
# Federal Register

4–24–09 Friday
Vol. 74 No. 78 Apr. 24, 2009

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# Federal Register

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WHAT: Free public briefings (approximately 3 hours) to present:

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

WHEN: Tuesday, May 12, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008

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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 959

**[Doc. No. AMS–FV–09–0012; FV09–959–1 IFR]**

## Onions Grown in South Texas; Change in Regulatory Period

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule revises the regulatory period during which minimum grade, size, quality, and maturity requirements are in effect for onions grown in South Texas under Marketing Order No. 959 (order). The previous regulatory period for South Texas onions was March 1 to July 15 of each year. The new regulatory period ends on June 4. Prior to this change, onions subject to order requirements from June 5 to July 15 were present in the market at the same time as onions produced in other areas of the United States not regulated under Federal marketing orders. Changing the ending date of the regulatory period to June 4 relaxes the regulatory requirements for onions covered under the order, and will enable producers and handlers to compete more effectively in the marketplace, and therefore, promote the orderly marketing of onions. The South Texas Onion Committee (Committee), which locally administers the order, unanimously recommended the change.

**DATES:** Effective April 25, 2009; comments received by June 23, 2009 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682–2833, Fax: (956) 682–5942, or e-mail: *Belinda.Garza@usda.gov*.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

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

This rule, which was unanimously recommended by the Committee, revises the regulatory period during which minimum grade, size, quality, and maturity requirements are in effect for onions grown under the order in South Texas. This change is intended to enable producers and handlers to compete more effectively in the marketplace, and therefore, promote the orderly marketing of onions.

Section 959.52(b) of the order authorizes the establishment of grade, size, quality, maturity, or pack regulations for all varieties of onions within the production area during any period in any or all portions of the production area. Section 959.52(c) authorizes the modification, suspension, or termination of regulations. Section 959.60 provides that whenever onions are regulated pursuant to § 959.52, or at other times when recommended by the Committee and approved by the Secretary, such onions shall be inspected by the Federal or Federal–State Inspection Service.

Section 959.110 of the order's administrative rules and regulations apportions 35 South Texas counties between two onion-growing areas known as District 1, consisting of 19 counties designated as the Coastal Bend–Lower Valley area, and District 2, consisting of 16 counties designated as the Laredo–Winter Garden area.

Section 959.322 of the order's rules and regulations provides that the handling of South Texas onions shall be subject to specified grade, size, and inspection requirements. That section also prescribes the time period during which such regulatory requirements for

South Texas onions are in effect. Prior to this action, the regulatory period during which regulations were in effect ran from March 1 to July 15, annually (see 72 FR 49136).

During a public meeting held on December 15, 2008, the Committee unanimously recommended changing the ending date of the regulatory period for onions from July 15 to May 31. Upon further consideration, the Committee unanimously recommended, through a follow-up mail vote completed on January 28, 2009, changing the ending date to June 4.

Prior to the 2007 marketing season, the regulatory period was from March 1 through June 4. At that time, the regulatory period did not completely cover the full South Texas production season and onion shipments occurring after June 4 were not subject to order requirements. The early and mid-season crop is produced in District 1 of the production area, which generally accounts for about 90 percent of the total. The remaining crop, approximately 10 percent, is produced in District 2, and is shipped during the latter part of the season.

In 2007, based on a Committee recommendation, the ending date of the regulatory period was extended from June 4 to July 15. The Committee believed that extending the ending date from June 4 to July 15 would provide the consumer with higher-quality onions for a longer period of time because the entire production area would be regulated throughout its shipping period. Extending the ending date of regulation also resulted in additional assessment revenue being collected by the Committee, since assessments are based on inspection certificates.

After two seasons' experience, District 2 producers and handlers requested the Committee to reconsider the extension of the regulatory period. According to the Committee, extending the regulatory period from June 4 to July 15 in 2007 resulted in the South Texas onion industry competing in the market directly with lