and of itself is not a basis for subcategorization). However, we are not convinced that there is any basis for subcategorization because the non-NSPS plants have no physical differences that are impediments to the installation of the necessary and widely-demonstrated capture and control systems for fugitive emissions. Moreover, as we discuss in detail below, even if (against our view) it is appropriate to subcategorize, GACT would be the same for NSPS plants and non-NSPS plants.

We stated at proposal that GACT for fugitive emissions from the melt shop includes hoods to capture the fugitive emissions escaping during charging, melting, and tapping, and ducting the emissions to a baghouse. All EAF facilities have capture and control systems for emissions from charging, melting, and tapping, and this technology has been applied to many other industries (e.g., iron and steel foundries, integrated iron and steel plants). However, most EAF steelmaking facilities have better capture systems for charging and tapping emissions than do some of the affected non-NSPS plants. We have identified no technical reason that the capture and control systems demonstrated by plants subject to the NSPS to achieve an opacity limit of six percent cannot be applied industry wide. The technology for upgrading the capture and control of emissions from charging and tapping is generally available and includes new or redesigned capture hoods, higher evacuation rates, and in some cases, additional baghouse capacity, all of which have been accounted for in our cost estimates.

Not only is this type of technology routinely utilized, but there is no technical impediment to its applicability in this source category. The commenters stated that "buildings are not fully closed and the furnace design and emission capture systems are such that modifications are required to achieve the NSPS standards", but this merely indicates that some type of upgrade would be required for plants to meet the standards, not that these older plants cannot be physically enclosed so that they were able to achieve the NSPS opacity limit. Moreover, these sources' fugitive emissions consist of the same HAP in the same concentration as all of the NSPS plants. (See the HAP concentration data presented in "Electric Arc Furnace Impacts Analysis", Docket Item 0074 in Docket Number EPA–HQ–OAR–2004–0083.) In addition, a number of pre-NSPS EAFs have in fact upgraded to meet a 6 percent opacity limit. Not only are these

sources' fugitive emissions comparable to those of the remaining non-upgraded facilities, but their costs are comparable as well, as are the cost effectiveness of the emission reductions. (See the results of the cost survey of plants that have previously upgraded as discussed in "Electric Arc Furnace Impacts Analysis", Docket Item 0074 in Docket Number EPA–HQ–OAR–2004–0083.)

EPA therefore does not believe that the remaining non-NSPS plants are of a different class or type than the universe of sources meeting the 6 percent opacity standard. They produce the same product by the same means, are capable of controlling opacity by the same means at the same effectiveness, appear to be identically situated to non-NSPS EAFs which meet the 6 percent standard, and (as discussed below) are capable of meeting that standard at reasonable cost and cost effectiveness.

Moreover, even if (against our views) subcategorization would be appropriate, EPA believes GACT for the subcategory would be the NSPS standard. The standard reflects readily available technology (as just discussed) at reasonable cost and cost effectiveness. EPA carefully reviewed the detailed cost information submitted by the commenters for upgrading non-NSPS plants to meet the proposed opacity limit. The cost estimates are higher than those we developed at proposal reflecting that there are certain unique or site-specific factors for several plants that would result in costs higher than those we generated that did not include site-specific cost elements. We have accordingly revised the cost analysis from proposal and used the commenters' estimates of capital cost for most of the non-NSPS plants (using the average for those cases where a range of costs were provided for a given plant). We have also incorporated the commenters' estimates on the increased operating costs when they provided such estimates (e.g., increased consumption of electricity and labor for operation and maintenance). When estimates of operating cost were not provided, we developed estimates of operating costs for electricity, labor for operation and maintenance, and dust disposal based on the size of the upgraded system.

We did not accept the commenters' full estimate of cost for one non-NSPS plant. The commenters provided a capital cost estimate of $30.5 million to replace the entire existing melt shop at this plant, including a new and larger EAF to replace two small ones, new EAF transformers, new cranes and other ancillary equipment, and other modifications. We disagree with this cost estimate because it is based on the cost for a new facility, including new process equipment, in addition to new capture and control equipment for emissions. For our revised impacts analysis, we estimated the cost for emission capture and control equipment only and used a capital cost of $16.3 million that the commenter attributed to a new baghouse and ancillary equipment associated with emission control; however, we note that it could be more economical to upgrade the existing baghouses, and the cost estimate of $16 million was based on an EAF steelmaking facility that was several times larger than this plant, making even this estimate highly conservative. (The estimated impacts, including the revised cost estimates, are documented in "Revised Analysis of Impacts" in the rulemaking docket.)

We also reviewed the available information on costs associated with lost production when the upgrades are installed. Prior to proposal, we sent a detailed cost survey to several plants that had made substantial upgrades to improve the capture and control of fugitive emissions. One plant stated that the installation was performed as much as possible over a 1 year period during normal operations, the final tie-in of the control system to the EAF was made during a regularly-scheduled production outage of two weeks, and sufficient inventory was maintained to supply customers. A second plant also said that most of the installation was completed during normal operations, final tie-in was during two different scheduled outages of two weeks, and sufficient inventory was maintained to supply customers. A third plant replied that they could not provide a reliable estimate of any costs that might have been due to lost production during the installation. Based on the actual experience of plants that have made upgrades, we believe that significant costs due to lost production can be avoided by installation as much as possible during normal operation, final tie-in during a regularly-scheduled outage for maintenance, and building sufficient inventory to supply customers during the short period of production shutdown.

The commenter identified one plant that could meet the opacity limit 99 percent of the time, but claimed that costs would be incurred to address trivial and infrequent excursions to ensure the facility could meet the limit 100 percent of the time. The commenter did not include any cost estimates for this plant in their estimates of total costs for meeting the opacity limit and only provided a qualitative discussion and capital cost estimates for the wholesale replacement of EAFs. The estimates provided by the commenter were for the capital cost of replacing EAFs, including in one case purchasing a used 20-ton EAF to replace existing furnaces with a capital cost of $4.2 million and in another case installing a new 40-ton furnace at a cost of over $70 million. We requested several times but did not receive any opacity data showing whether this plant could or could not meet the opacity limit, and we do not think it appropriate to assume a new and larger EAF would need to be installed at a cost of many millions of dollars to address trivial and infrequent excursions even if they had occurred. Excursions that occur one percent of the time or less could well be outliers and a result of an equipment failure that is not preventable (i.e., a malfunction). Moreover, a rare excursion could be caused by a preventable equipment failure or operating error, in which case the event might be considered a deviation. If the excursion occurs because of a particular sequence or overlapping of cycles since this facility has multiple small furnaces, then careful attention to scheduling of operations might be a solution. In any event, the commenter and facility did not provide sufficient information, a credible cost estimate, or any opacity data; consequently, we do not have sufficient information to conclude that the facility would incur significant costs for upgrading.

Our revised estimate of the cost for non-NSPS to meet the NSPS opacity limit is a capital cost of $69 million and a total annualized cost of $13 million per year. These costs average less than one percent of sales, will not affect the profit margin significantly, and will not cause plant closures. Consequently, the technology to meet the NSPS is economically feasible, which supports our view that the emission control technology is "generally available."

We also re-examined our estimates of the emission reductions attributable to revised standards (the key input, along with cost, to assessing cost effectiveness). The commenters stated that for three plants, the reductions should be based on improving capture efficiency from 90 percent to 95 percent rather than the improvement of 85 percent to 95 percent that was used in our impacts analysis. We have acknowledged there is a great deal of uncertainty in this estimate; consequently, we have developed estimates of HAP metal (and PM, their surrogate) emission reductions using both ranges for improved capture efficiency. For plants that provided

evacuation rates, we estimated the emission reductions from the design evacuation rate and a PM concentration of 0.01 gr/dscf in the captured emissions. The commenters stated that they believed this estimate is high because some of the dust that is captured by the upgraded system would have settled out in the melt shop and not be emitted as fugitive emissions. However, the estimate of 0.01 gr/dscf is an unbiased average estimate that we believe is roughly accurate within a factor of two. We had information from one plant that indicated the concentration of fugitive emissions before control was 0.02 gr/dscf (a factor of two higher than our estimate). The lower end is bounded by 0.005 gr/dscf (a factor of two lower) because at that concentration a baghouse would not be needed to meet the PM emission limit of 0.0052 gr/dscf. Consequently, we did not revise this aspect of our estimates of emission reductions.

After making the changes to the estimates of costs, emissions, and emission reductions described above, the cost effectiveness is $15,000/ton for PM and $250,000/ton for HAP metals. As we stated at proposal, we believe the cost effectiveness for PM is well within the range of acceptability and is in line with the cost effectiveness for PM for other rules (72 FR 53826). We further noted at proposal that the cost effectiveness for PM is within the range we have accepted previously for control of PM emitted by mobile sources, and we continue to believe that these mobile source rules provide a reasonable benchmark for PM cost effectiveness.

We also disagree with the commenters' assertions that the cost effectiveness for metal HAP is unacceptable. The final GACT standard for EAFs will provide reductions of 52 tons per year of compounds of chromium, lead, manganese, and nickel, which are all urban HAP for which this category was listed pursuant to sections 112(c)(3) and 112(k). EPA listed these metal compounds as urban HAP because of their significant adverse health effects. A large portion of the reductions of these urban HAP will occur in the urban areas that EPA identified in the Integrated Urban Air Toxics Strategy. See CAA 112(k)(3)(C).

The primary HAP emitted from melting iron and steel scrap are manganese and lead with smaller levels of chromium and nickel. These metals (especially manganese) are inherent components of the scrap that is melted, and at the high temperatures used in the EAFs, the HAP metals are unavoidably vaporized and emitted. These metal HAP are present in particulate matter emissions from the EAF, and because they are in particulate form, they can be captured and removed from the gas stream at high efficiency by control devices designed to capture particulate matter (such as baghouses). The nature of these emissions and the HAP composition are unique to iron and steel melting furnaces such as EAFs and are quite different from the emissions from other processes and operations that do not involve melting metal scrap at high temperatures.

There are adverse health effects associated with the metal HAP emitted from EAFs. Hexavalent chromium and certain forms of nickel are known human carcinogens. Lead is toxic at low concentrations, and children are particularly sensitive to the chronic effects of lead. Chronic exposure to manganese affects the central nervous system. Additional details on the health and environmental effects of these HAP can be found at *http://www.epa.gov/ttn/atw/hlthef/hapindex.html.* In addition, approximately 50 percent of the PM emissions are in the form of fine particulate matter, and EPA studies have found that fine particles continue to be a significant source of health risks in many urban areas.

Accordingly, even considered as a separate subcategory, EPA believes that GACT for these sources would be the current NSPS standard, due to technical feasibility at reasonable cost and cost effectiveness.

Furthermore, we have incorporated into this final rule certain provisions of the General Provisions (40 CFR part 63, subpart A) that afford sources additional flexibility. For example, existing sources can request an additional year to comply with the standard if they can demonstrate to the permitting authority that such additional time is needed to install controls. See 40 CFR 63.6(i)(4)(1)(A). In addition, EPA's regulations implementing CAA section 112(l) provide further flexibility. Specifically, 40 CFR part 63, subpart E provides that a State may seek approval of permit terms and conditions that differ from those specified in a section 112 rule, if the State can demonstrate that the terms and conditions of the permit are equivalent to the requirements of this rule. The procedures for seeking approval of such a permit are set forth in detail in 40 CFR 63.94.

Comment: One commenter noted the proposal requires that a capture system must collect "gases and fumes," while a capture system is defined as collecting "particulate matter." The commenter believes that neither of these terms is correct; the capture system should be described as capturing "emissions" generated from the EAF and other metallurgy operations.

Response: We agree and have made this revision.

Comment: One commenter noted that the proposed rule identifies opacity standards for melt shops exclusive to EAF or ladle metallurgy operations (LMO) and no other sources. The commenter requested that the term "melt shop" be defined so that the applicability of the opacity standard is accurately applied. The commenter further claimed that the current requirement restricting the opacity standard to the operation of an EAF or LMO is unenforceable. The commenter said that based on States' experiences, many different operations occur within a melt shop, and without having at least one other person positioned within the building viewing all operations within, it would be impossible to know whether emissions observed outside of a building were associated with all the activities of a melt shop or solely the EAF or LMO. The commenter suggested removing the exclusivity of the opacity standard to EAF and LMO.

Response: We disagree. The procedures for conducting opacity observations are the same as those in the NSPS, and these procedures have been used successfully for over 20 years to enforce the NSPS. In addition, our opacity data and GACT determination were based on the procedures for conducting opacity observations as required by the NSPS.

2. Ladle Metallurgy Operations

Comment: Two commenters stated that LMO should not be covered by the EAF area source rule because it would be inconsistent with the area source listing of EAF steelmaking facilities (which does not mention LMO). The area source listing reflects the fact that EAF emissions are the source of the vast majority of PM (and potential HAP) emissions at these facilities. The commenters stated that coverage of LMO will require additional controls at many facilities to address minimal HAP emissions. The commenters claimed that EPA has not collected information on LMO emissions or the cost of controlling them and also noted that LMO is not covered by the NSPS. The commenters claim that HAP metals have been removed from the steel in the EAF by the time it reaches the post processing stage of the LMO. The commenters indicated that there are 12 facilities with a separate LMO baghouse (i.e., not ducted to the baghouse associated with the EAF), seven with the LMO located in a separate building,

and six facilities that stated LMO fugitive emissions are separate from EAF melt shop emissions. The commenters stated that these facilities will need to take steps to ensure they can meet the NSPS limits. One commenter also stated that argon-oxygen decarburization (AOD) vessels should not be covered by the area source rule for the same reasons given above for LMO (except that AOD vessels are covered by the NSPS). The commenter provided no information similar to that provided for LMO on AOD vessels with separate baghouses or located in separate buildings.

Another commenter requested that EPA clarify that LMO is not covered by the standard or, if it is subject to the standard, which it complies if it is equipped with a side draft hood or close fitting hood even if there is no additional canopy collection.

Response: We agree with the commenters that the area source listing and 1990 emissions inventory for EAFs did not include LMO. The PM emissions from LMO are a small percentage of the emissions from EAF operations, and as the commenters note, the percent HAP in the PM from LMO is lower than that from EAFs because the more volatile HAP metals are removed during the EAF melting process. Consequently, we are clarifying that the area source rule applies only to EAFs and AOD vessels.

We disagree with the one commenter who suggested that AOD vessels also should not be covered by the area source standard for many of the same reasons that were applied to LMO. Although the use of LMO was not very widespread in 1990, AOD vessels have been used at specialty and stainless steel facilities for many years. In fact, AOD vessels were included in the 1983 NSPS, and we included AOD vessels in our GACT determination for EAF steelmaking facilities. Many AOD operations are vented to and controlled by the same baghouses that are used to control EAF emissions; consequently, the 1990 emissions inventory would have included AOD emissions even when the emission source was identified as the EAF. Thus when we listed the EAF steelmaking area source category under section 112(c)(3), we considered and included facilities with AOD emissions as part of the source category that we needed to meet the 90 percent requirement for emissions of the Urban HAP arsenic, cadmium, chromium, lead, manganese, and nickel. The comments with respect to HAP metals are also not applicable to AOD vessels because AOD emissions contain high percentages of chromium and nickel, which are alloys used in making specialty and stainless steel.

We evaluated the impacts of including AOD vessels in the proposed area source standard. We identified only one plant that did not control AOD vessels with a baghouse, and we estimated the cost of replacing the wet scrubber with a baghouse. For this plant, both the EAF and AOD vessels are vented to a single wet scrubber; consequently, our cost estimate was based on a baghouse designed to control emissions from both operations. We evaluated the cost and cost effectiveness for this plant at proposal in our determination of GACT for small stainless steel producers (72 FR 53827). The commenter did not identify any additional plants that did not have a baghouse for the AOD vessel, and the commenter provided no data or other information showing that any other AOD vessels could not meet the proposed emission limits. Consequently, we believe that we have adequately evaluated the potential impacts of the proposed rule on AOD vessels and conclude that the NSPS limits for AOD vessels represent GACT for these vessels at carbon steel and large specialty steel facilities.

3. Small Stainless Steel Subcategory

Comment: One commenter submitted two comments on the subcategory for small stainless steel producers. The commenter asked if the 150,000 tons per year threshold applies to actual production or to potential facility production capacity. The commenter also asked that facilities in this subcategory be given the option of complying with the more stringent emission limit of 0.0052 gr/dscf that was proposed for other EAF facilities. The commenter stated that some facilities in the subcategory already have this limit in their permit and that they should not be required to demonstrate compliance with the 0.8 pounds per ton (lb/ton) limit as well. The commenter also claimed that without the option of complying with the 0.0052 gr/dscf limit, small facilities might be discouraged from upgrading pollution control equipment because the permitting authority could translate the lb/ton limit into a concentration limit more stringent than 0.0052 gr/dscf.

One commenter stated that the 0.8 lb/ton limit should not be applied to baghouses because a concentration limit in gr/dscf is more appropriate for baghouses. The commenter said that PM emissions from a baghouse are not linearly related to steel production rates. The commenter asks that EPA clarify that the lb/ton limit applies only to wet scrubbers.

Another commenter recommended that the PM limit for the small stainless steel subcategory be expressed in grain loading or similar fashion per industry practice instead of a lb/ton format. The commenter explained that it is not possible to demonstrate continuous compliance with the lb/ton format because not all particulate matter is released at the same time (i.e., the control device may continue to release PM after the end of a production run). The commenter stated that the testing provisions do not fully address this problem.

Response: The threshold for small stainless steel facilities is based on potential production as determined from the operating capacity of the EAF in tons per year multiplied by the maximum number of operating hours per year. We are clarifying that the potential production can be based on the maximum production or maximum number of permitted operating hours if specified in the facility's operating permit. Otherwise, the potential production would be based on the EAF production capacity and maximum operating hours.

We agree with the commenters that facilities in the small stainless steel subcategory that are equipped with baghouses should be allowed to demonstrate compliance exclusively with the more stringent PM of 0.0052 gr/dscf rather than 0.8 lb/ton as well for several reasons. There are existing plants equipped with baghouses that already must meet the more stringent PM limit of 0.0052 gr/dscf; consequently, requiring them to also demonstrate compliance with the less stringent limit is unnecessarily burdensome. We also agree that a concentration format is more appropriate for baghouses because baghouses are typically designed to meet an outlet concentration expressed in gr/dscf. On the other hand, wet scrubbers are typically designed to achieve a percent reduction in PM, and emissions are more relatable to steel production (i.e., higher steel production rates result in higher inlet loadings, which usually results in higher emissions at the outlet for wet scrubbers). The test procedures are clear for determining compliance with the lb/ton limit, and the plant with the wet scrubber has previously determined emissions in this format; consequently, we are not revising the testing provisions.

4. Particulate Matter Limit for EAFs

Comment: One commenter identified a plant that was not included in the analysis of impacts at proposal. The commenter stated that the facility could meet the opacity limit of six percent; however, compliance with the PM emission limit of 0.0052 gr/dscf will require upgrades to the baghouse, and other modifications will be required. The commenter estimated the capital cost for the upgrades as $1.9 million.

Response: We have evaluated the commenter's estimated cost for upgrades in our revised analysis of impacts. However, it is not clear that these costs should be attributed entirely to the area source standard. Our discussion with plant representatives prior to proposal indicated that a performance test showed that the baghouse achieved 0.0052 gr/dscf or less. In addition, bag replacement is a typical and recurring maintenance expense for baghouses, and bags would be replaced periodically even in the absence of the area source standard. Assuming the new bags and other modifications achieve a nominal reduction of only 0.001 gr/dscf, the improvements are cost effective and reasonable for reductions in PM emissions ($5,100/ton). Since this is the only plant in the subcategory that might be impacted by the PM emission limit, the estimate of cost effectiveness also represents the industry-wide estimate of cost effectiveness. (All estimates of impacts of the final standard are documented in the rulemaking docket.)

Comment: One commenter suggested that the PM limit should be based on the average performance of the best performing 12 percent of sources (i.e., the MACT floor).

Response: We discussed in detail in the proposal preamble (72 FR 53816) that the standard is based on GACT rather than MACT for Urban HAP other than mercury. The methodology suggested is the MACT methodology for establishing floors, which is neither required nor appropriate in determining what constitutes GACT.

D. Proposed GACT Standards for Scrap To Control HAP Other Than Mercury

Comment: One commenter objected to the definition of "free organic liquid" for turnings and borings because most turnings and borings contain significant quantities of oil. The commenter recommended that the prohibition on free organic liquids not include metal working fluids that contain less than one percent chlorinated compounds or less than 0.1 percent of a carcinogen. The commenter explained that this change would allow the majority of turning and borings to be recycled while avoiding possible emissions of chlorinated compounds.

Response: We disagree with the commenter because this provision is designed to prevent significant amounts of oil or other free organic liquids from entering the EAF with the scrap. These organic liquids contribute to the emissions of organic HAP such as benzene and polycyclic organic matter.

Comment: One commenter asks EPA to clarify the meaning of taking corrective action under § 63.10685(a)(1)(iii), which requires the facility to include in the scrap management plan procedures for "taking corrective actions with vendors whose shipments are not within specifications." The commenter asked to what extent a scrap provider has any recourse when corrective actions are deemed necessary.

Response: The procedures for taking corrective actions must be described by the EAF owner or operator in the site-specific pollution prevention plan and these procedures may vary depending on the type of scrap, scrap provider, and other factors, some of which may be unique to the facility. The concept is not a new one because EAF owners or operators have historically taken corrective actions when scrap does not meet their specifications. The area source rule places no direct requirements on the scrap provider; however, we expect that the scrap provider would work with customers (the EAF owners or operators) to resolve any questions of recourse with respect to corrective actions.

Comment: Several commenters believe the following proposed language creates a potential loophole for sources to charge otherwise unacceptable materials: "The requirements for a pollution prevention plan do not apply to the routine recycling of baghouse bags and other internal process or maintenance materials in the furnace." These commenters believe the language presents a loophole that renders the pollution prevention plan unenforceable and should be removed. One commenter suggests these exemptions not be allowed unless specifically identified in the pollution prevention plan and approved by the Administrator. Two commenters noted that under the proposed language, if an inspector found chlorinated plastics, lead or free organic liquids in an EAF's feedstock, the inspector would need to demonstrate that these wastes did not stem from "internal process materials or maintenance materials."

Response: The final rule, like the proposal, allows certain materials generated internally (e.g., baghouse bags) to be charged to the EAF. We agree that these materials should be identified and described in the facility's pollution prevention plan, and this is reflected in the final rule language. These materials are only those that are generated internally; consequently, they cannot be used as a loophole for incoming scrap. The inspector should be aware that the presence of chlorinated plastics, lead, or free organic liquids in these internal process materials or maintenance materials should be relatively rare, and if present, only exist in small quantities and only as described in the site-specific pollution prevention plan.

Comment: Two commenters stated that the metallic scrap restrictions are vague, difficult, and practically unenforceable. The commenter requests that EPA either define the terms "to the extent practicable" and "standard industry practice", set a particular standard, or make the requirements voluntary. Another commenter asked what the term "to the extent practicable" means in practice, and if there is no definition, how can the compliance provisions lead to corrective actions.

Response: We do not see the need to codify a definition of "practicable" but note here that our intent is that something is practicable if it is capable of being put into practice and is feasible. However, we believe that the term "standard industry practice" does not have a significantly clearer meaning, and in fact, may not result in as much removal. We are deleting the term in the final rule and continue to use the term "to the extent practicable" as it relates to the removal of lead-containing components such as batteries and wheel weights.

E. Miscellaneous Comments

1. General Provisions

Comment: One commenter objected to the requirement for SSM plans and reports because the burden of the recordkeeping and reporting requirements are not commensurate with the small quantity of pollutants covered by the rule. If SSM plans are required in the final rule, the commenter recommended that the plan requirements be limited to the operation of the EAF and LMO and associated control devices. The commenter was concerned that the SSM requirements could be read to apply to problems with the pollution prevention plans. The commenter recommended that Table 1

to Subpart YYYYY should indicate the limitation of the SSM requirements.

Response: We agree that the SSM requirements do not apply to the pollution prevention plans. Sources must comply with the pollution prevention plans at all times, including periods of SSM. Therefore, separate requirements governing SSM are not necessary.

Comment: One commenter stated that because the rule requires compliance with the compliance assurance monitoring (CAM) provisions, Table 1 to subpart YYYYY should indicate that the monitoring requirements in § 63.8(a) through (c) of the general provisions (40 CFR part 63, subpart A) apply only if a continuous opacity monitoring system or continuous emission monitoring system (CEMS) is used.

Response: We agree and will make this clarification.

2. Compliance Date

Comment: Two commenters requested that three years be allowed for non-NSPS facilities to install or modify controls to meet the opacity limit. The commenters stated that a series of events must occur to improve controls: Conceptual and detailed engineering studies must be conducted to determine what is needed to achieve compliance, a budget must be established and capital funding requests initiated and approved by company management, the project must be contracted out (after a competitive bidding process), necessary building permits obtained, and construction initiated. The commenters asked that EPA provide for the full three-year compliance period allowed under the CAA in order to avoid a proliferation of extension requests.

Response: We recognize that certain facilities will require extensive upgrades, including new capture systems, new baghouses, and site-specific modifications to improve control of fugitive emissions and meet the melt shop opacity limit. Consequently, we agree that it is appropriate to allow up to three years to achieve compliance for those facilities that demonstrate to the satisfaction of the permitting authority that additional time is needed to install or modify emission control equipment to meet the opacity limit.

3. Title V Permit

Comment: One commenter stated that the title V permit program is for major sources of criteria pollutants or HAP. The commenter stated that there was one small specialty steel EAF facility that was not a major source for any pollutant and that the facility has a State permit that caps emissions below major source thresholds. The commenter asked that the proposed rule be revised to require a title V permit only for those facilities that are major sources.

Response: Section 502(a) of the CAA requires sources subject to regulation under section 112 of the CAA to obtain a permit to operate. However, Section 502(a) authorizes the Administrator, in his discretion, to "promulgate regulations to exempt one or more source categories (in whole or in part) from the requirement of (title V) if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories * * *." EPA promulgated a rule interpreting section 502(a) and therein stated that EPA may only exempt a category from Title V permitting if we find compliance to be "impracticable, infeasible, or unnecessarily burdensome," and we determine that exempting the category would not adversely affect public health, welfare, or the environment. (See 70 FR 75,320 and 75,323, December 19, 2005.) Nowhere in our rule did we establish a presumption in favor of exempting sources from title V permitting, and the statute leaves such determinations to the discretion of the Administrator.

The decision to exempt a source category from title V requirements is made on a case-by-case basis according to the facts of the particular source category. The commenter has identified one EAF steelmaking facility (in a population of over 90 facilities) that does not currently have a title V permit. The commenter does not explain, however, why an exemption from title V is appropriate for this source category, where, as here, 99 percent of the facilities in the source category have title V permits. We refer the commenter to the detailed justification underlying exemption of other area source categories from title V. (For example, see 72 FR 38871, July 16, 2007.) We continue to believe that title V permitting is necessary for this source category. The record in this case does not demonstrate that compliance with title V permitting would be impracticable, infeasible, or unnecessarily burdensome for the sources in this category.

Comment: One commenter stated that § 63.106890(d) should be revised because the language could have the unintended consequence of forcing facilities that already have a title V permit to obtain a new permit. The commenter provided suggested language to clarify the requirement.

Response: Although facilities with a title V permit do not have to obtain a new title V permit as a result of this area source rule, sources that already have a title V permit must include the requirements of this rule through a permit reopening or at renewal according to the requirements of 40 CFR part 70 and the title V permit program. See 40 CFR 70.7(f).

4. Performance Tests

Comment: One commenter recommended that the provision allowing use of a previous performance test to demonstrate compliance be revised to include a time frame for action by the permitting authority. The commenter expressed concern that the facility may be exposed to a compliance risk if the source submits a test and the permitting authority deems the prior test unacceptable. The commenter was concerned that the requirement to test within 180 days of the compliance date would not be adequate if permitting authority has delayed action on the source's notification of compliance status report. The commenter provided rule language that would require that the prior test be deemed approved if not deemed unacceptable within 60 days.

Response: We agree that in the rare event that a permitting authority takes months to deem that a prior test is unacceptable, there may not be sufficient time to arrange and conduct a performance test within 180 days of the compliance date. We are revising the provision in the rule to state that if a permitting authority determines a prior performance test is unacceptable to demonstrate compliance, a performance test must be performed with 180 days of the compliance date or within 90 days of receipt of the notification of disapproval of the prior test, whichever is later.

5. Funding for State and Local Agencies

Comment: One commenter stated that in order for these rules to be implemented properly, EPA should provide sufficient additional funds to State and local clean air agencies. The commenter said that in recent years, Federal grants for State and local air programs have amounted to only about one-third of what they should be, and budget requests for the last two years have called for additional cuts. According to the commenter, additional area source programs, which are not eligible for title V fees, will require significant increases in resources for State and local air agencies beyond what is currently provided. The commenter claims that without increased funding, some State and local air agencies may

not be able to adopt and enforce additional area source rules.

Response: State and local air programs are an important and integral part of the regulatory scheme under the CAA. As always, EPA recognizes the efforts of State and local agencies in taking delegations to implement and enforce CAA requirements, including the area source standards under section 112. We understand the importance of adequate resources for State and local agencies to run these programs; however, we do not believe that this issue can be addressed through today's rulemaking.

EPA today is promulgating standards for the EAF Steelmaking area source category that reflect what constitutes MACT for mercury emissions and GACT for the Urban HAP other than mercury for which the source category was listed. MACT and GACT standards are technology-based standards. The level of State and local resources needed to implement these rules is not a factor that we consider in determining what constitutes GACT or MACT. Moreover, we note that the rule for EAF steelmaking facilities requires all affected facilities to have a title V permit; consequently, the comment about loss of fees from title V permit exemptions is not pertinent for this rule.

Although the resource issue cannot be resolved through today's rulemaking for the reason stated above, EPA remains committed to working with State and local agencies to implement this rule. State and local agencies that receive grants for continuing air programs under CAA section 105 should work with their project officer to determine what resources are necessary to implement and enforce the area source standards. EPA will continue to provide the resources appropriated for section 105 grants consistent with the statute and the allotment formula developed pursuant to the statute.

6. Secondary Nonferrous Metal Production

Comment: One commenter asked that EPA clarify that the rule does not apply to EAFs that are used to produce nonferrous metals, where nonferrous metal means "any pure metal other than iron or any metal alloy for which a metal other than iron is its major constituent by percent in weight."

Response: We agree. The types of facilities identified by the commenter are covered under other source categories depending on the type of metal produced (e.g., secondary nonferrous metals, secondary aluminum, secondary copper, etc.)

V. Impacts of the Final Rule

We estimate that the final standards will reduce mercury emissions from EAF by an estimated 5 tons per year (tpy) and will reduce emissions of other metallic HAP (primarily manganese with some lead, nickel and chromium) by about 52 tpy. Emissions of PM will be reduced by 865 tpy.

The capital cost of the final standards is estimated as $69 million. The total annualized cost of the final rule is estimated at $13 million/yr, including the annualized cost of capital and the annual operating costs for emissions control systems. The additional cost of monitoring, reporting, and recordkeeping attributable to the final rule, including the preparation of scrap management plans and scrap specifications, is estimated as $122,000 per year. No adverse economic impacts are expected for large or small entities. Secondary impacts will include an increase in the generation of hazardous waste (865 tpy) and an increase in electricity usage (23,000 megawatt-hours per year) from additional fans and fan capacity associated with baghouse installations and upgrades to meet the opacity standard.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards, and the recordkeeping and reporting requirements in the part 64 CAM rule, which are based on the requirements in the operating permits rule (40 CFR parts 70 and 71). These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The final rule requires all facilities to submit a one-time notification of applicability and notification of compliance status required by the NESHAP general provisions (40 CFR part 63, subpart A). The notification of compliance status must include compliance certifications for various rule requirements. The general provisions also require preparation of a test plan for performance tests and advance notification of the date the performance test is to be conducted.

The provisions for the control of contaminants from scrap require the owner or operator to prepare a pollution prevention plan to minimize the amount of chlorinated plastics, lead, and free organic liquids that are charged to the furnace and to submit the plan to the Administrator for approval. Facilities must keep the plan onsite and train certain employees in the plan's requirements. Alternatively, the facility must restrict the type of scrap charged to the furnace. For mercury, facilities must prepare a site-specific plan for removal of mercury switches, submit the plan to the Administrator for approval, and submit semiannual progress reports containing information on the mercury switches that have been removed would also be required. Alternatively, facilities must purchase motor vehicle scrap only from suppliers that participate in an approved program for the removal of mercury switches or recover only material for its specialty alloy content that does not contain mercury switches. Facilities are required to maintain records to demonstrate compliance with the selected option. Records of specific information are required for plants electing to comply with the site-specific plan for mercury; semiannual progress reports are also required.

All area source facilities are required to conduct performance tests to demonstrate initial compliance with the applicable PM and opacity limits. Existing facilities are allowed to certify initial compliance based on the results of a previous performance test that meets the rule requirements. All facilities must monitor capture systems and PM control devices for EAF and AOD vessels, maintain records, and submit reports according to the part 64 CAM requirements. These reports

include deviation reports, semiannual monitoring reports, and annual compliance certifications.

Consistent with § 63.6(e) of the general provisions, all plants are required to prepare and operate by a startup, shutdown, and malfunction plan, and make an immediate report if a startup, shutdown, or malfunction was not consistent with their plan. Plants also must keep records and make semiannual reports according to the requirements in § 63.10.

The annual average monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years of this ICR) is estimated to total 2,393 labor hours per year at a cost of $121,573. This includes 2.7 responses per year from each of 91 respondents for an average of about 9.7 hours per response. There are no additional capital/startup costs or operation and maintenance costs associated with the final rule.

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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (whose parent company has fewer than 1,000 employees for NAICS code 331111); (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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are approximately nine EAF steelmaking facilities owned by small businesses. We have determined that the requirements for these small business owned facilities consist of preparing a scrap selection plan or mercury switch removal plan and maintaining records to document compliance with these requirements. The requirements of the part 63 General Provisions include notifications, records, semiannual reports, and a startup, shutdown and malfunction plan. The information required in these information collection requirements is very similar to the information collection requirements in 40 CFR parts 64, 70, and 71. We have determined that the nine or fewer EAF steelmaking facilities (less than 10 percent of the total number of facilities) will experience an impact of about $3,500 per year per facility, which is less than one percent of total revenues.

Electric arc furnaces and AOD vessels at all EAF steelmaking facilities that are area sources are already equipped with capture systems and control devices. We have identified ten plants that may have to upgrade emission capture and control systems at a total capital cost of $69 million and a total annualized cost of $13 million per year. However, none of these plants are owned by small businesses.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has nonetheless tried to reduce the impact of this rule on small entities. We held meetings with industry trade associations and company representatives to discuss the proposed rule and have included provisions such as the lb/ton limit for small facilities that address their concerns. We have also included a subcategory based partially on facility size that allows more individualized consideration of EAFs in the subcategory, which include small businesses.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final 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 to the private sector in any 1 year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of

the UMRA. EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, the final rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The final rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to the Executive Order because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final 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. Further, we have concluded that this final rule is not likely to have any adverse energy effects because energy requirements will not be significantly impacted by the additional pollution controls or other equipment that are required by this rule.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This final rule involves technical standards. EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 9 in 40 CFR part 60, appendix A; EPA Method 9095B, "Paint Filter Liquids Test," (revision 2, November 2004) (incorporated by reference—see § 63.14); and ASTM D2216–05, "Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass" (incorporated by reference—see § 63.14).

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5D, 9, 9095B, or ASTM D2216–05. The search and review results are in the docket for this final rule.

One VCS was identified as applicable to this final rule. The standard ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," is cited in this final rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The search for emissions measurement procedures identified 12 other VCS. The EPA determined that these 12 standards identified for measuring emissions of the HAP or surrogates subject to emissions standards in this final rule were impractical alternatives to EPA test methods. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 12 methods are discussed in a memorandum included in the docket for this final rule.

For the methods required or referenced by this final rule, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or

environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule establishes national standards for the area source category.

K. 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 Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule will be effective on December 28, 2007.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended as follows:
■ a. By adding paragraph (b)(63);
■ b. By revising paragraph (i)(1); and
■ c. By adding paragraph (k)(1)(iv).

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(63) ASTM D2216–05, "Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass," IBR approved for the definition of "Free organic liquids" in § 63.10692.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.10686(d)(1(iii), 63.10702, 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), and Table 5 to subpart DDDDD of this part.

* * * * *

(k) * * *

(1) * * *

(iv) Method 9095B, "Paint Filter Liquids Test," revision 2, November 2004, IBR approved for the definition of "Free organic liquids" in § 63.10692.

* * * * *

3. Part 63 is amended by adding subpart YYYYY to read as follows:

Subpart YYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

Sec.

Subpart YYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

Applicability and Compliance Dates

§ 63.10680 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an electric arc furnace (EAF) steelmaking facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each EAF steelmaking facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after September 20, 2007.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) If you own or operate an area source subject to this subpart, you must have or obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.10681 What are my compliance dates?

(a) Except as provided in paragraph (b) of this section, if you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by no later than June 30, 2008.

(b) If you own or operate an existing affected source, you must achieve compliance with opacity limit in § 63.10686(b)(2) or (c)(2) by no later than December 28, 2010 if you demonstrate to the satisfaction of the permitting authority that additional time is needed to install or modify emission control equipment.

(c) If you start up a new affected source on or before December 28, 2007, you must achieve compliance with the applicable provisions of this subpart by no later than December 28, 2007.

(d) If you start up a new affected source after December 28, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.10685 What are the requirements for the control of contaminants from scrap?

(a) *Chlorinated plastics, lead, and free organic liquids.* For metallic scrap utilized in the EAF at your facility, you must comply with the requirements in

either paragraph (a)(1) or (2) of this section. You may have certain scrap at your facility subject to paragraph (a)(1) of this section and other scrap subject to paragraph (a)(2) of this section provided the scrap remains segregated until charge make-up.

(1) *Pollution prevention plan.* For the production of steel other than leaded steel, you must prepare and implement a pollution prevention plan for metallic scrap selection and inspection to minimize the amount of chlorinated plastics, lead, and free organic liquids that is charged to the furnace. For the production of leaded steel, you must prepare and implement a pollution prevention plan for scrap selection and inspection to minimize the amount of chlorinated plastics and free organic liquids in the scrap that is charged to the furnace. You must submit the scrap pollution prevention plan to the permitting authority for approval. You must operate according to the plan as submitted during the review and approval process, operate according to the approved plan at all times after approval, and address any deficiency identified by the permitting authority within 60 days following disapproval of a plan. You may request approval to revise the plan and may operate according to the revised plan unless and until the revision is disapproved by the permitting authority. You must keep a copy of the plan onsite, and you must provide training on the plan's requirements to all plant personnel with materials acquisition or inspection duties. Each plan must include the information in paragraphs (a)(1)(i) through (iii) of this section:

(i) Specifications that scrap materials must be depleted (to the extent practicable) of undrained used oil filters, chlorinated plastics, and free organic liquids at the time of charging to the furnace.

(ii) A requirement in your scrap specifications for removal (to the extent practicable) of lead-containing components (such as batteries, battery cables, and wheel weights) from the scrap, except for scrap used to produce leaded steel.

(iii) Procedures for determining if the requirements and specifications in paragraph (a)(1) of this section are met (such as visual inspection or periodic audits of scrap providers) and procedures for taking corrective actions with vendors whose shipments are not within specifications.

(iv) The requirements of paragraph (a)(1) of this section do not apply to the routine recycling of baghouse bags or other internal process or maintenance materials in the furnace. These exempted materials must be identified in the pollution prevention plan.

(2) *Restricted metallic scrap.* For the production of steel other than leaded steel, you must not charge to a furnace metallic scrap that contains scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers or capacitors containing polychlorinated biphenyls, lead-containing components, chlorinated plastics, or free organic liquids. For the production of leaded steel, you must not charge to the furnace metallic scrap that contains scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers or capacitors containing polychlorinated biphenyls, chlorinated plastics, or free organic liquids. This restriction does not apply to any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed or cleaned to the extent practicable such that the materials do not include lead components, chlorinated plastics, or free organic liquids. This restriction does not apply to motor vehicle scrap that is charged to recover the chromium or nickel content if you meet the requirements in paragraph (b)(3) of this section.

(b) *Mercury requirements.* For scrap containing motor vehicle scrap, you must procure the scrap pursuant to one of the compliance options in paragraphs (b)(1), (2), or (3) of this section for each scrap provider, contract, or shipment. For scrap that does not contain motor vehicle scrap, you must procure the scrap pursuant to the requirements in paragraph (b)(4) of this section for each scrap provider, contract, or shipment. You may have one scrap provider, contract, or shipment subject to one compliance provision and others subject to another compliance provision.

(1) *Site-specific plan for mercury switches.* You must comply with the requirements in paragraphs (b)(1)(i) through (v) of this section.

(i) You must include a requirement in your scrap specifications for removal of mercury switches from vehicle bodies used to make the scrap.

(ii) You must prepare and operate according to a plan demonstrating how your facility will implement the scrap specification in paragraph (b)(1)(i) of this section for removal of mercury switches. You must submit the plan to the permitting authority for approval. You must operate according to this plan as submitted during the review and approval process, operate according to the approved plan at all times after approval, and address any deficiency identified by the permitting authority within 60 days following disapproval of a plan. You may request approval to revise the plan and may operate according to the revised plan unless and until the revision is disapproved by the permitting authority. The permitting authority may change the approval status of the plan upon 90-days written notice based upon the semiannual compliance report or other information. The plan must include:

(A) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper management of the mercury switches removed from that scrap as required under the rules implementing subtitle C of the Resource Conservation and Recovery Act (RCRA) (40 CFR parts 261 through 265 and 268). The plan must include documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need to promote the removal of mercury switches from end-of-life vehicles. Upon the request of the permitting authority, you must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols;

(B) Provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the facility meet the scrap specification;

(C) Provisions for periodic inspections or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap and that the mercury switches removed are being properly managed, including the minimum frequency such means of corroboration will be implemented; and

(D) Provisions for taking corrective actions (i.e., actions resulting in scrap providers removing a higher percentage of mercury switches or other mercury-containing components) if needed, based on the results of procedures implemented in paragraph (b)(1)(ii)(C) of this section).

(iii) You must require each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to your facility during the previous year and the basis for the estimate. The permitting authority may request documentation or additional information at any time.

(iv) You must establish a goal for each scrap provider to remove at least 80 percent of the mercury switches.

Although a site-specific plan approved under paragraph (b)(1) of this section may require only the removal of convenience light switch mechanisms, the permitting authority will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal.

(v) For each scrap provider, you must submit semiannual progress reports to the permitting authority that provide the number of mercury switches removed or the weight of mercury recovered from the switches, the estimated number of vehicles processed, an estimate of the percent of mercury switches removed, and certification that the removed mercury switches were recycled at RCRA-permitted facilities or otherwise properly managed pursuant to RCRA subtitle C regulations referenced in paragraph (b)(1)(ii)(A) of this section. This information can be submitted in aggregated form and does not have to be submitted for each scrap provider, contract, or shipment. The permitting authority may change the approval status of a site-specific plan following 90-days notice based on the progress reports or other information.

(2) *Option for approved mercury programs.* You must certify in your notification of compliance status that you participate in and purchase motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator based on the criteria in paragraphs (b)(2)(i) through (iii) of this section. If you purchase motor vehicle scrap from a broker, you must certify that all scrap received from that broker was obtained from other scrap providers who participate in a program for the removal of mercury switches that has been approved by the Administrator based on the criteria in paragraphs (b)(2)(i) through (iii) of this section. The National Vehicle Mercury Switch Recovery Program and the Vehicle Switch Recovery Program mandated by Maine State law are EPA-approved programs under paragraph (b)(2) of this section unless and until the Administrator disapproves the program (in part or in whole) under paragraph (b)(2)(iii) of this section.

(i) The program includes outreach that informs the dismantlers of the need for removal of mercury switches and provides training and guidance for removing mercury switches;

(ii) The program has a goal to remove at least 80 percent of mercury switches from the motor vehicle scrap the scrap provider processes. Although a program approved under paragraph (b)(2) of this section may require only the removal of convenience light switch mechanisms, the Administrator will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal; and

(iii) The program sponsor agrees to submit progress reports to the Administrator no less frequently than once every year that provide the number of mercury switches removed or the weight of mercury recovered from the switches, the estimated number of vehicles processed, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at facilities with permits as required under the rules implementing subtitle C of RCRA (40 CFR parts 261 through 265 and 268). The progress reports must be based on a database that includes data for each program participant; however, data may be aggregated at the State level for progress reports that will be publicly available. The Administrator may change the approval status of a program or portion of a program (e.g., at the State level) following 90-days notice based on the progress reports or on other information.

(iv) You must develop and maintain onsite a plan demonstrating the manner through which your facility is participating in the EPA-approved program.

(A) The plan must include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.

(B) You must provide in the plan documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need to promote the removal of mercury switches from end-of-life vehicles. Upon the request of the permitting authority, you must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols.

(C) You must conduct periodic inspections or provide other means of corroboration to ensure that scrap providers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles.

(3) *Option for specialty metal scrap.* You must certify in your notification of compliance status that the only materials from motor vehicles in the scrap are materials recovered for their specialty alloy (including, but not limited to, chromium, nickel, molybdenum, or other alloys) content (such as certain exhaust systems) and, based on the nature of the scrap and purchase specifications, that the type of scrap is not reasonably expected to contain mercury switches.

(4) *Scrap that does not contain motor vehicle scrap.* For scrap not subject to the requirements in paragraphs (b)(1) through (3) of this section, you must certify in your notification of compliance status and maintain records of documentation that this scrap does not contain motor vehicle scrap.

(c) *Recordkeeping and reporting requirements.* In addition to the records required by § 63.10, you must keep records to demonstrate compliance with the requirements for your pollution prevention plan in paragraph (a)(1) of this section and/or for the use of only restricted scrap in paragraph (a)(2) of this section and for mercury in paragraphs (b)(1) through (3) of this section as applicable. You must keep records documenting compliance with paragraph (b)(4) of this section for scrap that does not contain motor vehicle scrap.

(1) If you are subject to the requirements for a site-specific plan for mercury under paragraph (b)(1) of this section, you must:

(i) Maintain records of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, and an estimate of the percent of mercury switches recovered; and

(ii) Submit semiannual reports of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, an estimate of the percent of mercury switches recovered, and a certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The semiannual reports must include a certification that you have conducted inspections or taken other means of corroboration as required under paragraph (b)(1)(ii)(C) of this section. You may include this information in the semiannual compliance reports required under paragraph (c)(3) of this section.

(2) If you are subject to the option for approved mercury programs under paragraph (b)(2) of this section, you must maintain records identifying each

scrap provider and documenting the scrap provider's participation in an approved mercury switch removal program. If you purchase motor vehicle scrap from a broker, you must maintain records identifying each broker and documentation that all scrap provided by the broker was obtained from other scrap providers who participate in an approved mercury switch removal program.

(3) You must submit semiannual compliance reports to the Administrator for the control of contaminants from scrap according to the requirements in § 63.10(e). The report must clearly identify any deviation from the requirements in paragraphs (a) and (b) of this section and the corrective action taken. You must identify which compliance option in paragraph (b) of this section applies to each scrap provider, contract, or shipment.

§ 63.10686 What are the requirements for electric arc furnaces and argon-oxygen decarburization vessels?

(a) You must install, operate, and maintain a capture system that collects the emissions from each EAF (including charging, melting, and tapping operations) and argon-oxygen decarburization (AOD) vessel and conveys the collected emissions to a control device for the removal of particulate matter (PM).

(b) Except as provided in paragraph (c) of this section, you must not discharge or cause the discharge into the atmosphere from an EAF or AOD vessel any gases which:

(1) Exit from a control device and contain in excess of 0.0052 grains of PM per dry standard cubic foot (gr/dscf); and

(2) Exit from a melt shop and, due solely to the operations of any affected EAF(s) or AOD vessel(s), exhibit 6 percent opacity or greater.

(c) If you own or operate a new or existing affected source that has a production capacity of less than 150,000 tons per year (tpy) of stainless or specialty steel (as determined by the maximum production if specified in the source's operating permit or EAF capacity and maximum number of operating hours per year), you must not discharge or cause the discharge into the atmosphere from an EAF or AOD vessel any gases which:

(1) Exit from a control device and contain particulate matter (PM) in excess of 0.8 pounds per ton (lb/ton) of steel. Alternatively, the owner or operator may elect to comply with a PM limit of 0.0052 grains per dry standard cubic foot (gr/dscf); and

(2) Exit from a melt shop and, due solely to the operations of any affected EAF(s) or AOD vessel(s), exhibit 6 percent opacity or greater.

(d) Except as provided in paragraph (d)(6) of this section, you must conduct performance tests to demonstrate initial compliance with the applicable emissions limit for each emissions source subject to an emissions limit in paragraph (b) or (c) of this section.

(1) You must conduct each PM performance test for an EAF or AOD vessel according to the procedures in § 63.7 and 40 CFR 60.275a using the following test methods in 40 CFR part 60, appendices A–1, A–2, A–3, and A–4:

(i) Method 1 or 1A of appendix A–1 of 40 CFR part 60 to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A–1 of 40 CFR part 60 to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B of appendix A–3 of 40 CFR part 60 to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 of appendix A–3 of 40 CFR part 60 to determine the moisture content of the stack gas.

(v) Method 5 or 5D of appendix A–3 of 40 CFR part 60 to determine the PM concentration. Three valid test runs are needed to comprise a PM performance test. For EAF, sample only when metal is being melted and refined. For AOD vessels, sample only when the operation(s) are being conducted.

(2) You must conduct each opacity test for a melt shop according to the procedures in § 63.6(h) and Method 9 of appendix A–4 of 40 CFR part 60. When emissions from any EAF or AOD vessel are combined with emissions from emission sources not subject to this subpart, you must demonstrate compliance with the melt shop opacity limit based on emissions from only the emission sources subject to this subpart.

(3) During any performance test, you must monitor and record the information specified in 40 CFR 60.274a(h) for all heats covered by the test.

(4) You must notify and receive approval from the Administrator for procedures that will be used to determine compliance for an EAF or AOD vessel when emissions are combined with those from facilities not subject to this subpart.

(5) To determine compliance with the PM emissions limit in paragraph (c) of this section for an EAF or AOD vessel in a lb/ton of steel format, compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process-weighted mass emissions of PM, lb/ton;
C = Concentration of PM or total metal HAP, gr/dscf;
Q = Volumetric flow rate of stack gas, dscf/hr;
T = Total time during a test run that a sample is withdrawn from the stack during steel production cycle, hr;
P = Total amount of metal produced during the test run, tons; and
K = Conversion factor, 7,000 grains per pound.

(6) If you own or operate an existing affected source that is subject to the emissions limits in paragraph (b) or (c) of this section, you may certify initial compliance with the applicable emission limit for one or more emissions sources based on the results of a previous performance test for that emissions source in lieu of the requirement for an initial performance test provided that the test(s) were conducted within 5 years of the compliance date using the methods and procedures specified in paragraph (d)(1) or (2) of this section; the test(s) were for the affected facility; and the test(s) were representative of current or anticipated operating processes and conditions. Should the permitting authority deem the prior test data unacceptable to demonstrate compliance with an applicable emissions limit, the owner or operator must conduct an initial performance test within 180 days of the compliance date or within 90 days of receipt of the notification of disapproval of the prior test, whichever is later.

(e) You must monitor the capture system and PM control device required by this subpart, maintain records, and submit reports according to the compliance assurance monitoring requirements in 40 CFR part 64. The exemption in 40 CFR 64.2(b)(1)(i) for emissions limitations or standards proposed after November 15, 1990 under section 111 or 112 of the CAA does not apply. In lieu of the deadlines for submittal in 40 CFR 64.5, you must submit the monitoring information required by 40 CFR 64.4 to the applicable permitting authority for

approval by no later than the compliance date for your affected source for this subpart and operate according to the approved plan by no later than 180 days after the date of approval by the permitting authority.

Other Information and Requirements

§ 63.10690 What parts of the General Provisions apply to this subpart?

(a) You must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as provided in Table 1 of this subpart.

(b) The notification of compliance status required by § 63.9(h) must include each applicable certification of compliance, signed by a responsible official, in paragraphs (b)(1) through (6) of this section.

(1) For the pollution prevention plan requirements in § 63.10685(a)(1): "This facility has submitted a pollution prevention plan for metallic scrap selection and inspection in accordance with § 63.10685(a)(1)";

(2) For the restrictions on metallic scrap in § 63.10685(a)(2): "This facility complies with the requirements for restricted metallic scrap in accordance with § 63.10685(a)(2)";

(3) For the mercury requirements in § 63.10685(b):

(i) "This facility has prepared a site-specific plan for mercury switches in accordance with § 63.10685(b)(1)";

(ii) "This facility participates in and purchases motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the EPA Administrator in accordance with § 63.10685(b)(2)" and has prepared a plan demonstrating how the facility participates in the EPA-approved program in accordance with § 63.10685(b)(2)(iv);

(iii) "The only materials from motor vehicles in the scrap charged to an electric arc furnace at this facility are materials recovered for their specialty alloy content in accordance with § 63.10685(b)(3) which are not reasonably expected to contain mercury switches"; or

(iv) "This facility complies with the requirements for scrap that does not contain motor vehicle scrap in accordance with § 63.10685(b)(4)."

(4) This certification of compliance for the capture system requirements in § 63.10686(a), signed by a responsible official: "This facility operates a capture system for each electric arc furnace and argon-oxygen decarburization vessel that conveys the collected emissions to a PM control device in accordance with § 63.10686(a)".

(5) If applicable, this certification of compliance for the performance test requirements in § 63.10686(d)(6): "This facility certifies initial compliance with the applicable emissions limit in § 63.10686(a) or (b) based on the results of a previous performance test in accordance with § 63.10686(d)(6)".

(6) This certification of compliance for the monitoring requirements in § 63.10686(e), signed by a responsible official: "This facility has developed and submitted proposed monitoring information in accordance with 40 CFR part 64".

§ 63.10691 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA or a delegated authority such as a State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (6) of this section.

(1) Approval of an alternative non-opacity emissions standard under 40 CFR 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in 40 CFR 63.90.

(4) Approval of major change to monitoring under 40 CFR 63.8(f). A "major change to monitoring" is defined in 40 CFR 63.90.

(5) Approval of a major change to recordkeeping/reporting under 40 CFR 63.10(f). A "major change to recordkeeping/reporting" is defined in 40 CFR 63.90.

(6) Approval of a program for the removal of mercury switches under § 63.10685(b)(2).

§ 63.10692 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Argon-oxygen decarburization (AOD) vessel means any closed-bottom, refractory-lined converter vessel with submerged tuyeres through which gaseous mixtures containing argon and oxygen or nitrogen may be blown into molten steel for further refining.

Capture system means the equipment (including ducts, hoods, fans, dampers, etc.) used to capture or transport emissions generated by an electric arc furnace or argon-oxygen decarburization vessel to the air pollution control device.

Chlorinated plastics means solid polymeric materials that contain chlorine in the polymer chain, such as polyvinyl chloride (PVC) and PVC copolymers.

Control device means the air pollution control equipment used to remove particulate matter from the effluent gas stream generated by an electric arc furnace or argon-oxygen decarburization vessel.

Deviation means any instance where an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Electric arc furnace (EAF) means a furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. An electric arc furnace consists of the furnace shell, roof, and the transformer.

Electric arc furnace (EAF) steelmaking facility means a steel plant that produces carbon, alloy, or specialty steels using an EAF. This definition excludes EAF steelmaking facilities at steel foundries and EAF facilities used to produce nonferrous metals.

Free organic liquids means material that fails the paint filter test by EPA Method 9095B, (revision 2, dated November 1994) (incorporated by reference—see § 63.14) after accounting for water using a moisture determination test by ASTM Method D2216–05 (incorporated by reference—see § 63.14). If, after conducting a moisture determination test, if any portion of the material passes through and drops from the filter within the 5-

minute test period, the material contains *free organic liquids.*

Leaded steel means steel that must meet a minimum specification for lead content (typically 0.25 percent or more) and for which lead is a necessary alloy for that grade of steel.

Mercury switch means each mercury-containing capsule or switch assembly that is part of a convenience light switch mechanism installed in a vehicle.

Motor vehicle means an automotive vehicle not operated on rails and usually operated with rubber tires for use on highways.

Motor vehicle scrap means vehicle or automobile bodies, including automobile body hulks, that have been processed through a shredder. *Motor vehicle scrap* does not include automobile manufacturing bundles, or miscellaneous vehicle parts, such as wheels, bumpers or other components that do not contain mercury switches.

Nonferrous metals means any pure metal other than iron or any metal alloy for which an element other than iron is its major constituent by percent in weight.

Scrap provider means the person (including a broker) who contracts directly with a steel mill to provide scrap that contains motor vehicle scrap. Scrap processors such as shredder operators or vehicle dismantlers that do not sell scrap directly to a steel mill are not *scrap providers.*

Specialty steel means low carbon and high alloy steel other than stainless steel that is processed in an argon-oxygen decarburization vessel.

Stainless steel means low carbon steel that contains at least 10.5 percent chromium.

Tables to Subpart YYYYY of Part 63

As required in § 63.10691(a), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table.

TABLE 1 TO SUBPART YYYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYYY

Citation	Subject	Applies to subpart YYYYY?	Explanation
§ 63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
§ 63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities and Circumvention	Yes.	
§ 63.5	Preconstruction Review and Notification Requirements.	Yes.	
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(5)–(h)(9), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
§ 63.7	Applicability and Performance Test Dates.	Yes.	
§ 63.8(a)(1), (a)(2), (b), (c), (d), (e), (f)(1)–(5), (g).	Monitoring Requirements	Yes	Requirements apply if a COMS or CEMS is used.
§ 63.8(a)(3)	[Reserved]	No.	
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No.	
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	Yes	Requirements apply if a COMS or CEMS is used.
§ 63.8(f)(6)	RATA Alternative	Yes	Requirements apply if a CEMS is used.
§ 63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (f), (g), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes.	
§ 63.9(b)(3), (h)(4)	Reserved	No.	
§ 63.9(b)(4)		No.	
§ 63.10(a), (b)(1), (b)(2)(i)–(v), (b)(2)(xiv), (b)(3), (c)(1), (c)(5)–(c)(8), (c)(10)–(c)(15), (d), (e)(1)–(e)(4), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply if a COMS or CEMS is used.
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative	Yes	Requirements apply if a CEMS is used.
§ 63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
§ 63.11	Control Device Requirements	No.	
§ 63.12	State Authority and Delegations	Yes.	
§§ 63.13–63.16	Addresses, Incorporations by Reference, Availability of Information, Performance Track Provisions.	Yes.	

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Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: The 2008 Critical Use Exemption From the Phaseout of Methyl Bromide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2006–1016; FRL–8510–8]

RIN 2060–A030

Protection of Stratospheric Ozone: The 2008 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing an exemption to the phaseout of methyl bromide to meet the needs of 2008 critical uses. Specifically, EPA is authorizing uses that qualify for the 2008 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2008. EPA is taking action under the authority of the Clean Air Act to reflect recent consensus decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the 18th Meeting of the Parties.

DATES: This rule is effective on December 28, 2007.

ADDRESSES: EPA has established a docket for this action identified under Docket ID No. EPA–HQ–OAR–2006–1016. All documents in the docket are listed on the *http://www.regulations.gov* site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available only through *http://www.regulations.gov* or in hard copy. To obtain copies of materials in hard copy, please call the EPA Docket Center at (202) 564–1744 between the hours of 8:30 a.m.–4:30 p.m. E.S.T., Monday–Friday, excluding legal holidays, to schedule an appointment. The EPA Docket Center's Public Reading Room address is EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Aaron Levy by telephone at (202) 343–9215, or by e-mail at *levy.aaron@epa.gov* or by mail at Aaron Levy, U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's stratospheric ozone protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: This final rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a class I, Group VI controlled substance) for critical uses during calendar year 2008. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, namely the critical use exemption and the quarantine and pre-shipment exemption. With this action, EPA is authorizing the uses that will qualify for the 2008 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from pre-phaseout inventory for critical uses in 2008.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d) of the Clean Air Act, which states: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on December 28, 2007. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule grants an exemption from the phaseout of methyl bromide.

Table of Contents

I. General Information

Regulated Entities

Entities potentially regulated by this action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers, and Exporters of methyl bromide; Applicators and Distributors of methyl bromide; Users of methyl bromide, e.g., farmers of vegetable crops, fruits, and seedlings; Owners of stored food commodities and structures such as grain mills and processors; and Agricultural researchers.

The above table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is aware could potentially be regulated by this action. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR Part 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

II. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule on the phaseout schedule for methyl bromide published in the **Federal Register** on March 18, 1993 (58 FR 15014), and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr* and *http://www.ozone.unep.org* or by contacting the Stratospheric Ozone Hotline at 1–800–296–1996.

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authorities. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to certain Federal and State requirements governing their sale, distribution, and use. Nothing in this final rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or Local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that are affected by provisions of this action must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this final rule are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What Is the Background to the Phaseout Regulations for Ozone Depleting Substances?

The current regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances can be found at 40 CFR Part 82, Subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has made several amendments to the regulations since that time.

Methyl bromide was added to the Protocol as an ozone depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level of 25,528,270 kilograms, and, in 40 CFR 82.7, EPA also set forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which for newly listed class I ozone depleting substances provides that "no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances." EPA based its action on scientific assessments and actions by the Parties to the Montreal Protocol to freeze the level of methyl bromide production and consumption for industrialized countries at the Fourth Meeting of the Parties (MOP) in 1992 in Copenhagen, Denmark.

At the Seventh MOP in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with the CAAA of 1990 language. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout.

IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide exemptions for critical uses. These amendments were contained in section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. EPA again amended the revised phaseout to allow for an

exemption for quarantine and preshipment purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule titled "Protection of Stratospheric Ozone: Process for Exempting Critical Uses From the Phaseout of Methyl Bromide" (the "Framework Rule") in the **Federal Register** that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA then promulgated a supplemental rule on December 13, 2005 that added critical uses to the exemption program for 2005 and allocated additional stock allowances (70 FR 73604). EPA published a final rule on February 6, 2006, to exempt production and import of methyl bromide for 2006 critical uses and indicated which uses met the criteria for the exemption program for that year (71 FR 5985). EPA published another final rule on December 14, 2006, to exempt production and import of methyl bromide for critical uses in 2007 and indicated which uses met the criteria for critical uses for that year (71 FR 75386). Under authority of section 604(d)(6) of the CAA, this action lists the uses that qualify as approved critical uses in 2008 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This action reflects Decision XVIII/13, taken at the Eighteenth Meeting of the Parties in October 2006. In accordance with Article 2H(5) of the Montreal Protocol, the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses (see Section V.E. of this preamble). The status of Decisions is addressed in *NRDC* v. *EPA*, (464 F.3d 1, DC Cir. 2006) and in EPA's "Supplemental Brief for the Respondent," filed in *NRDC* v. *EPA* and available in the docket for this action. In this final rule, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What Is the Critical Use Exemption Process?

A. Background of the Process

Starting in 2002, EPA began notifying applicants of the process for obtaining a critical use exemption from the methyl bromide phaseout. On May 8, 2003, the Agency published its first notice in the **Federal Register** (68 FR 24737) announcing the availability of the application for a critical use exemption and the deadline for submission of the requisite data. Applicants were informed that they may apply as individuals or as part of a group of users (a "consortium") who face the same limiting critical conditions (i.e. specific conditions that establish a critical need for methyl bromide). EPA has repeated this process annually since then. The critical use exemption is designed to permit production and import of methyl bromide for uses that do not have technically and economically feasible alternatives.

The criteria for the exemption initially appeared in Decision IX/6 of the Parties to the Protocol. In that Decision, the Parties agreed that "a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination." These criteria are reflected in EPA's definition of "critical use" at 40 CFR 82.3.

In response to the annual requests for critical use exemption applications published in the **Federal Register**, applicants provide data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submit data on their use of methyl bromide, on research programs into the use of alternatives to methyl bromide, and on efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination, or CUN. The U.S. Department of State submits the CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The CUNs of various countries are subsequently reviewed by the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol. These bodies make recommendations to the Parties on the nominations. The Parties then take a Decision to authorize a critical use exemption for a particular country. The Decision also identifies how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the Clean Air Act, for each exemption period, EPA consults with the United States Department of Agriculture and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the Agency has determined to be necessary for critical uses and the uses that the Agency has determined meet the criteria of the critical use exemption.

For more information on the domestic review process and methodology employed by the Office of Pesticide Programs, please refer to a detailed memo titled *"Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America"* available on the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself has remained the same since the inception of the exemption program.

On January 24, 2006, the U.S. Government (USG) submitted the fourth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This fourth nomination contained the request for 2008 critical uses. In March 2006, MBTOC sent questions to the USG concerning technical and economic issues in the nomination. In April 2006, the USG transmitted responses to MBTOC's requests for clarification. The USG received MBTOC's second round of questions in June 2006, and sent responses to MBTOC in August 2006. These documents, together with reports by the advisory bodies noted above, can be accessed in the public docket for this rulemaking. The determination in this final rule reflects the analysis contained in those documents.

B. How Does This Final Rulemaking Relate to Previous Critical Use Exemption Rulemakings?

The December 23, 2004, Framework Rule (69 FR 76982) established the operational framework for the critical use exemption program in the U.S., including trading provisions and recordkeeping and reporting obligations. The Framework Rule defined the terms "critical use allowances" (CUAs) and "critical stock allowances" (CSAs) at 40 CFR 82.3. Today's action authorizes the uses that will qualify as critical uses for 2008 and the amounts of CUAs and CSAs that will be allocated for those uses. The uses that EPA is authorizing as 2008 critical uses are the uses which the USG included in the fourth CUN, and which were approved by the Parties in Decision XVIII/13. In this action, EPA is also refining its approach for determining the amount of CSAs to allocate in 2008 and each year thereafter. EPA discusses the refined approach in detail in Section V.D. of this preamble.

C. Critical Uses

In Decision XVIII/13, taken in October 2006, the Parties to the Protocol agreed as follows: "for the agreed critical-use categories for 2008, set forth in table C of the annex to the present decision for each Party to permit, subject to the conditions set forth in the present decision and decision Ex.I/4, to the extent that those conditions are applicable, the levels of production and consumption for 2008 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *"

The following uses are those set forth in table C of the annex to Decision XVIII/13: Commodities, Cocoa beans (NPMA [1] subset), NPMA food processing structures (cocoa beans removed), Mills and processors, Smokehouse ham, Cucurbits—field, Eggplant—field, Forest nursery, Nursery stock—fruit, nut, flower, Orchard replant, Ornamentals, Peppers—field, Strawberry—field, Strawberry runners, Tomatoes—field, and Sweet potato slips. The agreed critical-use levels for 2008 total 5,355,946 kilograms (kg), which is equivalent to 21.0% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. However, the maximum amount of allowable new production and import as set forth in table D of Decision XVIII/13 is 4,595,040 kg (18.0% of baseline). For the reasons described in Section V.D. of this preamble, EPA is allowing up to 3,083,763 kg (12.1% of baseline) of new production or import of methyl bromide for critical uses for 2008, with 1,729,689 kg (6.8% of baseline) coming from stocks. To clarify, while the Parties require only 760,906 kg of stockpile use if the entire U.S. allotment is utilized, EPA is allowing use of 1,729,689 kg of pre-phaseout inventory for critical uses and reducing allowable production accordingly.

In this final rule, EPA is amending columns B and C of Appendix L to 40 CFR art 82, subpart A to reflect the agreed critical-use categories identified in Decision XVIII/13 for the 2008 control period (calendar year). The Agency is amending the table of critical uses based, in part, on the technical analysis contained in the 2008 U.S. nomination that assesses data submitted by applicants to the critical use exemption program as well as public and proprietary data on the use of methyl bromide and its alternatives. EPA sought comment on the analysis contained in the 2008 nomination and, in particular, any information regarding changes to the registration or use of alternatives that may have transpired after the 2008 nomination was submitted. The Agency stated that such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the critical use exemption. Based on Decision XIII/13 and the 2008 U.S. CUN, EPA is determining that the uses in Table I: Approved Critical Uses, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2008.

TABLE I.—APPROVED CRITICAL USES

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Pre-Plant Uses:		
Cucurbits	(a) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
	(b) Southeastern U.S. limited to growing locations in Alabama, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.

[1] NPMA stands for National Pest Management Association.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Public (government-owned) seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation.. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(b) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(c) California rose nurseries	Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. A need for methyl bromide for research purposes.
	(b) North Carolina and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Presence of medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached.
	(b) California table and raisin grape growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California wine grape growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(d) California walnut growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(e) California almond growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Michigan herbaceous perennials growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. A need for methyl bromide for research purposes.
	(d) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. Time to transition to an alternative. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot. A need for methyl bromide for research purposes.
Sweet Potato Slips	(a) California growers	Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe fungal pathogen infestation. A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematodes. Restrictions on alternatives due to karst topographical features, and in Florida, soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
Post-Harvest Uses:		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe infestation of beetles, weevils, or moths. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute (for this rule, "pet food" refers to domestic dog and cat food).	Moderate to severe infestation or beetles, moths, or cockroaches. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Bakeries in the U.S.	Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(e) Members of the National Pest Management Association treating cocoa beans in storage and associated spaces and equipment and processed food, cheese, herbs, spices and spaces and equipment in associated processing facilities.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives. A need for methyl bromide for research purposes.
Dry Cured Pork Products	(a) Members of the National Country Ham Association.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(b) Members of the American Association of Meat Processors.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(c) Nahunta Pork Center (North Carolina)	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(d) Gwaltney of Smithfield Ltd	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

The National Pest Management Association (NPMA) requested that the language in Column B of Table I describing the NPMA be changed to "Members of the National Pest Management Association treating cocoa beans in storage and associated spaces and equipment and processed food, cheese, dried milk, herbs, spices and spaces and equipment in associated processing facilities." EPA has incorporated this revised language describing the NPMA because it clarifies that commodities will be fumigated as part of space fumigations, as indicated in NPMA's application.

Dow Agrosciences LLC (Dow) commented that sulfuryl fluoride (ProFume) can replace methyl bromide for all post-harvest uses during the 2008 control period. Dow also states that some post-harvest use limiting critical conditions are no longer relevant and should be removed. The commenter noted that sulfuryl fluoride has superseded phosphine and heat as the preferred alternative in post-harvest use categories. The commenter requested removal of the following limiting critical conditions:

- Time to transition to an alternative
- Older structures that cannot be properly sealed
- Presence of sensitive electronic equipment subject to corrosion by phosphine
- Rapid fumigation

First, EPA addresses the transition rate and overall feasibility of sulfuryl fluoride for post-harvest sectors in Section V.D.6. of this preamble. Second, EPA agrees that the inability to properly seal older structures in preparation for fumigation should not be the sole condition for granting critical use exemption status to food processing facilities. The 2008 CUN does not state that the inability to seal older structures is a basis for methyl bromide need. Therefore, EPA agrees and has removed this limiting critical condition from the rule text.

Third, as discussed in the 2008 CUN, research is still ongoing regarding the efficacy of sulfuryl fluoride for the post-harvest critical uses listed in Table I, and EPA must ensure that post-harvest sectors have sufficient time to validate and adopt the new technology. Therefore, the presence of sensitive electronic equipment remains a proper limiting critical condition for critical use applications that would otherwise use phosphine, which corrodes electronic equipment.

Finally, regarding the rapid fumigation limiting critical condition for certain post-harvest sectors, the United States Department of Agriculture (USDA) Agriculture Research Service (ARS) is currently conducting research on the efficacy and practicality of using alternative fumigants, including sulfuryl fluoride, to control post-harvest pests of durable commodities such as nuts and dried fruit. While acknowledging that sulfuryl fluoride appears to have the potential to provide effective and rapid vacuum fumigation of nuts and dried fruit, the Agency must ensure that the tree nut and dried fruit industry has sufficient time to validate and adopt the new technology. Therefore, rapid fumigation remains a valid limiting critical condition for the sectors where it is listed in Table I.

Dow commented that EPA should remove or modify some of the pre-plant limiting critical conditions in the final rule. The commenter stated that with the availability of 1,3-Dichloropropene (1,3-D) as a nematicide, "nematode infestations" should not qualify as a limiting critical condition. The 2008 CUN explained that methyl bromide is the only option to effectively control the target pests, including nematodes, found in the Southeastern U.S. where pest pressures commonly exist at moderate to severe levels. EPA responds in more detail in the Response to Comments document for this action.

At the public hearing for this action the Florida Golf Course Superintendents Association and a researcher from Florida University argued that the golf and turf industry should qualify for critical use methyl bromide. EPA responds to these comments in a Response to Comments document available on the docket for this rulemaking.

EPA is finalizing the proposed changes amending the table in 40 CFR Part 82, subpart A, Appendix L, as reflected above. EPA is adding six references and deleting four references in column B, changing the description of one critical use in column B, and removing one limiting critical condition from five post-harvest sectors in column C. Specifically, the changes are as follows: Adding Mississippi to the approved locations for cucurbit growers because that location was included in the approved Southeast Cucurbit Consortium application for 2008; removing Florida from the approved forest seedling locations because a 2008 application for that location was not submitted to EPA; removing Maryland from the approved strawberry nursery locations because a 2008 application for that location was not submitted to EPA; removing California from the approved locations for pepper growers because the United States Government did not reflect this location in its 2008 CUN; adding Mississippi to the approved locations for pepper growers because that location was included in the approved Southeast Pepper Consortium application for 2008; adding Mississippi and Missouri to the approved locations for strawberry fruit growers because those locations were included in the approved Southeastern Strawberry Consortium application for 2008; adding California sweet potato slip growers to reflect the authorization of that use in Decision XVIII/13; adding Mississippi to the approved locations for tomato growers because that location was included in the approved Southeastern Tomato Consortium application for 2008; removing turf grass because that use was not agreed to by the Parties in Decision XVIII/13; adding Gwaltney and Smithfield Inc. to the approved entities for dry cured pork products because their application was approved for 2008; changing the description of members of the National Pest Management Association (NPMA) as requested by NPMA; and deleting the limiting critical condition "older structures that can not be properly sealed to use an alternative to methyl bromide" for post-harvest sectors.

The categories listed in Table I above have been designated critical uses for 2008 in Decision XVIII/13 of the Parties. The amount of methyl bromide approved for research purposes is included in the amount of methyl bromide approved by the Parties for the commodities for which "research purposes" is indicated as a limiting critical condition in the table above. As explained in Section V.D.5. of this preamble, EPA is allowing sale of 15,491 kg of methyl bromide from existing stocks for research purposes, and adjusting new production accordingly.

In accordance with the recommendations in Table 9 of the TEAP's September 2006 Final Report entitled "Evaluations of 2006 Critical Use Nominations for Methyl Bromide and Related Matters," available on the docket for this rulemaking, EPA is allowing the following sectors to use critical use methyl bromide for research purposes: Commodities, cucurbits (field), eggplant (field), nursery stock (fruit, nut, flower), ornamentals, peppers (field), strawberry (field), strawberry runners, and tomatoes (field). In their applications to EPA, these sectors identified research programs that require the use of methyl bromide.

D. Critical Use Amounts

Section V.C. of this preamble explains that Table C of the annex to Decision XVIII/13 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol (Parties). When added together, the critical use amounts authorized by the Parties for the U.S. in 2008 total 5,355,946 kilograms (kg), which is equivalent to 21.0% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. However, the limit on authorized new production or import as set forth in Table D of the annex to Decision XVIII/13 is 4,595,040 kg (18.0% of baseline). The difference between allowable new production and import and the total critical use amount is to be made up from pre-phaseout inventory that was produced before January 1, 2005. EPA further discusses the breakout between new production or import and stocks in sections V.D.1–3. of this preamble.

EPA is establishing the following reductions to the amount of newly produced or imported methyl bromide authorized in Decision XVIII/13 to satisfy critical uses:

(a) Reductions to account for the amount of available stocks;

(b) Reductions to account for unused critical use methyl bromide at the end of 2006;

(c) Reductions to account for methyl bromide for research purposes that EPA encourages researchers to purchase from available stocks;

(d) Reductions to accommodate uptake of sulfuryl fluoride for post-harvest cocoa bean fumigation in 2008; and

(e) Reduction to accommodate a certain amount of transition to the recently registered fumigant iodomethane for some pre-plant uses.

After accounting for the reductions listed above, in this action EPA is issuing 3,083,763 kg of critical use allowances (CUAs), which allow limited amounts of new production and import of methyl bromide for 2008 critical uses up to the amount of 3,083,763 kg (12.1% of baseline) as shown in Table II. EPA is also issuing 1,729,689 kg of critical stock allowances (CSAs), which allow sales of 1,729,689 kg (6.8% of baseline) from existing pre-phaseout inventories for critical uses in 2008. Sections V.H. and V.I. of this preamble provide definitions for the terms CUA and CSA. EPA explains each of the reductions listed above in subsequent sections of this preamble.

EPA received five comments that object to the Agency's proposed reductions and state that EPA should grant the full amount of new production allowed by the Parties to the Montreal Protocol in Decision XVIII/13.

EPA received one comment from Chemtura Corporation (Chemtura) asserting that EPA "arbitrarily" reduces the amount of production authorized by the Parties and "never deigns to explain how amounts for production previously determined to be critical are deemed no longer to be critical." At the public hearing for this action three commenters argued that the methyl bromide allocations have been reduced at each stage of the review process and do not need to be further reduced by the Agency in this rulemaking. When the USG prepares a critical use nomination, it is making a determination as to the level of critical need. It is not making a determination that a particular portion of that need should be met from new

production as compared to stocks. The Parties' Decisions contain a determination as to the level of critical need as well as a maximum amount of that total need that may be met from new production. The Parties' Decisions do not specify a minimum amount that must be met from new production. It is not accurate to state, as the commenter does, that a particular production amount is itself "critical." As explained elsewhere in this preamble, EPA is adjusting the amount of new production to take into account stocks that it has determined to be available.

Fumigation Service and Supply, Inc. (FSS) commented that the Copenhagen Amendment was signed by the U.S. to phase out methyl bromide 14 years ago, and stated that this time period should have been adequate for all users of methyl bromide to switch to alternative fumigation methods. The commenter stated that EPA's proposed allocations will penalize companies that have already phased out methyl bromide. The Natural Resources Defense Council (NRDC) requested that EPA reduce the 2008 CUE allocations by at least 1,275,000 kg and by larger amounts in 2009 due to advancements in using sulfuryl fluoride and iodomethane. The comments on EPA's proposed allocation amounts are addressed in subsequent sections of this preamble and in the Response to Comments document available on the docket for this action.

1. Background of Critical Use Amounts

The Framework Rule (69 FR 76982) and subsequent CUE rules each took note of language regarding stocks of methyl bromide in relevant decisions of the Parties. In developing this action, the Agency noted that paragraph six of Decision XVIII/13 contains the following language: "that each Party which has an agreed critical use renews its commitment to ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and that such procedures take into account available stocks of banked or recycled methyl bromide, in particular, the criterion laid down in paragraph 1(b)(ii) of decision IX/6." Language calling on Parties to address stocks also appears in prior Decisions related to the critical use exemption.

In the Framework Rule, which established the architecture of the CUE program and set out the exempted levels of critical use for 2005, EPA interpreted paragraph 5 of Decision Ex. I/3, which is similar to Decision XVIII/13(6), "as meaning that the U.S. should not authorize critical use exemptions without including provisions addressing drawdown from stocks for critical uses" (69 FR 76987). Consistent with that interpretation, the Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that stocks were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. In developing this final rule, EPA did not propose changes to these basic CSA provisions.

In the August 25, 2004, Proposed Framework Rule (69 FR 52366), EPA proposed to adjust the authorized level of new production and consumption for critical uses by the amount of "available" stocks. The methodology for determining the amount of "available" stocks considered exports, methyl bromide for feedstock uses, and the need for a buffer in case of catastrophic events. However, the Final Framework Rule did not adopt the proposed methodology for determining available stocks. Instead, EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties (Total Authorized CUE Amount—Authorized New Production and Import).

In the 2006 CUE Rule, published February 6, 2006 (71 FR 5985), EPA applied the approach described in the Framework Rule by allocating as CSAs the difference between the total authorized CUE amount and the amount of new production and import authorized by the Parties (2.0% of baseline), as well as the small supplemental allocation in Decision XVII/9 (0.4% of baseline). EPA also issued CSAs allowing additional amounts of existing stocks to be sold for critical uses (roughly 3.0% of baseline). In the 2006 CUE Rule, EPA issued a total of 1,136,008 kg as CSAs, equivalent to 5.0% of baseline. Similarly, in the 2007 CUE Rule, EPA issued a number of CSAs that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import (6.2% of baseline), but also an additional amount (1.3% of baseline) for a total of 1,915,600 CSAs (7.5% of baseline).

EPA viewed the allocation of additional CSA amounts as an appropriate exercise of its discretion. EPA reasoned that the Agency was not required to allocate the full amount of authorized new production and consumption. The Parties agreed to "permit" a particular level of production and consumption; they did not—and could not—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to exempt the full amount permitted by the Parties. Section 604(d)(6) of the Clean Air Act (CAA) does not require EPA to exempt any amount of production and consumption for critical uses, but instead specifies that the Agency "may" exempt amounts for production, import, and consumption, thus providing EPA with substantial discretion in creating critical use exemptions.

In the July 6, 2006, Proposed 2007 CUE Rule (71 FR 38325), EPA sought comment on "whether, in the critical use exemption context, it would be appropriate to adjust the level of new production and import with the goal of maintaining a stockpile of some specified duration [* * *] and on how many months of methyl bromide inventory would be appropriate, in order to maintain non-disruptive management of this chemical in the supply chain" (71 FR 38339). In the Final 2007 CUE Rule, EPA noted that "the Parties have not taken a decision on an appropriate amount of inventory for reserve. Nor has EPA reached any conclusion regarding what amount might be appropriate. Given this uncertainty, and the continuing decline in inventory levels, EPA is exercising caution in this year's CSA allocation. EPA will consider various approaches to this issue in the future based on the data received during this notice and comment rulemaking process and other information obtained by the Agency" (71 FR 75399).

The benefits of pre-phaseout methyl bromide inventories for critical uses were discussed at the 18th and 19th Meetings of the Parties (MOPs). The Parties did not take a decision at the 18th or 19th MOP on whether it would be appropriate to allow some specific amount of pre-phaseout stocks to remain in inventory, or what amount that might be. However, at the 19th MOP, the Parties did recognize that it is appropriate to adjust new production and import levels to account for the amount of "available stocks." In Table D of the Annex to Decision XIX/9, the Parties authorized new production and consumption for critical uses in the United States during 2009 of 3,961,974 kg, "minus available stocks."

In the proposed rule, EPA noted that in another instance—essential use exemption process for the use of chlorofluorocarbons in the manufacture of metered-dose inhalers—the Parties have allowed companies to maintain

working stocks of up to one year's supply. As explained in the FDA Determination Letter available on the public docket for this rulemaking, FDA bases its determination of the amount of CFC production that is necessary for medical devices "on an estimate of the quantity of CFCs that would allow manufacturers to maintain as much as a 12-month stockpile." However, neither FDA nor EPA maintains a CFC reserve on behalf of any essential use manufacturer, or guarantees that a certain amount of CFCs will always be held in inventory.

Similarly, in developing this action, EPA did not propose to maintain a reserve of methyl bromide for critical uses, or to guarantee that a certain amount of methyl bromide would always be held in inventory. EPA did, however, propose to calculate the amount of existing methyl bromide stocks that is available for critical uses in 2008, and to consider this amount in the Agency's determination of how much sale of existing stocks and how much production and import to allow for critical uses in 2008. Section V.D.2. of the proposed rule described EPA's proposed method to calculate the amount of stocks available for critical uses in 2008. Section V.D.3. of the proposed rule explained how EPA proposed to adjust new production and import levels to account for the Agency's calculation of the amount of available stocks.

In the proposed rule, EPA explained that through data collection and experience, EPA has gained information about the CUE program that the Agency did not have when the program began. For example, data on the aggregate amount of methyl bromide held in inventory at the end of calendar years 2003, 2004, 2005, and 2006 is now available in the public docket for this rulemaking. The pre-phaseout inventory has gradually declined to the point where, for the first time, EPA estimates that at the start of the 2008 control period the pre-phaseout inventory will represent less than a one-year supply of critical use methyl bromide. EPA explained that the proposed approach is intended as a clear and repeatable process for the Agency to make responsible allocations that reflect a reasonable estimate of the amount of inventory available in a future control period based on data collected from earlier control periods.

2. Calculation of Available Stocks

In developing this action, EPA proposed a formula to calculate the amount of available stocks in 2008, expressed as follows: AS = ES—D—SCF, where AS = available stocks on January 1, 2008; ES = existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2007; D = estimated drawdown of existing stocks during calendar year 2007; and SCF = a supply chain factor, the calculation of which was described in the proposed rule and in the Technical Support Document (TSD) available on the public docket for this rulemaking. Using the methodology described in the proposed rule, EPA proposed that ES = 7,671,091 kg; D = 3,224,351 kg; and SCF = 2,731,211 kg. EPA proposed that 1,715,438 kg (6.7% of baseline) of pre-phaseout methyl bromide stocks will be available for critical uses in 2008. The Agency sought comments on its proposed methodology.

The Methyl Bromide Industry Panel (MBIP) correctly noticed in its comments that EPA made a mathematical error in its calculation of available stocks in the proposed rule. Even though EPA listed existing stocks as 7,671,091 kg, which is the correct value, the Agency used the value 7,671,000 kg in its calculation. As a result, EPA proposed 1,715,438 kg of available stocks in 2008, when EPA intended to proposed available stocks of 1,715,529 kg. In other words, EPA underestimated available stocks by 91 kg. EPA has corrected its calculations in this final rule.

The North American Millers' Association (NAMA) commented that the mechanisms for reporting pre-phaseout inventory and usage are imprecise, and therefore the Agency's calculations of inventory levels are likely inaccurate. The commenter did not explain why it stated that the mechanisms for reporting stocks and usage are imprecise, and EPA has not found any specific reason to question the accuracy of its aggregate pre-phaseout inventory data.

EPA received seven comments supporting the creation of a supply chain factor (SCF), but these comments asserted that the 15-week SCF suggested for use in the event of a supply disruption is inadequate and recommended a one-year supply instead. The commenters may have misunderstood the assumption in the TSD, which explains EPA's analysis of how large the SCF should be, that it would take up to 15 weeks for adequate amounts of methyl bromide imports to reach the U.S. if there is a domestic production failure. Because the Agency proposed an SCF that would provide insurance against a production failure during the peak production season (i.e. the beginning of the calendar year), the Agency's proposed SCF is actually equivalent to about 51% of the 5,355,946 kg authorized for U.S. critical uses in 2008, or roughly a six-month supply if demand were constant throughout the year. The commenters provide a number of reasons why they recommend a larger supply buffer, and EPA responds to those comments below.

Chemtura stated that EPA's proposed SCF is inappropriate because it conflicts with the USG's position at the 19th Meeting of the Parties (MOP) to the Montreal Protocol in Montreal, Canada, where the commenter asserted the USG delegation requested a six month reserve for critical uses. NRDC commented that the Parties rejected the U.S. proposal to allow maintenance of a half-year supply chain reserve at the 19th Meeting of the Parties. EPA disagrees with Chemtura's characterization of the events at the September 2007 MOP, and with Chemtura's assertion because a negotiating position does not constitute a factual basis for a rulemaking, or a specific policy or technical finding of the USG. Furthermore, as explained in the proposed rule (72 FR 48966), EPA's proposed SCF provides a technical basis for calculating available stocks that is consistent with the Montreal Protocol, and therefore clearly within EPA's authority under Section 604(d)(6) of the Clean Air Act. EPA also disagrees with NRDC's assertion, because the Parties neither adopted nor rejected the creation of such a reserve. More information about the 2007 MOP is provided in the Report of the Nineteenth MOP, available on the docket for this action.

Chemtura and MBIP quoted the technical limitations discussed in the TSD and stated that these limitations render the final calculation invalid. The Agency does not agree that any of the acknowledged technical limitations individually, or taken together, invalidate either the proposed SCF or EPA's calculation of available pre-phaseout inventory. EPA's proposed SCF should be considered within the context of the United States' renewed commitment in paragraph six of Decision Ex.II/1, which was restated in Decision XVIII/13, to ensure that the criteria in Decision IX/6(1), which is explained above, are applied when allowing the use of methyl bromide. One of the primary ways that EPA met this commitment in previous years was to consider the aggregate quantity of existing stocks, and to reduce authorized new production levels to encourage a more rapid drawdown of existing stocks than required by the Parties. EPA's consideration of stocks in

determining the appropriate production level is partially responsible for steadily shrinking the volume of pre-phaseout inventory to less than half of its 2003 amount, and the Agency projects that aggregate stocks will represent less than a one year supply of critical use methyl bromide at the beginning of 2008. With existing inventories declining significantly, EPA asked, at what point should the Agency stop facilitating a more rapid inventory drawdown? To answer this question, and to enhance the transparency and uniformity of future CUE allocation rules, EPA proposed to estimate the level of aggregate inventory that would be necessary to respond to a scenario in which all methyl bromide production in the U.S. is abruptly halted during peak production season. The Agency did not conduct a statistical or probability analysis of the likelihood of this scenario. EPA chose this scenario because in the U.S. methyl bromide, unlike most commercial chemicals, is produced at only one facility. Therefore, a scenario in which this facility completely ceases production is of special concern. In estimating the amount of methyl bromide that would be necessary in such a scenario, EPA considered the effect of such a production failure during the peak production season. EPA chose this conservative approach partly in recognition that there could be other contingencies that might affect critical users' ability to obtain methyl bromide.

Five commenters raised examples of other events that could occur, and argued that the SCF should account for all of these contingencies happening together. EPA notes that the probability that all of these contingencies occurring together is lower than the probability that any of them will occur individually. In addition, many of the possible events described by the commenters would have an uncertain effect not easily quantified. The scenario that EPA used as a basis for the size of the proposed SCF is straightforward and allows for quantification. In general, EPA relies on private entities to take prudent steps to protect themselves against various contingencies. The inclusion of the SCF in the calculation of available stocks provides suppliers an opportunity to maintain a buffer, but is not designed to guarantee the availability of pre-phaseout inventory in all conceivable circumstances.

NRDC and Dow stated that EPA has no basis for assuming a catastrophic loss at the U.S. methyl bromide production plant, as no such event has ever occurred at this location. In addition, they found unlikely EPA's assumption of such an event happening right after the first of the year. First, EPA points out—as it did in the proposed rule—that the methyl bromide industry is unlike many others because there is only one active production facility in the United States. EPA recognizes that a catastrophic loss is unlikely, but this does not obviate the need to plan for such a scenario. While EPA expects private entities to take prudent steps to protect themselves, EPA does not wish to render them incapable of maintaining a reasonable supply buffer. In developing the TSD, the Agency estimated that significant imports could arrive in up to 15 weeks. Depending on what season the production failure occurred, EPA estimated that the lost production would be within the range of 11–51% of the 2008 demand for 2008 critical use methyl bromide. EPA proposed the conservative value, an SCF equivalent to 51% of the 2008 need for critical use methyl bromide, in part to account for a wider range of other supply disruption scenarios that could occur.

Below, EPA reiterates the technical limitations of the TSD, and explains why each limitation does not render the final estimate invalid, as a number of the commenters contended.

The TSD stated that, "pre-2005 inventory is held by multiple companies, and the sale of that inventory is governed by market forces. Hence, in the event of a production failure, the stockpile could be purchased by any user (i.e., critical use/non-critical use, quarantine and preshipment, feedstock, or foreign users). Most likely, the stockpile would go to the user willing to pay the highest price in time of short-term global shortage. Second, there may also be existing contract agreements that must be honored. As a result, there is no guarantee that the existing pre-2005 inventory of methyl bromide will flow towards U.S. critical uses in the case of a production failure." Quarantine and preshipment (QPS) refers to the exemption from the phaseout of methyl bromide for quarantine and preshipment applications as defined in the January 2, 2003, QPS Final Rule (68 FR 238) and at 40 CFR 82.3. EPA believes that methyl bromide for QPS, feedstock, and exempted Article 5 country (developing country) uses would not have to be supplied from pre-phaseout inventory after a supply disruption, because, as explained in the proposed rule, existing regulations allow manufacturers and distributors to manage inventories of methyl bromide designated for those purposes (72 FR 48968).

There is precedent in the CUE program for allowing methyl bromide distributors to respond to market forces. In the Proposed Framework Rule, EPA explained that, "The issuance of critical stock allowances (CSAs) does not obligate holders to make these quantities available to critical uses if they choose for practical or business reasons not to sell or distribute stocks to critical uses. However, EPA believes that these firms will respond to market conditions" (69 FR 52376). Similarly, EPA's consideration of a SCF in its calculation of available stocks does not obligate suppliers to sell their stocks to critical users following a supply disruption. EPA is unable to predict exactly how stocks would be used after a disruption. All things considered, EPA does not believe that the possibility that some inventory would be consumed by non-critical users after a supply disruption should invalidate or alter the size of the proposed SCF.

The TSD also stated that, "it is not clear that a contingency plan exists amongst the various methyl bromide producers as to how to respond to a major supply disruption. Thus, the reallocation of shipping containers to import methyl bromide into the United States may not occur smoothly over the first weeks or months while the various manufacturers, shippers, and customers sort out their arrangements." Similarly, two commenters expressed concern that importing the methyl bromide necessary to meet U.S. demand would take far longer than 15 weeks due to inflexibilities in the methyl bromide shipping system. Chemtura stated that "adjusting distribution patterns to accommodate a sudden shift in worldwide demand and supply, as would occur with the loss of U.S. production, would require an extensive, ad hoc redesign of this distribution system with very little, if any, lead time."

The possibility that methyl bromide distributors have not conducted emergency response planning does not invalidate the SCF estimate described in the TSD. Methyl bromide distribution is the responsibility of the methyl bromide industry and not EPA. EPA's role is to allow producers and distributors to satisfy critical needs for methyl bromide, not to guarantee that they will do so. The Agency carefully considered physical shipping constraints that dictate how rapidly methyl bromide distribution patterns can shift, including ISO container capacity, the length and timing of shipping routes, and the volume of methyl bromide that could be shipped internationally to maintain the global distribution system following a

U.S. production failure. However, for the reasons expressed above, the TSD does not assume that distributors would need long periods of time to redesign their distribution patterns in order to respond. Furthermore, since each shipping route would take weeks to complete, the TSD assumed that industry would have ample planning time to re-route containers as necessary.

Finally, the TSD stated that, "characteristics such as the purity of the pre-2005 inventory of methyl bromide could affect users' ability to use this inventory to meet their needs for methyl bromide; however, these characteristics are not known. For example, some of the methyl bromide held in inventory intended for pre-plant uses may be pre-mixed with chloropicrin in compressed gas cylinders and therefore could not be used for post-harvest fumigation." Similarly, EPA received comments from The Industrial Fumigant Company (IFC) and MBIP that expressed concern about the availability of stocks of methyl bromide free of chloropicrin for the post-harvest sector. MBIP stated that chloropicrin is premixed in "virtually the entire" U.S. inventory of existing stocks. IFC was especially concerned about the possible need for emergency fumigation treatments, which would require pure methyl bromide.

EPA's current reporting requirements do not request information about all of the characteristics, or composition, of the existing stockpile. Just prior to publishing the proposed rule, the Agency received anecdotal information suggesting that a large percentage of the existing stockpile is mixed with chloropicrin, and therefore unsuitable for post-harvest uses. EPA has also heard conflicting reports stating that a substantial portion of the existing stockpile is pure methyl bromide. The Agency is currently considering options to obtain more information about the existing stockpile, including but not limited to, requesting information from holders of pre-phaseout inventory using information-gathering authority under section 114 of the Clean Air Act. Because the CUA amount in today's final rule is less than the production amount authorized by the Parties, EPA may consider allowing the conversion of some CSAs to CUAs in appropriate circumstances. The Agency also notes that if pre-phaseout inventory contains very small amounts of pure methyl bromide, then allowing for a larger supply buffer composed of that inventory would not remedy the commenters' concerns.

Chemtura commented that EPA needs to acknowledge methyl bromide's role as a tool in responding to catastrophic events such as a need to provide widespread re-fumigation after a natural disaster, and that methyl bromide has security as well as economic importance. EPA agrees with the commenter and acknowledges methyl bromide's role in responding to the situations described by the commenter. Methyl bromide's role in responding to such challenges as those listed by the commenter is one of the reasons EPA proposed a SCF in its analysis of available stocks, and based its estimate of the SCF on conservative assumptions.

Four commenters stated that the SCF should be a one-year supply because of the global ramifications that the supply disruption from the U.S.'s one plant could have. EPA agrees that a severe critical use methyl bromide shortage in the U.S. could have important global ramifications. That is one reason EPA considered international factors in its SCF analysis. For example, after close scrutiny, EPA estimated that foreign production capacity is capable of meeting global demands for methyl bromide. While the commenters did not provide a specific basis for why a one-year supply would be most appropriate, EPA responds to some of their other concerns below and in the Response to Comments document on the docket for this rulemaking.

Four commenters raised concerns about the ability of the Israeli plant, which could supply critical use methyl bromide to the U.S. after a domestic production failure, to divert methyl bromide to the U.S., especially in light of conflicts occurring in the Middle East. The commenters did not provide specific information about the likelihood or consequences of the Israeli supply disruption that they mentioned. The TSD required a determination about which contingencies to use as the basis for the analysis. Contingencies that were too speculative or whose effects could not be readily quantified were not included in the analysis. However, EPA adopted a conservative approach in recognition that its analysis could not address all possible contingencies. One of the commenters stated that the U.S. would not be sacrificing environmental goals by maintaining a one-year SCF because stockpiled methyl bromide that is not in use can do no harm to the environment. EPA notes that using existing methyl bromide can displace the need for new production, with corresponding environmental benefits.

MBIP and Chemtura both asserted that importing methyl bromide to meet U.S. demand would take longer than the 15 weeks EPA estimates. MBIP claimed that the current capacity of specialized ISO containers, which are used to ship methyl bromide overseas, is inadequate to maintain global distribution following a supply disruption. MBIP stated, "Assuming round trip times of 45 days for shipments from Israel to Europe and 90 days for all other trips, the current worldwide fleet of ISO containers would need to immediately grow by more than 35% to establish and maintain the global distribution system for methyl bromide within the 15-week period estimated by EPA." In their public comments Chemtura stated, "To assist the Agency further in understanding the logistical challenges raised by a shut-down of U.S. production, Chemtura is submitting, as business-confidential exhibits, two diagrams showing its estimates of the current global distribution map, and how the distribution map would change if U.S. production were suddenly disrupted."

EPA disagrees with MBIP's claim that the current fleet of ISO containers would be unable to maintain the global distribution system for methyl bromide within the 15-week period estimated by the Agency. The conclusions described in the TSD are based, in part, on a detailed analysis of the capacity of the existing ISO container fleet, and other shipping logistics. EPA could not reconcile the differences between the Agency's estimate and MBIP's estimate, because MBIP did not provide details about how it concluded that the existing fleet of containers would be inadequate.

After close analysis, EPA found a number of points of disagreement with the assumptions in Chemtura's confidential submission. In general, these disagreements are related to concerns that Chemtura raised in its public comments, which EPA addresses in this preamble. For confidentiality reasons, the Agency is unable to elaborate on how Chemtura's submission conflicts with the analysis explained in the TSD. The Agency closely analyzed Chemtura's confidential submissions and did not find a specific reason therein to revise the TSD, or the size of the proposed SCF. EPA's detailed response to Chemtura's confidential comments has been placed on a confidential section of the docket because it includes information claimed as confidential business information.

MBIP raised several concerns about the amount of time it would take for foreign methyl bromide producers—specifically Israel Chemicals Ltd. (ICL)—to ramp-up production after a U.S. production failure. MBIP stated that increasing foreign production would take longer than EPA estimated because: Methyl bromide manufacturers

typically plan production several months in advance; foreign producers may have to wait for government approval before increasing their production; and an immediate increase in methyl bromide production may not be possible due to limited storage capacity.

In the analysis underpinning the TSD, EPA built in a certain amount of time—starting when U.S. production fails—for foreign producers to make arrangements and adjustments to their production schedules before they would need to ramp-up production. EPA considered the ability of foreign producers to ramp-up production, including gaining access to raw materials and storage capacity. Foreign producers could increase production and exports to the United States without approval from the Parties to the Montreal Protocol, so long as entities holding CUA allowances are willing to expend their CUAs to import that material. MBIP did not provide specific information about how the concerns it raised should change the analysis contained in the TSD, or whether there are steps that foreign producers could take in advance as contingency measures that could alleviate these concerns. EPA responds to these comments in more detail in the Response to Comments document on the docket for this action.

MBIP noted that "significant regulatory challenges could hamper companies' ability to obtain a sufficient supply of chloropicrin for methyl bromide formulations" and that "if quantities of chloropicrin had to be exported from the U.S. to Israel, several CWC [Chemical Weapons Convention] regulatory requirements would be triggered." While it is true that the export of chloropicrin to Israel would involve certain export certificates, it is not clear that quantities of chloropicrin would need to be exported from the U.S. to Israel.

According to preliminary Form R reports from the 2006 Toxic Release Inventory (TRI), as well as past reports from 2005, methyl bromide/chloropicrin products are currently formulated at five or more facilities around the United States (EPA has placed information collected from the TRI on the docket for this action). Thus, at least for the products sold by these distributors to U.S. critical users, chloropicrin would not be required to be exported to Israel for formulation. The commenter did not provide specific information about the likelihood that the CWC, or other regulatory measures, would impede the supply of methyl bromide products to U.S. critical users, or whether advance planning could help resolve potential difficulties.

MBIP commented that the distribution system for methyl bromide in the U.S. is complex and that imports would not reach all repackaging locations in the same time period. The commenter stated that 500,000 kilograms of methyl bromide must remain in the system (a minimum of 3,231 metric tons of pre-phaseout stocks) to keep the domestic distribution system functional. EPA specifically accounted for this concern in the proposed SCF analysis. The SCF would replace lost production for 15 weeks until imports arrive. Assuming these imports are all shipped to the location where methyl bromide is currently produced in the U.S., imported methyl bromide could be expected to reach repackaging locations in the same amount of time as it would if there were no production failure. EPA recognizes that the timely distribution of pre-phaseout stocks after a domestic production failure would depend upon business decisions made by suppliers. However, the proposed SCF is large enough to give suppliers the opportunity to provide uninterrupted distribution in the analyzed scenario.

In its comments, MBIP stated: "EPA does not consider regulatory obstacles that may delay the availability of alternate supply * * * In addition, formulations of methyl bromide are regulated by EPA as pesticides under FIFRA. As such, suppliers of these products must maintain registrations with EPA. Under FIFRA, the source of methyl bromide used in the products must be identified to EPA and detailed information about the manufacturing process must be submitted. In addition, the labels for all products must bear a special number that denotes the pesticide producing establishment where the product is formulated. If production is shifted to another location, the source information, manufacturing process data, and labels for all affected products would have to be updated before the products could be imported or distributed in the U.S. For example, if the methyl bromide that is sourced from Israel is made using a different manufacturing process than those on file with EPA, U.S. registrants may need to notify EPA of the change in the formulation process that is on file or even file an amendment to that process."

Pesticide registration information is highly confidential, but critical sales data shows that imported methyl bromide is registered for some critical uses in the U.S. EPA does not obligate producers to register their products for all U.S. critical uses, but the Agency believes that firms will respond to market conditions, and undertake appropriate emergency response planning. A firm's decision about whether to register its product for critical uses is similar to business planning decisions under the established critical stock allowance policy noted above; in which EPA let firms respond to market conditions, instead of requiring them to sell methyl bromide to critical users (69 FR 52376). The Agency believes that the added transparency of the SCF approach will help companies respond to market conditions more rapidly and appropriately.

NRDC and Dow objected to the proposal to create an SCF and believe the methyl bromide in question should be used to reduce or eliminate the need for new production and import allocations for 2008. The Agency explained the reasons for proposing an SCF in the proposed rule. EPA responds to the commenters' specific concerns below and in the Response to Comments document.

NRDC stated that the SCF will be equivalent to existing stockpiles and will be easy to get and use by those with restricted use pesticide licenses. NRDC also stated that stocks will not be maintained for the purpose of the SCF—the stocks intended for the SCF that remain unallocated for CUEs can be freely used by non-critical users. The commenter is correct that this supply buffer would be composed of methyl bromide produced before the January 1, 2005, phaseout. The commenter is also correct that non-critical users are not barred from purchasing pre-phaseout methyl bromide inventory. In the Final Framework Rule, EPA explained its rationale and authority for allowing non-critical users to access pre-phaseout inventory (69 FR 76988). EPA is not revisiting that issue in this rulemaking.

The Agency does not believe that the fact that producers and distributors may sell pre-phaseout inventory to non-critical users invalidates the proposed SCF, or EPA's proposed estimation of the amount of available stocks in 2008. The commenter is speculating about what suppliers would do given the opportunity to maintain a buffer, which is something that has not yet been tested. Information on pre-phaseout inventory drawdown during 2008 will inform EPA's future CUE rulemakings.

While EPA did not propose to require that distributors keep the SCF amount as a supply buffer for critical users, Section V.D.3. of the proposed rule laid out an approach in which the Agency would stop drawing down stocks faster

than the minimum agreed by the Parties, if EPA determines that available stocks will be less than the SCF amount. By considering a SCF in its analysis of the amount of stocks that are available for critical uses, EPA is giving producers and distributors the opportunity to provide a reasonable supply buffer to satisfy critical needs.

At the public hearing for this action the California Strawberry Commission (CSC) and Ameribrom Inc. commented that the private companies that own pre-phaseout inventory have no obligation to sell it. Ameribrom commented that the SCF needs to be held by manufacturers and importers because distributors, who own a large portion of the pre-phaseout inventory, do not distribute the methyl bromide when it is needed. EPA notes that the supply of pre-phaseout inventories to critical users is based upon private business decisions that the Agency does not control and responds to these comments in more detail in the Response to Comments document available on the docket for this action.

Dow stated that the SCF should be based on what it called "the actual 2008 methyl bromide demand (4,816,514 kg) as determined by the U.S. Government and as proposed in the rule," rather than the amount approved by the Parties (5,355,946 kg). The commenter stated that an SCF calculated based upon a methyl bromide volume that exceeds the critical need for 2008 renders the SCF value and basis for the calculation nonsensical. Dow concluded that this simple recalculation would reduce overall new production in 2008 by more than 250,000 kg.

It appears that the Dow's figure for "actual methyl bromide demand" is derived by subtracting the proposed 539,432 kg carryover amount (72 FR 48969), from the critical use amount agreed to by the Parties (5,355,946 kg). As discussed in Section V.D.4. of this preamble, EPA reduces new production to account for carryover critical use material in order to prevent companies from building inventories of newly produced critical use methyl bromide. EPA reduces new production amounts to account for carryover, but in doing so the Agency is not reopening the issue of the overall amount of total critical need. EPA expects that critical users will satisfy the remainder of their critical needs by using the critical use methyl bromide that was unused in previous control periods. Therefore, the SCF is only affected by reductions to account for the feasibility of alternatives. Accordingly, for the reasons explained in Section V.D.6. of this preamble, EPA is reducing the total 2008 CUE by 27,769 kg to account for the increased uptake of sulfuryl fluoride and iodomethane in 2008. The Agency has re-calculated the SCF by applying a revised 2008 critical use demand of 5,328,177 kg. This adjustment reduces the SCF by 14,160 kg.

To clarify, EPA proposed that the SCF should represent about 51% of the total critical need in 2008. In the proposed rule, the Agency assumed that the total critical need in 2008 would be 5,355,946 kg, as agreed to by the Parties in Decision XVIII/13. Therefore, EPA proposed an SCF of 2,731,211 kg (5,355,946 kg * 50.994% = 2,731,211 kg). As explained in Section V.D.6. of this preamble, EPA now estimates that the total critical need in 2008 will be 27,769 kg less than the Parties authorized in Decision XVIII/13, because EPA is making further reductions to account for the uptake of sulfuryl fluoride for cocoa bean fumigation, and for the newly registered fumigant iodomethane. Therefore, in this final rule EPA estimates that the total critical need in 2008 will be 5,328,177 kg. Accordingly, EPA now calculates an SCF of 2,717,051 kg (5,328,177 kg * 50.944% = 2,717,051 kg).

Dow commented that the SCF is counterproductive to the phase-out of methyl bromide and offers disincentives to companies to invest in alternatives. EPA recognizes that a very large methyl bromide inventory could have the counterproductive effects that the commenter mentioned. In response to this concern, EPA has encouraged a faster draw down of the pre-phaseout inventory than the minimum agreed by the Parties. The Agency has also explained the rigorous technical review process for critical uses both domestically and internationally. Companies should be aware that as soon as technically and economically feasible methyl bromide alternatives are available for particular uses, critical use exemptions will be reduced accordingly. Because the SCF is a percentage of the current year's estimated critical need, companies should also consider that, all things being equal, the SCF will change in accordance with critical use exemption levels.

NRDC objected to the SCF because Congress and the Parties did not intend for EPA to designate stocks as "unavailable." EPA did not propose to designate any amount of pre-phaseout inventory, or any specific holdings, as "unavailable." EPA proposed to recognize the amount of existing stocks that is available. As discussed above and in the proposed rule, in paragraph 4 of Decision XVIII/13, and similar Decisions, the Parties indicated that each individual Party has discretion to recognize the amount of existing stocks that is available for critical uses. Most recently, Table D of the Annex to Decision XIX/9 explicitly indicates that for the 2009 control period the United States will reduce authorized new production levels to account for the amount of available stocks. Thus, EPA's proposed approach is consistent with the practice under the Montreal Protocol. It is also an appropriate exercise of the discretion granted by Congress under Section 604(d)(6) of the Clean Air Act.

NRDC stated that no chemical company keeps more than a two- or three-month supply of a chemical, yet the SCF is nearly a four-month supply. The commenter provided no evidence for its assertion that no chemical company keeps more than a two- to three-month supply of a chemical. Furthermore, the methyl bromide industry is unusual because there is only one production facility in the United States and in fact in the Western Hemisphere. The proposed rule estimated that the SCF for 2008 should be 2,731,211 kg, or roughly a six-month supply of critical use methyl bromide if demand were constant throughout the year.

NRDC commented that methyl bromide users can make temporary adjustments at a manageable cost in the event of a supply disruption, such as using alternatives or shifting fumigation schedules. EPA agrees that depending on when a supply disruption occurs, it is possible that a limited number of entities might be able to delay scheduled fumigations. It is also possible that some non-critical users might need to access the pre-phaseout inventory for security or other emergency purposes. We do not know whether these effects would occur or to what extent they would offset each other. Such speculation does not change the validity of EPA's estimate that 2,717,051 kg is a reasonable SCF for 2008. EPA disagrees with the commenter's assertion that critical users could readily switch to alternatives following a supply disruption. By definition, and as confirmed by several rounds of expert review, entities that qualify for critical use methyl bromide do not have access to technically and economically feasible alternatives.

In this final rule, EPA is adopting the proposed formula for calculating the amount of stocks available for critical uses in 2008, expressed as follows: $AS_{2008} = ES_{2007} - D_{2007} - SCF_{2008}$, where AS_{2008} = available stocks on January 1,

2008; ES_{2007} = existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2007; D_{2007} = estimated drawdown of existing stocks during calendar year 2007; and SCF_{2008} = a supply chain factor for 2008, the calculation of which was described in the proposed rule and in the TSD available on the public docket for this rulemaking. Using the methodology described in the proposed rule, correcting for mathematical errors explained above, and reducing 2008 critical needs by 27,769 kg to account for the uptake of sulfuryl fluoride and iodomethane explained below in Section V.D.6., EPA finds that ES_{2007} = 7,671,091 kg; D_{2007} = 3,224,351 kg; and SCF_{2008} = 2,717,051 kg. Therefore, EPA calculates that 1,729,689 kg (6.8% of baseline) of pre-phaseout methyl bromide stocks will be available for critical uses in 2008.

EPA believes 1,729,689 kg is a reasonable estimate of the amount of stocks that should be considered available for critical uses in 2008, especially given the U.S. role as one of the world's largest suppliers to meet global methyl bromide needs. EPA also believes the methodology used to make this estimate is consistent with the relevant Decisions of the Parties, including Decision IX/6, and the Clean Air Act. EPA has determined that the approach finalized in this action is the most efficient and reasonable way to balance the goals of satisfying critical needs for methyl bromide and also facilitating the transition to ozone-safe alternatives. Finally, as discussed above and in the Response to Comments document, EPA considered all of the comments received and did not find a specific reason to change its proposed refined approach for calculating the amount of available stocks.

3. Adjusting New Production and Import Amounts To Account for Available Stocks

In developing this action, EPA proposed to refine its allocation approach to account for the amount of stocks available for critical uses in 2008, and each year thereafter as appropriate and feasible. EPA proposed to allocate critical stock allowances (CSAs) in 2008 in an amount equal to the quantity of pre-phaseout inventory "available" for critical uses in 2008, as estimated by EPA using the formula described above. In the proposed rule, EPA calculated that there would be 1,715,438 kg of available inventory in 2008. Therefore, EPA proposed to allow the sale of 1,715,438 kg from existing stocks for critical uses in 2008 by allocating an equivalent number of CSAs. As in past years, EPA proposed to adjust the critical use allowance (CUA) amounts accordingly, so that the total number of CUAs and CSAs is not greater than the total critical use amount authorized by the Parties. In the proposed rule, EPA noted that to account for carryover amounts of methyl bromide, amounts for research purposes or other appropriate reasons, including updated information on alternatives, EPA may allocate a total number of CUAs and CSAs that is less than the total critical use amount authorized by the Parties for 2008. EPA also proposed a method for adjusting new production and import to account for the amount of available stocks in future years if the amount of available stocks is less than the amount of stocks the Parties authorize for critical uses for the year in question. EPA sought comments on its proposed approach for adjusting new production and import amounts to account for the amount of stocks available for critical uses.

EPA received six comments that expressed concern about the proposed level of CSAs for 2008. The commenters noted that the proposed amount of methyl bromide to come from pre-phaseout inventory is greater than the amount agreed to by the Parties in Decision XVIII/13. The proposed rule and Section V.D.1. of this preamble explain that in previous years EPA has determined that more critical use methyl bromide should come from stocks than the minimum levels agreed to by the Parties, and that EPA understands those actions to be in compliance with the Montreal Protocol, and within the Agency's authority established in Section 604(d)(6) of the Clean Air Act. Furthermore, the inclusion of a SCF in EPA's determination of the amount of available stocks should relieve some of the commenters' concerns.

MBIP commented that EPA's proposal to use pre-phaseout inventory for critical uses jeopardizes the U.S.'s ability to address a catastrophic supply disruption. The proposed rule and Section V.D.2. of this preamble explain that by including a SCF in its calculation of available stocks, EPA is allowing for the maintenance of a supply buffer that could help to satisfy critical needs in the event of an emergency, such as a major supply disruption.

The Florida Fruit and Vegetable Association (FFVA) stated that EPA should develop and make available to CUE holders a timely and accurate accounting system for use during the control period for both new production and CSAs. The commenter contended that this accounting system would be important as stockpiles decrease and would allow the Agency flexibility to shift from CSAs to new production during the control period if necessary. The commenter stated that without this flexibility the Agency should authorize the total quantity approved for the 2008 control period as new production with the understanding that the portion of material not used as a result of the use of pre-phaseout stocks during 2008 would be deducted from future authorizations. If EPA understands correctly, the commenter is concerned that at some point existing stocks will not be able to satisfy all of the CSAs issued by EPA for a given control period, and that if this happens during a control period, EPA should convert CSAs to CUAs. The Agency believes that the proposed approach for determining CUA and CSA amounts, which accounts for the amount of available stocks, is a major step towards decreasing the probability that EPA would issue more CSAs than existing stocks are able to satisfy in a given control period. Currently, EPA collects annual data about critical sales of new production and pre-phaseout inventory. EPA agrees with the commenter that collecting this data more often, quarterly for example, could have certain benefits related to monitoring pre-phaseout inventory information. As the commenter stated, more timely data could help EPA determine more rapidly if it would be appropriate to allow the conversion of some CSAs to CUAs. However, by increasing the frequency of reporting, the commenter's proposal would impose a substantial administrative burden upon the regulated community, especially upon small distributors. Considering the approach that EPA is finalizing in this rule, which should decrease the likelihood of impractically large CSA allocations, the Agency does not believe the benefits of the commenter's proposal would justify the additional costs it would impose.

In this rule, EPA is adopting the proposed approach for adjusting allowable new production and import levels to account for the amount of available stocks. As discussed above, this approach is consistent with the relevant Decisions of the Parties, especially Table D of the Annex to Decision XIX/9, which for 2009 explicitly authorizes for the United States a certain amount of new production and import "minus available stocks." After considering all of the comments received, EPA believes that

this is the most reasonable, efficient, and transparent way for the Agency to continue to facilitate responsible management of pre-phaseout inventory. Therefore, with this action the Agency is allowing 1,729,689 kg of methyl bromide to be supplied from pre-phaseout inventory for critical uses in 2008 by issuing an equivalent number of CSAs, and adjusting the amount of CUAs accordingly.

To clarify, the critical use amounts authorized by the Parties in Decision XVIII/13 for 2008 total 5,355,946 kg. However, the maximum amount of authorized new production or import as set forth in Table D of the Annex to Decision XVIII/13 is 4,595,040 kg. This means that while the Parties require only 760,906 kg of stockpile consumption if the entire U.S. allotment is utilized, EPA is allowing 1,729,689 kg of 2008 critical use needs to be met from pre-phaseout inventory. Thus, to account for the amount of available stocks, EPA is allocating 968,783 kg of extra pre-phaseout inventory consumption for critical uses in 2008. As in past years, EPA proposed to adjust the amount of CUAs accordingly, so that the sum of CUAs and CSAs is not greater than the total amount authorized by the Parties. After accounting for the additional reductions discussed below for unused critical use methyl bromide at the end of 2006, increased uptake of sulfuryl fluoride for post-harvest cocoa bean fumigation in 2008, transition to the recently registered fumigant iodomethane, and reductions to encourage research amounts to be supplied from pre-phaseout inventory, EPA is allowing 3,083,763 kg of new production and import for critical uses in 2008.

In developing this action, EPA proposed to adjust new production and import to account for the amount of available stocks in future years if the amount of available stocks is less than the amount of stocks the Parties authorize for critical uses for the year in question (72 FR 48969). EPA did not receive any comments on how it proposed to account for available stocks if the amount of available stocks is less than the amount of stocks the Parties authorize for critical uses for the year in question. If that scenario arises, EPA may adopt the approach it described in the proposed rule after a notice and comment rulemaking process. EPA estimates that there will be sufficient pre-phaseout inventory at the beginning of the 2009 control period to satisfy the amount of 2009 inventory drawdown (300,000 kg) for critical uses authorized by the Parties in Decision XIX/19.

4. Treatment of Carryover Material

As described in the December 23, 2004, Framework Rule (69 FR 76997), EPA is not permitting entities to build stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. Under current regulations, quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a calendar year must be reported to EPA the following year. These reporting requirements appear at §§ 82.13(f)(3), 82.13(g)(4), 82.13(h)(1), 82.13(bb)(2), and 82.13(cc)(2). EPA uses the reported information to calculate the amount of methyl bromide that was produced or imported under the critical use exemption, but not exported or sold to end-users in that year. An amount equivalent to this "carryover," whether pre-plant or post-harvest, is then deducted from the total level of allowable new production and import in the year following the year of the data report. For example, the amount of carryover from 2005, which was reported in 2006, was deducted from the allowable amount of production or import for critical uses in 2007. In developing this action, EPA proposed to treat carryover the same way for 2008.

As discussed in Section V.D.2., carryover critical use material is not included in EPA's definition of existing stocks as it applies to the proposed formula for determining the amount of available stocks. EPA is not including carryover amounts as part of existing stocks, because doing so could lead to a double-counting of carryover amounts, and thus a double reduction of CUAs. The definition of existing stocks specifically refers to pre-phaseout inventory, not material produced or imported under the critical use exemption.

In developing this action, EPA explained that in February 2007 the Agency, received reports about critical use methyl bromide production, imports, exports, sales and/or inventory holdings in 2006 under the requirements at 40 CFR 82.13. The information reported to EPA indicated that 6,923,926 kg of critical use methyl bromide was acquired through production or import in 2006, and 6,384,493 kg of critical use methyl bromide was exported or sold to end-users in 2006. EPA proposed to calculate the amount of carryover at the end of 2006 with the method used in column L of the U.S. Accounting Framework for critical uses of methyl bromide. The Agency calculated that the carryover amount at the end of 2006 was 539,433 kg, which was the difference between the reported amount of critical use methyl bromide acquired (*i.e.* produced or imported) in 2006 and the reported amount used (*i.e.* sold to end users in 2006) (6,923,926 kg − 6,384,493 kg = 539,433 kg). On March 16, 2007, in the 2006 U.S. Accounting Framework for critical uses of methyl bromide, which is available on the docket for this action, the Agency officially reported 539 metric tons of carryover from 2006 to the UNEP Ozone Secretariat.

In the proposed rule, EPA brought attention to a petition submitted by Chemtura that proposed changes to: (1) The Agency's established method for calculating carryover; (2) the distribution of subsequent CUA reductions; and (3) the existing recordkeeping and reporting requirements. The Agency made Chemtura's petition available on the public docket, and specifically sought detailed comments on Chemtura's proposals. EPA asked that comments suggesting alternative methods for calculating the amount of carryover material at the end of each year be detailed and comprehensive; address what changes would be needed to the reporting requirements; and discuss the degree of administrative burden that alternative methods might impose. The Agency also sought comment on ways to improve the completeness of data reporting by affected companies. EPA emphasized that the process for calculating the amount of carryover CUE material each year relies on data regarding sales to end users as reported to EPA by distributors and applicators. The Agency specifically requested comment on whether requiring producers, importers, and distributors to report the names of distributors and third-party applicators to which they have sold critical-use methyl bromide would result in more complete reporting, and whether this would justify the additional burden of such requirements.

Chemtura's petition asserted that "EPA must adjust its methodology for calculating carry over." EPA disagrees for two fundamental reasons: the Agency's established methodology is a simple and accurate way to calculate the carryover amount each year; and adjusting the established method could create international confusion about U.S. reporting, which could jeopardize international authorizations of new production to satisfy the critical needs of U.S. agriculture. EPA expands on these points below.

Six commenters supported Chemtura's request that EPA revise its carryover calculation procedures to consider a broader range of information

sources when determining the carryover amount from a given control period. The commenters suggested that EPA calculate the carryover as the sum of all critical use methyl bromide that companies report as being held in inventory. In its comments, Chemtura recognizes that this approach would not fully address the problem of incomplete reporting, and suggests that a conservative margin for error could be achieved by calculating the average carryover for all reported sales and applying the average to any remaining unreported volume. If EPA understands correctly, the commenters are requesting an "inventory approach" to calculate the carryover amount, in which EPA would calculate carryover as the sum of critical use methyl bromide inventory reported in section 2.6 of the annual Sales of Critical Use Methyl Bromide to End Users Reports ("sales reports"), a sample of which is posted on the docket for this rulemaking. EPA understands that the commenter believes the inventory method would result in a lower carryover amount and would be more accurate. However, EPA does not believe the inventory method would be as accurate as the established "sales method" that the Agency uses to report carryover amounts internationally.

For 2006, the inventory method would rely on data reported in section 2.6 of the annual sales report forms. In collaboration with major methyl bromide producers and distributors, the reporting forms were updated and posted on EPA's Web site in 2006. EPA posted instructional materials online with the updated forms, and held compliance assistance meetings to teach stakeholders how to use the new forms, including a session at the Methyl Bromide Alternatives Outreach (MBAO) conference in Orlando in November 2006 and a similar session at the MBAO conference in San Diego in October 2007. If the sales reports are completely and accurately filled out, section 2.6 is calculated with information from sections 2.4A, 2.4B, 2.2, and 2.5. For companies that hold critical use methyl bromide for other companies, the information reported in section 2.7 is an important cross-check of the information reported in section 2.6. However, EPA reviewed the data in sections 2.4 through 2.7 of the 2006 sales reports, and found several instances of blank, incomplete or apparently misreported information in those sections. EPA made efforts to contact distributors that filed reports with significant inconsistencies, and many of the reports were subsequently corrected. However, some of the data points remain blank or questionable. On the other hand, there were far fewer instances of blank or apparent misreporting in section 2.2 of the sales report, which lists sales to end users by critical use sector. Most importantly, all instances of blank or apparently misreported sales in section 2.2 were corrected after EPA staff contacted the corresponding reporting entities. Given EPA's concerns about the data in sections 2.4 through 2.7 and the Agency's reservations about changing the carryover calculation method, EPA has decided to retain the proposed approach in this final rule.

Six commenters asserted that the critical use material calculated as carryover for 2006 is actually unaccounted sales rather than inventory held at the end of the year, and contend that EPA has evidence that this is the case. As discussed further below, the commenters claimed to have evidence that 2006 sales remain unreported, but did not produce official sales reports to support their claim.

MBIP stated that EPA should have been aware of underreporting of critical use sales and that EPA's data set for calculating the carryover set was deficient. MBIP claimed that information it received in response to its Freedom of Information Action (FOIA) request of May 2007 clearly showed that some companies filed reports in 2005 and not in 2006. Nonetheless, MBIP contended, EPA had mistakenly assumed that 100 percent of the unreported sales of critical use methyl bromide are held in inventory. In response, EPA points out that it made every reasonable effort to contact entities that reported in 2005 and not 2006. Although EPA contacted these entities, some of them still have not reported 2006 sales for critical uses. Whether every entity that sold critical use methyl bromide in 2005 did so in 2006 remains an open question. EPA has made it clear to MBIP that it would consider late submissions of official sales reports from 2006, but MBIP has been unable to produce suitable evidence of the unreported sales that they insist took place during 2006. With this final rule EPA is making a final determination of the 2006 carryover amount.

At the public hearing for this action, Ameribrom Inc. said that 80 percent of the 539 metric tons (MT) that EPA calculated as carryover is actually methyl bromide that was sold to critical users but not reported. The commenter also said that many small distributors do not understand the reporting requirements, and some are incapable of complying with them. The commenter did not provide specific, verifiable information to support the claim that 80 percent of the carryover is actually unreported sales. Therefore, EPA will not change its proposed approach as a result of Ameribrom's claims. The Agency is concerned with Ameribrom's statement that some small distributors did not file required reports. EPA continues to educate stakeholders about critical use exemption reporting requirements through outreach programs. For example, EPA posts instructional material on its Web site, holds informational sessions about reporting at the annual Methyl Bromide Alternatives Outreach Conference, and provides staff contacts to assist with reporting requirements. Most recently, EPA provided a letter template to members of MBIP, including Ameribrom, that explains the importance of full reporting, provides information about how to acquire official reporting forms, and a contact person to answer questions. EPA encouraged MBIP's members to customize the letter and send it to all of their customers.

MBIP stated that an independent auditor found that approximately 20 methyl bromide suppliers failed to provide EPA with sales reports, which accounted for approximately 80 percent of the calculated carryover. However, MBIP did not provide the names of these suppliers, so EPA could not confirm the veracity of MBIP's claim. Thus, as EPA explains above, the Agency is unwilling to revise its methodology for determining the previously calculated 2006 carryover amount, which was reported internationally on March 16, 2007. EPA has taken a number of steps to work with MBIP and other stakeholders to encourage full reporting. Full reporting is in everyone's interest, and the Agency will continue to work with industry in outreach and educational programs toward that end.

Chemtura asserted that many of the companies that routinely filed required reports were the entities most likely to be holding critical use methyl bromide inventory—manufacturers and distributors, and that that EPA's contention that "carryover increased while allocations and stocks have plummeted" is not credible. Similarly, EPA MBIP commented that it performed an audit that revealed that non-reporting entities were mostly smaller entities that were unlikely to hold any inventory. Six commenters requested that EPA rigorously enforce compliance with the supplier reporting requirements at 40 CFR 82.13. EPA received comments from Chemtura and MBIP that stated

that the proposed rule's explanation of how the carryover is calculated is the first such explanation given by EPA in any CUE rule promulgated to date. MBIP stated that this was their first opportunity to comment on EPA's method of calculation. EPA received a comment from Chemtura that expressed the view that EPA lacks authority to reduce the 2008 CUE amount based on carryover from a previous year. EPA responds to all of these comments in the Response to Comment document available on the docket for this action.

In this final rule, EPA is not adjusting the established methodology for calculating the amount of carryover critical use methyl bromide, because doing so could create international confusion about U.S. reporting, which could jeopardize international authorizations of new production to satisfy the critical needs of U.S. agriculture. The United States has important commitments to report information about methyl bromide for critical uses. In December 2004 the Parties agreed to Decision XVI/6, which adopted an accounting framework for critical uses of methyl bromide. Each Party with critical needs submits an accounting framework annually. The U.S. submitted its first Accounting Framework for 2005 critical uses on May 19, 2006. The U.S. subsequently revised the accounting framework agreed to by the Parties slightly because the amount of pre-phaseout inventory was being treated as confidential.

For 2005 and 2006, EPA calculated the carryover amount using the method described in the proposed rule, and reported the result internationally in the U.S. Accounting Framework for critical uses of methyl bromide. The Parties expect EPA to reduce new production, when appropriate, by the amount of carryover CUE material. A post-hoc revision of the methodology for the U.S. Accounting Framework could create international confusion, and, as discussed in this preamble, there is not a compelling reason to change EPA's method at this time. Therefore, EPA has determined that any revision of the previously reported 2006 carryover amount must be based upon new data, not a new method for manipulating old data.

In this final rule, EPA is continuing its practice of not permitting entities to build stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. In the proposed rule, EPA explained that the Agency received official sales reports under the requirements at 40 CFR 82.13 showing that 6,923,926 kg of critical use methyl bromide was acquired through production or import in 2006. The proposed rule stated that the information reported to EPA also indicated that 6,384,493 kg of critical use methyl bromide was sold to end-users in 2006. EPA calculated that the carryover amount at the end of 2006 was 539,433 kg, which is the difference between the amount acquired and the amount sold, and proposed to reduce 2008 CUA allocations accordingly. However, EPA received five official 2006 sales reports after the submission deadline, which was 45 days after December 31, 2006. The late sales reports were not counted in the proposed rule, or the 2006 U.S. Accounting Framework. These late reports show that an additional 40,199 kg of critical use methyl bromide was sold to end users in 2006. As a result, EPA's official records now show that 6,424,692 kg of methyl bromide was sold to end users in 2006. Therefore, in accordance with EPA's proposed method for calculating carryover amounts, EPA calculates that the 2006 carryover amount was 499,234 kg of critical use methyl bromide. This amount was calculated as follows: 6,923,926 kg—6,424,692 kg = 499,234 kg. To account for carryover of critical use methyl bromide, EPA is reducing the level of new production and import for critical uses by 499,234 kg.

a. Reporting Requirements To Calculate Carryover Amounts

In developing this action, EPA specifically requested comment on whether requiring producers, importers, and distributors to report the names of distributors and third-party applicators to which they have sold critical-use methyl bromide would provide valuable information to EPA, and encourage complete reporting of sales to end-user data. EPA sought comment on whether this would justify the additional burden of such requirements (72 FR 48970).

EPA received six comments that supported a petition submitted by Chemtura to augment the current reporting and recordkeeping process to prevent underreporting of methyl bromide use. The commenters proposed that EPA modify its reporting system in a manner that would allow the Agency to identify non-reporting companies and the amount of critical use sales attributable to each company. EPA could achieve this, the commenters asserted, by requiring each entity in the supply chain—from the manufacturer to the company that sells to the end user—to report the name of the entity that purchased the critical use methyl bromide and how much material it purchased.

EPA does not agree that it should require information that would allow the Agency to quantify the amount of critical use sales attributable to each non-reporting company. Instead of imposing additional burden on entities that do report in order to obtain information about non-reporters, a more straightforward and practical approach is to encourage full reporting. EPA, though, believes it would be beneficial to acquire the names of all distributors and third-party applicators with critical use exemption reporting requirements under 40 CFR 82.13. Collecting the names of these entities will facilitate Agency follow-up with non-reporters, allowing collection of necessary information in a more targeted manner than collecting detailed information from all entities. In early 2008 EPA will use its information gathering authority under section 114 of the Clean Air Act to ask all entities that sell critical use methyl bromide to report the names of all non-end user entities (i.e. producers, importers, distributors and third-party applicators) to which they sold critical use methyl bromide during the 2007 control period.

Chemtura commented that EPA's reliance on full and accurate reporting by the regulated community is unreasonable, because the existing reporting system does not provide EPA with any way to verify whether all entities that should file reports have done so. NRDC commented that EPA should require producers, importers, distributors and third-party applicators to report the names of distributors and third-party applicators to which they have sold any methyl bromide, including pre-2005 stocks, in order to get accurate data to track amounts sold for all purposes (including non-critical uses). The commenter stated that the costs of such reporting would be minimal and would be justified by the benefits of better tracking of CAA and Protocol compliance. EPA responds to these comments in the Response to Comment document available on the docket for this action.

b. Apportionment of Carryover Reductions Among Producers

In previous CUE rules, EPA used the approach described in the Framework Rule for applying reductions in CUA amounts equal to the amount of carryover CUE material from a previous year. EPA's practice to date has been to apply this reduction to the total volumes of allowable new production or import, and then to pro-rate CUA allocations to each company based on its 1991 baseline market share. In

developing this action, EPA proposed to use the same approach for 2008.

In the proposed rule, EPA explained that Chemtura's petition recommended alternative methods for apportioning carryover reductions among CUA holders. EPA encouraged interested parties to comment on the recommendations in Chemtura's petition and provide any additional suggestions regarding the apportionment of carryover among companies.

Chemtura's petition requested that EPA apportion carryover amounts proportional to the producers' responsibility for the carryover originating in their own supply chain. The petition further stated that EPA's process for apportioning carryover reductions among producers is arbitrary, capricious, unfair, and perpetuates poor stewardship. In its comments Chemtura acknowledged that EPA does not currently collect information that would allow the Agency to reduce CUAs on the basis of carryover originating in each producer's supply chain. As discussed below in more detail, EPA believes that acquiring credible data of this nature would impose extra burden on the regulated community without producing any discernible environmental benefit. The extra reporting that Chemtura proposed could redistribute the proportional allocation of CUAs among producers, but it would not affect the overall amount of critical use methyl bromide available to critical users, and therefore, would not help EPA achieve the primary goal of the critical use exemption program: to satisfy critical needs for methyl bromide. A better solution that does not impose extra burden on the regulated community is to continue to strengthen outreach and educational programs that facilitate full reporting under existing requirements.

Chemtura commented that CUE reductions to account for carryover are distributed among the four methyl bromide producers based on a proportional basis according to their 1991 consumption baselines. The commenter stated that an equal allocation of the carryover would be fairer and that using the 1991 data is now inconsistent with the available supply chain information and would maximize future distortions in the critical use market. EPA notes that Chemtura has not objected to EPA's framework for distributing CUAs to producers based on their 1991 market share, under which Chemtura receives over 60 percent of the new production allowances each year. The Proposed Framework Rule stated that, "Allocating CUAs based on each company's 1991 baseline allowances (on a pro-rata basis) is a better reflection of market share than simply dividing the number of allowances by the total number of entities, and would be less burdensome than conducting a detailed historical market share analysis on a [sic] an annual basis. Using the 1991 historic baseline method for distributing CUAs is consistent with how EPA has allocated methyl bromide production and consumption allowances for the past decade under the methyl bromide phaseout" (69 FR 52376). EPA believes the arguments in the Proposed Framework Rule still apply. Using the 1991 market shares, which have become the company-specific baselines for CUA allocations, provides the best available estimation of how much carryover is attributable to each company's supply chain. A more detailed method of estimation would involve additional burden for respondents.

Chemtura's petition recommended a "fault-based" system for allocating CUA reductions to account for carryover amounts. Chemtura stated that in order to support the fault-based carryover allocation process, EPA could modify the reporting requirements established at 40 CFR 82.13 to require that importers, producers, distributors, and third-party applicators list the producer of any critical use methyl bromide they acquired during the year. In its comments, Chemtura asserted that, "Identifying the producer of origin for any given sale or distributor should be a simple task, as each of the four producers supplies downstream customers with methyl bromide products under different pesticide registrations, labels, and product names. Thus, regardless of how many intermediary distributors a methyl bromide product may have passed through before reaching the end user, that entity can identify the producer by a review of the label or sales invoice."

Whether or not producer of origin reporting would be a "simple task," it would add to the regulatory burden currently borne by entities in the distribution chain. Preliminary estimates, using as a guideline EPA's previous estimates under Paperwork Reduction Act (PRA) requirements, a guideline, suggest that the burden imposed by producer of origin reporting could require 150 respondent hours per year, depending on how much EPA follow-up is necessary to perform standard data quality assurance procedures. EPA does not believe the "fault-based" system, or the extra reporting burden it requires, would provide any discernible environmental benefit, or help to satisfy critical needs for methyl bromide. Therefore, while the Agency may continue to analyze Chemtura's proposed reporting additions as part of the renewal process for its information collection request (ICR) under PRA, in this final rule the Agency is not implementing Chemtura's "fault-based" system or the additional reporting that it would require.

Chemtura's petition asserted that, "The opt-out system proposed [in the petition] provides an appropriate method for apportioning carryover penalties." Chemtura's proposed "opt-out" system would allow producers to voluntarily submit supply chain data in exchange for EPA's removal of the individual producer from the "default penalty pool." In its comments on the proposed rule, Chemtura asserted that Ameribrom had acknowledged responsibility for the majority of the 2008 carryover. Chemtura also commented that "EPA has received ample notice of the flaws in the framework." Chemtura further commented that any material that stays in the distribution system past the end of a control period should be considered part of the SCF rather than carryover, and that no carryover should be subtracted from CUEs in 2008 and beyond. EPA responds to these comments in the Response to Comment document available on the docket for this rulemaking.

In this action, EPA is reducing the total level of new production and import—i.e., the total number of CUAs issued—for 2008 by 499,234 kg to reflect the total level of carryover material available at the end of 2006. EPA will continue to consider the level of available stocks, and may consider adjusting carryover policies, through a notice and comment rulemaking process, if available stocks become very scarce. However, considering the current amount of available pre-phaseout inventory, in this action it is best to maintain the existing framework for responding to carryover.

5. Amounts for Research Purposes

Decision XVII/9(7) "request[ed] Parties to endeavor to use stocks, where available, to meet any demand for methyl bromide for the purposes of research and development." Consistent with that Decision, in the 2007 CUE Rule, EPA reduced the amount of new production and import by 21,702 kilograms, which was the amount needed for research, and encouraged methyl bromide suppliers to sell inventory to researchers and encouraged researchers to purchase inventory.

Decision XVIII/15(1) authorized "the production and consumption of [methyl bromide] necessary to satisfy laboratory and analytical critical uses." Paragraph 2 of that decision stated that methyl bromide produced under the exemption for laboratory and analytical uses may be used as a reference or standard; in laboratory toxicology studies; to compare the efficacy of methyl bromide and its alternatives inside a laboratory; and as a laboratory agent which is destroyed in a chemical reaction in the manner of feedstock. In a separate notice-and-comment rulemaking titled the "Global Essential Laboratory and Analytical Use Exemption," EPA is implementing the exemption authorized in Decision XVIII/15 (72 FR 52332). More information about that rulemaking process is available on the docket for that rule (EPA–HQ–OAR–2007–0384).

In the proposed CUE rule for 2008, EPA stated that there continues to be a need for methyl bromide for research purposes that do not meet the criteria for laboratory and analytical uses, as defined in Decision XVIII/15. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. In the proposed rule, EPA listed the critical use sectors that were approved by the Parties to use methyl bromide for research purposes in 2008 in Section V.C. and with the phrase "research purposes" listed in their limiting critical conditions in Table I of this preamble.

In developing this action, EPA proposed to allow sale of 15,491 kg of existing stocks for research purposes in 2008 to account for the amount authorized for those purposes. EPA proposed to allow the sale of methyl bromide from stocks for exempted research purposes by expending CSAs. An explanation of what amounts of methyl bromide and of what sectors qualify for research purposes can be found in Section V.C. of this preamble. The Agency proposed to continue to encourage methyl bromide suppliers to sell pre-phaseout inventory to researchers and to encourage researchers to purchase pre-phaseout inventory for research purposes. EPA sought comment on its proposal to issue CSAs for sale of pre-phaseout methyl bromide for exempted research purposes.

MBIP objected to EPA's proposal to issue CSAs for sale of pre-phaseout inventory for exempted research purposes. The commenter stated that existing stocks of pre-2005 inventory are too low to warrant further drawdown for research purposes and that new production should be increased by 15,491 kilograms to account for research needs. The Agency disagrees, and proposed a detailed analysis of the amount of available stocks, explained further in Section V.D.2. of this preamble, which found more than 1,700,000 kg of pre-phaseout inventory available for critical uses. Therefore, EPA is reducing new production by 15,491 kg, and encouraging researchers to procure methyl bromide from pre-phaseout inventory.

6. Methyl Bromide Alternatives

In the 2006 CUE Rule (71 FR 5985), EPA allocated less methyl bromide for critical uses than was authorized by the Parties in order to account for the recent Federal registration of sulfuryl fluoride. The allocation reductions in that rule reflected transition rates that were included for the first time in the 2007 U.S. CUN. In the 2007 CUE Rule, EPA explained why a similar reduction was made in that rule: "The report of the Methyl Bromide Technical Options Committee (MBTOC) indicated that the MBTOC did not make any reductions in these [post-harvest] use categories for the uptake of sulfuryl fluoride in 2007 because the United States Government indicated that it would do so in its domestic allocation procedures. Therefore, EPA is reducing the total volume of critical use methyl bromide by 53,703 kilograms to reflect the continuing transition to sulfuryl fluoride" (75 FR 75390).

In developing today's action, EPA referenced preliminary results of a study by Dr. Brian D. Adam of Oklahoma State University, which the Agency is making available on the public docket for this rulemaking. The proposed rule stated that Dr. Adam's study indicates that the cost of post-harvest cocoa fumigation with sulfuryl fluoride is not substantially greater than the cost of using methyl bromide for that fumigation. The proposed rule explained that in response to the study results, the National Pest Management Association (NPMA) withdrew its nomination request for critical use methyl bromide for 2009 cocoa fumigations, and informed EPA that it does not intend to seek critical use methyl bromide for 2010 cocoa fumigations. EPA reiterated NPMA's stated need for some critical use methyl bromide for cocoa in 2008 as the sector transitions to sulfuryl fluoride, and explained the situation further. EPA sought comment on how much of the 53,188 kg of critical use methyl bromide approved by the Parties for cocoa for 2008 should be allowed by the Agency. EPA asked that comments on this topic recommend specific amounts of critical use methyl bromide for cocoa in 2008, and provide detailed justifications for their recommendations.

EPA received a comment from NPMA that recognized that the Oklahoma State University study showed that the cost of using sulfuryl fluoride to treat post-harvest cocoa was not substantially greater than the cost of using methyl bromide. However, NPMA's comment stated that smaller companies in the industry needed time to transition to sulfuryl fluoride. This transition includes the completion of a manufacturer's stewardship program as well as customer education about non-methyl bromide treatment. Additionally, while most states in which cocoa is processed have a special 24(C) label to allow for higher Concentration and Time (CT) dosage allocations for use of sulfuryl fluoride on cocoa, New York has not approved this label. Therefore, NPMA requested that at least 75 percent of the 53,188 kg of critical use methyl bromide approved by the Parties be allocated for 2008. NPMA stated that its application for 2009 had been withdrawn, as the transition to sulfuryl fluoride should be complete by that time.

In their 2008 CUE application, NPMA requested 79,950 kg for 2008 critical uses. In developing the 2008 critical use nomination, the USG reduced NPMA's original request to account for growth, because EPA's framework does not allow critical users to increase their critical need based on expansion of their operations (FR 69 76996). USG also reduced NPMA's request to account for a reduction in the use rate of methyl bromide from 24 kg/1,000 m^3 to 20 kg/1,000 m^3. USG made a further reduction to account for a transition rate of 16.8% per year to sulfuryl fluoride. After accounting for these factors, USG nominated a total of 53,255 kg for cocoa bean fumigation in 2008, and the Parties approved 53,188 kg in Decision XVIII/13. In light of new information about the economic feasibility of sulfuryl fluoride for post-harvest cocoa fumigation, in this action EPA is approving less critical use methyl bromide for cocoa fumigation than the Parties authorized.

The Agency appreciates that NPMA voluntarily came forward and agreed to a more rapid transition to methyl bromide alternatives for cocoa fumigation. With this final rule, EPA is approving 39,891 kg of critical use methyl bromide for this sector, or 75 percent of the amount agreed to by the Parties in Dec. XVIII/13. Therefore, EPA is reducing the total amount authorized for 2008 critical uses by 13,297 kg to account for increased

uptake of sulfuryl fluoride for cocoa fumigation.

NRDC stated that EPA recently approved the use of iodomethane (methyl iodide) for field uses, which will reduce the need for methyl bromide CUE allocations. The commenter stated that iodomethane is a drop-in substitute for methyl bromide and that while it is more costly per kilogram, less of it is require to achieve the same efficacy. The commenter also stated that while iodomethane poses direct toxicity issues, the toxicity issues associated with methyl bromide are worse.

Chemtura requested that EPA assess the technical and economic feasibility of iodomethane for no fewer than two years before factoring its availability into future CUE decisions. The commenter stated that the controversial nature of the registration combined with the proximity of the registration to the close of the comment period on the CUE rule provided reason to delay considering this alternative when allocating CUEs. The commenter also noted that iodomethane was not yet registered in California because of safety questions and that there was anecdotal evidence of efficacy problems with the chemical. The commenter stated that at least two growing seasons are necessary to review and assess viability.

In the proposed rule EPA sought "information regarding changes to the registration or use of alternatives that may have transpired after the 2008 U.S. nomination was written." The Agency stated that, "Such information has the potential to alter * * *. EPA's determination as to which uses and what amounts of methyl bromide qualify for the critical use exemption." In this final rule, EPA is following through with that statement, and reducing pre-plant critical use amounts to account for new information about the uptake of iodomethane.

After considering new information about iodomethane, EPA estimates that in 2008 iodomethane will be a technically and economically feasible alternative for a limited amount of pre-plant applications. Iodomethane has been registered at the federal level for the period of October 1, 2007 to October 1, 2008 for the following crops: Strawberry, Pepper, Tomato, Ornamentals, Nurseries, Trees and Vines. The pesticide registration process in the U.S. involves multiple layers of regulatory review, and State registrations are required before a pesticide can be applied. As of December 11, 2007, the last day that EPA could reasonably consider information for this rulemaking, iodomethane had been registered in the following states that are included in Column B of Table I as locations that qualify to use pre-plant critical use methyl bromide for certain uses in 2008: Georgia, Michigan, Missouri, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee and Virginia. Therefore, EPA expects that iodomethane will be a legal fumigant option in 2008 for some growers that qualify for critical use methyl bromide.

To estimate the amount of iodomethane that will be a technically and economically feasible methyl bromide alternative in 2008, EPA considered a number of factors. The Agency considered that iodomethane is currently registered for 10 of 12 months during 2008, that iodomethane is expected to cost more than methyl bromide, and that there are restrictions on the use of iodomethane such as the imposition of buffers, that do not apply to methyl bromide use. The Agency's analysis, described in a memo on the docket for this action, estimates that iodomethane can feasibly replace 14,472 kg of methyl bromide in 2008. Therefore, in this action EPA is reducing the total amount of pre-plant critical use methyl bromide in 2008 by 14,472 kg to account for the uptake of iodomethane in 2008.

Besides the issues regarding post-harvest cocoa fumigation, and the newly registered pre-plant fumigant iodomethane, EPA is not making any additional reductions in critical use allowances to account for the uptake of alternatives. In developing this action, the Agency explained that in the 2008 CUN that USG applied transition rates for all critical use sectors. The MBTOC report of September 2006 included reductions in its recommendations for critical use categories based on the transition rates in the 2008 CUN. MBTOC's recommendations were then considered in the Parties' 2008 authorization amounts, as listed in Decision XVIII/13. Therefore, EPA explained that transition rates, which account for the uptake of alternatives, have already been applied for authorized 2008 critical use amounts. Furthermore, the Agency stated that the 2009 CUN, which represented the most recent analysis and the best available data for methyl bromide alternatives, did not conclude that transition rates should be increased for 2008. In developing this action, EPA sought comment on its proposal not to make further reductions in 2008 to account for the uptake of methyl bromide alternatives.

FSS stated that post harvest application requests by NPMA, Pet Food Institute, and Rice Millers are for applications for which methyl bromide is not necessary. FSS and Dow stated that methyl bromide allocations for these applications should therefore be significantly reduced or eliminated. Dow stated that nearly half of the 220 flour mills in the U.S. are fumigated with sulfuryl fluoride. Dow also stated that the transition rates for alternatives used by EPA may apply to farm applications, but Dow claimed these transition rates are too low for structural applications. Additionally, Dow and FSS asserted that sulfuryl fluoride has proved successful even after multiple applications with no return to methyl bromide, and that fumigation failures can happen with all materials, including methyl bromide. The Agency responds to these comments in a separate Response to Comments document available on the docket for this action.

MBIP noted that some fumigation companies need more time to transition to sulfuryl fluoride, including the purchase of new equipment and training in its use. Specifically, MBIP argued that allowing CUEs for cocoa in 2008 would enable a smoother transition to sulfuryl fluoride and would help to guarantee methyl bromide availability to guard against unforeseen problems with the transition.

EPA received extensive comments from Dow objecting to EPA's assessment of the label restriction on 1,3-D product use near karst topographical features in Florida. EPA responds to these comments in detail in the Response to Comments document available on the docket for this action.

As discussed above, in this action, EPA is reducing the proposed critical use amount for post-harvest cocoa fumigation by 13,297 kg. EPA is also reducing the proposed critical use amount for pre-plant fumigation by 14,472 kg to account for new information about the fumigant iodomethane. EPA is not reducing any of the other proposed critical use amounts for 2008 to account for the transition to alternatives, because uptake of alternatives was already considered in the 2008 U.S. CUN, adopted by MBTOC, and reflected in the 2008 CUE authorization amounts that EPA is finalizing with this action. The most recent information that EPA received does not support further reductions.

E. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 6 of Decision XVIII/13 requested Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the

2008 control period. A discussion of the Agency's application of the criteria in paragraph one of Decision IX/6 appears in sections V.A., V.C., V.D., and V.G. of this preamble. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which referred to the use of available stocks of methyl bromide, is addressed in sections V.D., V.F., and V.G. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled "*Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America*" for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and in paragraph 6 for Parties that submit critical use nominations to include information on the methodology they use to determine economic feasibility, are all addressed in the nomination documents.

Some of these criteria were evaluated in other documents as well. For example, the U.S. considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy (NMS) submitted to the Ozone Secretariat in December 2005 and in on-going consultations with industry. The NMS addresses all of the aims specified in Decision Ex. I/4(3) to the extent feasible and is available in the docket for this rulemaking.

F. Emissions Minimization

In the proposed rule, EPA noted for the regulated community the reference to emission minimization techniques in paragraph 8 of Decision XVIII/13, which stated that Parties shall request critical users to employ "emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible." EPA understands that research is being conducted on the potential to reduce rates and emissions using newly available high-barrier films and that these studies show promising results. Users of methyl bromide should make every effort to minimize overall emissions of methyl bromide by using measures such as the ones listed above, to the extent consistent with State and local laws and regulations. In the proposed rule, the Agency encouraged researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments and to provide such information with their critical use applications. In addition, the Agency welcomed comments on the implementation of emissions minimization techniques and whether and how further emissions minimization could be achieved.

At the public hearing for this action the CSC expressed its opinion that EPA should create a regulatory incentive for emissions reduction. NRDC commented that the most effective way to achieve further emission minimization is to require the use of emissions minimization techniques such as virtually impermeable films (VIF), barrier films, and deep shank injection. NRDC noted that these techniques offer the concurrent benefit of reducing the amount of methyl bromide needed for fumigations. EPA believes that reducing supply through the phaseout provides incentives for use minimization and therefore limits emissions. Other points discussed by this commenter can be found in the Response to Comments document on the docket for this action.

At the public hearing for this action, West Coast Tomato stated that VIF keeps methyl bromide in the soil longer where it is metabolized rather than escaping into the atmosphere. The commenter suggested that methyl bromide that is used in this way should not be decreased since it is not reaching the ozone layer. EPA has not fully reviewed the research that the commenter is referring to. In compiling annual critical use nominations, USG considers the feasibility of VIF, and other less permeable tarps, because the use of these technologies can reduce required dosage rates and the critical need for methyl bromide to treat certain crops. The commenter may be proposing a different type of exemption for methyl bromide use that does not result in emissions to the stratosphere, but this would require a change in the Montreal Protocol, which is outside the scope of the present rulemaking. Until EPA fully reviews the research that the commenter refers to, it would be inappropriate for the Agency to respond further.

G. Critical Use Allowance Allocations

A critical use allowance (CUA) is a privilege granted by EPA, using its authority under Section 604(d)(6) of the Clean Air Act, that enables the holder to produce or import one kilogram of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The allocation of 2008 pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

In the August 27, 2007, proposed rule, EPA proposed to allow limited amounts of new production or import of methyl bromide for critical uses for 2008 up to the amount of 3,101,076 kg (12.2% of baseline) as shown in Table II below. EPA sought comment on the total levels of exempted new production or import for pre-plant and post-harvest critical uses in 2008. For the reasons discussed in Section V.D. of this preamble, EPA is adjusting the proposed CUA amounts to account for late sales reports that decrease the calculated 2006 carryover amount and to account for the uptake of alternatives. Therefore, the total critical use exemption amount for 2008 is 4,813,452 kg (18.9% of baseline), with 3,083,763 kg (12.1% of baseline) of critical use allowances allowing new production or import, and the remaining amount, 1,729,689 kg (6.8% of baseline), available through critical stock allowances (CSAs) that allow critical users to access pre-phaseout methyl bromide. EPA is continuing to calculate company-specific CUA allocations on the basis of the 1991 baseline consumption share of the companies listed in Table II. The updated calculation spreadsheet is available on Docket ID No. EPA–HQ–OAR–2006–1016. Therefore, the CUAs are allocated as follows:

TABLE II.—ALLOCATION OF CRITICAL USE ALLOWANCES

Company	2008 Critical use allowances for pre-plant uses* (kilograms)	2008 Critical use allowances for post-harvest uses* (kilograms)
Chemtura Corp.	1,687,407	186,595
Albemarle Corp.	693,900	76,732
Ameribrom, Inc.	383,464	42,404
TriCal, Inc.	11,940	1,320
Total	2,776,711	307,052

*For production or import of class I, Group VI controlled substances exclusively for the pre-plant or post-harvest uses specified in Appendix L to this subpart.

Paragraph five of Decision XVIII/13 states "that Parties shall endeavor to license, permit, authorize, or allocate quantities of critical use methyl bromide as listed in tables A and C of the annex to the present decision." This is similar to language in Decisions Ex. I/3(4), Ex. II/1(4) and VII/9(4) regarding 2005, 2006, and 2007 critical uses, respectively. The language from these Decisions called on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

In establishing the critical use exemption program, the Agency endeavored to allocate directly on a sector-by-sector basis by analyzing and proposing this option among others in the August 2004 Framework Rule notice (69 FR 52366). EPA solicited comment on both universal and sector-based allocation of critical use allowances. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined in the final Framework Rule (69 FR 76989) that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-specific approach would pose significant administrative and practical difficulties. Although the approach adopted in the Framework Rule does not directly allocate allowances to each category of use, the Agency anticipates that reliance on market mechanisms will achieve similar results indirectly. The TEAP recommendations were based on data submitted by the U.S. which in turn were based on recent historic use data in the current methyl bromide market. In other words, the TEAP recommendations agreed to by the Parties were based on current use and the current use patterns take place in a market where all pre-plant and post-harvest methyl bromide uses compete for a lump sum supply of critical use material. Therefore, the Agency believes that under a system of universal allocations, divided into pre-plant and post-harvest sectors, the actual critical use will closely follow the sector breakout listed by the TEAP. These issues were addressed in the Framework Rule and EPA is not aware of any factors that would alter the analysis performed during the development of previous CUE allocation rules. A summary of the options analysis conducted by EPA is available in the docket for this rulemaking.

In developing this action, EPA did not propose to change the approach adopted in the Framework Rule for the allocation of CUAs but, in an effort to address Decision XVIII/13(5), EPA sought additional comment on the Agency's allocation of CUAs in the two groupings (pre-plant and post-harvest) that the Agency has employed in the past. NPMA and Chemtura commented that the universal system is working well and believe the concept of the pre-plant/post-harvest allocations is simple and easy for stakeholders to understand. The commenters also noted that the system has not disrupted the supply chain and has been easy for distributors to implement, and discouraged the Agency from switching to a sector-by-sector allocation system.

FFVA and a representative of the walnut, prune and fig industry commented that the geographical distribution of methyl bromide has created shortfalls resulting in the inability of individual growers to access or afford material to fumigate their fields in accordance with their production schedules. FFVA indicated that this was particularly noticeable during the 2005 and 2006 fall fumigation periods. The other commenter stated that the universal system has not worked well for the above reasons, but believes that a sector-by-sector allocation system would be equally flawed due to insufficient allocations in certain sectors and unequal holdings of pre-phaseout inventory.

CSC stated that EPA should explore a hybrid between a regional and a lump-sum allocation system. Specifically, the commenter suggested that EPA consider creating several large regional areas (such as the EPA regions) that combine all of the sectors within each region to create a regional lump-sum. The commenter further stated that the methyl bromide users who most frequently face difficulty obtaining methyl bromide are small, minority growers. The commenter argued that the allocation of methyl bromide creates a harm that is disproportionately distributed. The commenter's primary concern does not appear to be human health and environmental effects on minority or low-income populations. Instead, the commenter appears to believe that EPA's current allocation system causes economic harm for these populations, because they have difficulty satisfying their critical needs for methyl bromide.

This final rule creates an exemption to the phaseout of methyl bromide. The overall impact of this action is deregulatory, and has an economic benefit for growers with critical needs for methyl bromide. EPA responds further to this comment in the Response to Comment document for this action.

EPA agrees with the comments that supported the existing allocation system. EPA considered sector-specific, and other allocation approaches in the proposed Framework Rule, and decided that the existing universal allocation system with pre-plant and post-harvest allowances was the most effective and least burdensome system. The Framework Rule did not establish a regional approach, as one commenter suggested. EPA may consider such an approach for future CUE rules. EPA does not believe it would be appropriate to finalize such an approach without giving other interested parties an opportunity for comment. EPA responds to these comments further in the

Response to Comments document available on the docket for this action.

H. Critical Stock Allowance Allocations and the Confidentiality of Information About the Aggregate Methyl Bromide Inventory

Each critical stock allowance (CSA) is equivalent to one kilogram of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next (69 FR 76990). CSAs are not used to produce or import methyl bromide but are rights that enable the holder to sell pre-phaseout inventories of methyl bromide for use in approved critical uses. A CSA is expended when the entity selling methyl bromide sells the material, or fumigation services with the material, to an approved critical user who certifies that the material is for an approved critical use. Thus, the movement of pre-phaseout inventories or methyl bromide along the supply chain does not require expenditure of a CSA.

In developing this action, EPA proposed to allocate critical stock allowances (CSAs) to the entities listed below in Table III for the 2008 control period in the amount of 1,715,438 kg (6.8% of U.S. 1991 baseline). EPA's proposal was based on the proposed approach for accounting for available stocks of methyl bromide, which is described in Section V.D. of this preamble. For the reasons discussed in Section V.D., in this action EPA is allocating 1,729,689 kg of CSAs to the entities listed in Table III below. The amounts are apportioned to each entity in proportion to inventory held by each on January 1, 2007.

In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt*, 2006 WL 667327 (D.D.C. March 14, 2006). EPA's allocation of CSAs is based on each company's proportionate share of the aggregate inventory. Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table below. EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

In developing this action, EPA explained that several companies that receive small amounts of CSAs from EPA have contacted the Agency and requested that they be permitted to permanently relinquish their allowances. Due to the small CSA allocation and because they typically do not sell critical use methyl bromide, they find the allocation of CSAs, and associated recordkeeping and reporting requirements, to be unduly burdensome. In response to this concern, in the proposed 2007 CUE rule EPA proposed to allow CSA holders, on a voluntary basis, to permanently relinquish their allowances through written notification to the Agency. EPA received no adverse comments. However, no CSA holders contacted EPA to take advantage of that voluntary opportunity. In the 2008 proposed rule EPA again gave CSA holders the opportunity, on a voluntary basis, to permanently relinquish their allowances through written notification to the Agency. EPA explained that companies voluntarily relinquishing their allowances would not receive CSA allocations and would be excluded from future allocations, and that all allowances forfeited by companies would be reallocated to the remaining companies on a pro-rata basis.

Seven companies contacted EPA during the comment period for this action and volunteered to relinquish their CSAs. The companies that contacted the Agency were: Blair Soil Fumigation, Dodson Brothers, Carolina Eastern Inc., Harvey Fertilizer & Gas, J.C. Ehrlich Co., Southern States Cooperative Inc., and Vanguard Fumigation Co. With this final rule, EPA is honoring their requests and removing these seven companies from Table III below. Additionally, EPA will not issue CSAs to these seven companies in future control periods. EPA has reallocated their CSAs to the remaining companies on a pro-rata basis.

TABLE III.—ALLOCATION OF CRITICAL STOCK ALLOWANCES

Company
Albemarle.
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Burnside Services, Inc.
Cardinal Professional Products.
Chemtura Corp.
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail.
Hy Yield Bromine.
Industrial Fumigation Company.
Pacific Ag.
Pest Fog Sales Corp.
Prosource One.
Reddick Fumigants.
Royster-Clark, Inc.
Trical Inc.
Trident Agricultural Products.
UAP Southeast (NC).
UAP Southeast (SC).
Univar.
Western Fumigation.
Total—1,729,689 kilograms.

I. Stocks of Methyl Bromide

As discussed above and in the December 23, 2004 Framework Rule, an approved critical user may obtain access to exempted production and import of methyl bromide and to limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. The Framework Rule also established trading provisions that allow critical use allowances (CUAs) to be converted into CSAs. Under this action, no significant changes are being made to those provisions.

NRDC commented that EPA should dedicate all pre-phaseout stocks of methyl bromide to CUEs. The Agency notes that it has responded to similar comments in the Final Framework Rule (69 FR 76988), the Final 2007 CUE Rule (71 FR 75400), and in response to NRDC's late submission of supplemental comments on the Proposed 2007 CUE Rule. EPA is not revisiting this issue in this rulemaking.

The proposed rule explained in detail how EPA acquired information about pre-phaseout inventory for 2003 and after, and how EPA had applied its regulations on treatment of information claimed as confidential. In the proposed rule, EPA noted that it did not receive any objections to releasing the aggregate stocks information for calendar year 2006. To simplify the process of releasing future aggregate stocks information, EPA proposed to release the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of 2007, and each year thereafter. For the reasons given in a letter that EPA sent on April 23, 2007, which is available in the docket, to all entities which had reported holding pre-phaseout inventory at the end of 2003, 2004, 2005, or 2006, this aggregate information is clearly not entitled to

confidential treatment. EPA proposed to release the aggregate of this stockpile data in future years without first notifying entities by letter, as EPA has done in the past two years. EPA sought comment on this proposal. In the proposed rule, the Agency stated that if it did not receive any comments opposing its proposal, the aggregate of methyl bromide stockpile data collected under the reporting requirements at 40 CFR 82.13 would not be treated as confidential information and could be released in future without additional notice to the competitors.

In its comments MBIP did not object to EPA's proposal to release aggregate stockpile data in future years at this time. MBIP stated that they reserve the right to object in the future should the number of competitors in the industry dwindle to two or fewer in order to protect confidentiality. Therefore, because EPA received no comments objecting to its proposal at the present time, for as long as there are a sufficient number of competitors in the industry, the aggregate of methyl bromide stockpile data collected under the reporting requirements at 40 CFR 82.13 will not be treated as confidential information and may be released in future without further notice. However, if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and would not release the aggregate without notice.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action," because it raises novel or legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This rulemaking does not impose any additional information collection burden. OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0564, and EPA ICR number 2179.03. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 action on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
Agricultural production ...	1112—Vegetable and Melon farming 1113—Fruit and Nut Tree Farming 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops 0172—Grapes 0173—Tree Nuts 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning). 311211—Flour Milling 311212—Rice Milling 493110—General Warehousing and Storage 493130—Farm Product Warehousing and Storage.	2041—Flour and Other Grain Mill Products 2044—Rice Milling 4221—Farm Product Warehousing and Storage 4225—General Warehousing and Storage	$6.5 million. 500 employees. $23.5 million.
Distributors and Applicators.	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection	$6.5 million.
Producers and Importers	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This action will only affect entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities submitted critical use applications, either individually or as members of consortia, for a critical use exemption for the 2005 control period. EPA received requests from a comparable number of entities for the 2006, 2007, and 2008 control periods. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this final rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. 603-604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million and $30 million annually. We have therefore concluded that this final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This action is deregulatory and does not impose any new requirements on any entities. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." 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."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. This final rule does not significantly or uniquely affect the communities of Indian tribal governments. The final rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this final rule.

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

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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final 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. This final rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, EPA has concluded that this final rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any stratospheric ozone depletion that results from this final rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions in the U.S.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 28, 2007.

List of Subjects in 40 CFR part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: December 19, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.8 is amended by revising the table in paragraph (c)(1) and paragraph (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2008 Critical use allowances for pre-plant uses* (kilograms)	2008 Critical use allowances for post-harvest uses* (kilograms)
Chemtura Corp.	1,687,407	186,595
Albemarle Corp.	693,900	76,732
Ameribrom, Inc.	383,464	42,404
TriCal, Inc.	11,940	1,320
Total	2,776,711	307,052

*For production or import of class I, Group VI controlled substance exclusively for the pre-plant or post-harvest uses specified in Appendix L of this subpart.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2008 on a pro-rata basis in relation to the inventory held by each.

Company
Albemarle.
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Burnside Services, Inc.
Cardinal Professional Products.
Chemtura Corp.
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail.
Hy Yield Bromine.
Industrial Fumigation Company.
Pacific Ag.
Pest Fog Sales Corp.
Prosource One.
Reddick Fumigants.
Royster-Clark, Inc.
Trical Inc.
Trident Agricultural Products.
UAP Southeast (NC).
UAP Southeast (SC).
Univar.
Western Fumigation.
Total—1,729,689 kilograms.

■ 3. Appendix L to Subpart A is revised to read as follows:

Appendix L to Part 82 Subpart A—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2008 Control Period

Column A: Approved critical uses	Column B: Approved critical user and location of use	Column C: Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Pre-Plant Uses:		
Cucurbits	(a) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
	(b) Southeastern U.S. limited to growing locations in Alabama, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Public (government-owned) seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(c) California rose nurseries	Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. A need for methyl bromide for research purposes.
	(b) North Carolina and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Presence of medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached.
	(b) California table and raisin grape growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition - on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California wine grape growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(d) California walnut growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(e) California almond growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Michigan herbaceous perennials growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. A need for methyl bromide for research purposes.
	(d) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. Time to transition to an alternative. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot. A need for methyl bromide for research purposes.
Sweet Potato Slips	(a) California growers	Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation Moderate to severe fungal pathogen infestation. A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation. Moderate to severe nematodes. Restrictions on alternatives due to karst topographical features, and in Florida, soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
Post-Harvest Uses:		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe infestation of beetles, weevils, or moths. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute (for this rule, "pet food" refers to domestic dog and cat food).	Moderate to severe infestation or beetles, moths, or cockroaches. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Bakeries in the U.S.	Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S..	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(e) Members of the National Pest Management Association treating cocoa beans in storage and associated spaces and equipment and processed food, cheese, herbs, spices and spaces and equipment in associated processing facilities.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives. A need for methyl bromide for research purposes.
Dry Cured Pork Products	(a) Members of the National Country Ham Association.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(b) Members of the American Association of Meat Processors.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(c) Nahunta Pork Center (North Carolina)	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(d) Gwaltney of Smithfield Ltd.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

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- Hospital ethylene oxide sterilizers; published 12-28-07

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

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H.R. 3648/P.L. 110–142

Mortgage Forgiveness Debt Relief Act of 2007 (Dec. 20, 2007; 121 Stat. 1803)

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Methamphetamine Remediation Research Act of 2007 (Dec. 21, 2007; 121 Stat. 1809)

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Charlie W. Norwood Living Organ Donation Act (Dec. 21, 2007; 121 Stat. 1813)

H.R. 2408/P.L. 110–145

To designate the Department of Veterans Affairs outpatient clinic in Green Bay, Wisconsin, as the "Milo C. Huempfner Department of Veterans Affairs Outpatient Clinic". (Dec. 21, 2007; 121 Stat. 1815)

H.R. 2671/P.L. 110–146

To designate the United States courthouse located at 301 North Miami Avenue, Miami, Florida, as the "C. Clyde Atkins United States Courthouse". (Dec. 21, 2007; 121 Stat. 1816)

H.R. 3703/P.L. 110–147

To amend section 5112(p)(1)(A) of title 31, United States Code, to allow an exception from the $1 coin dispensing capability requirement for certain vending machines. (Dec. 21, 2007; 121 Stat. 1817)

H.R. 3739/P.L. 110–148

To amend the Arizona Water Settlements Act to modify the requirements for the statement of findings. (Dec. 21, 2007; 121 Stat. 1818)

H.J. Res. 72/P.L. 110–149

Making further continuing appropriations for the fiscal year 2008, and for other purposes. (Dec. 21, 2007; 121 Stat. 1819)

S. 597/P.L. 110–150

To amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research. (Dec. 21, 2007; 121 Stat. 1820)

S. 888/P.L. 110–151

Genocide Accountability Act of 2007 (Dec. 21, 2007; 121 Stat. 1821)

S. 2174/P.L. 110–152

To designate the facility of the United States Postal Service located at 175 South Monroe Street in Tiffin, Ohio, as the "Paul E. Gillmor Post Office Building". (Dec, 21, 2007; 121 Stat. 1823)

S. 2371/P.L. 110–153

To amend the Higher Education Act of 1965 to make technical corrections. (Dec. 21, 2007; 121 Stat. 1824)

S. 2484/P.L. 110–154

To rename the National Institute of Child Health and Human Development as the Eunice Kennedy Shriver National Institute of Child Health and Human Development. (Dec. 21, 2007; 121 Stat. 1826)

S.J. Res. 8/P.L. 110–155

Providing for the reappointment of Patricia Q. Stonesifer as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 21, 2007; 121 Stat. 1829)

Last List December 21, 2007

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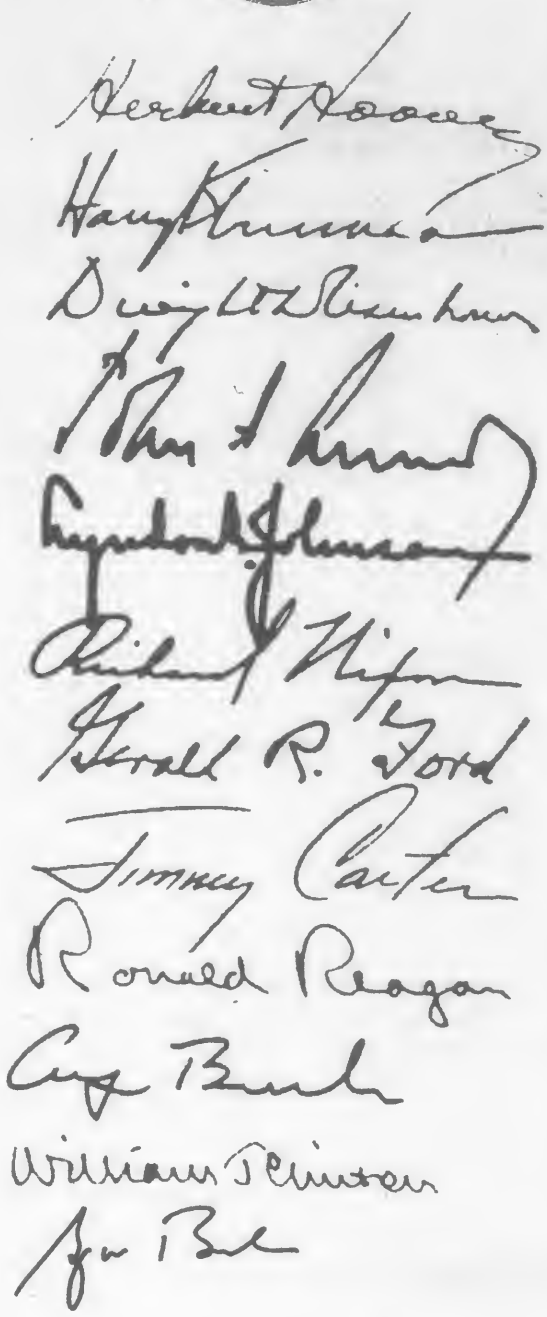

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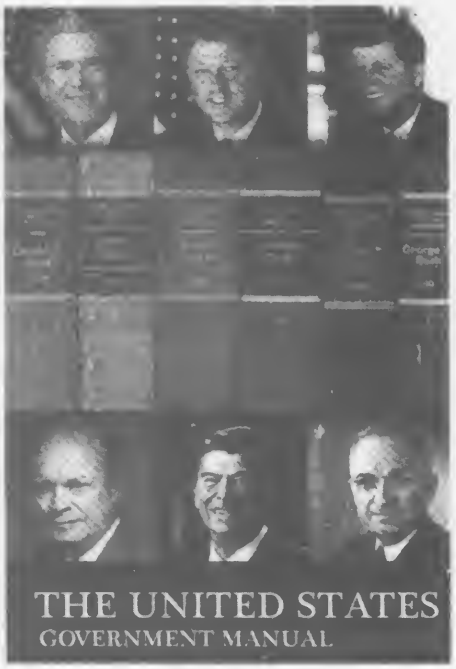

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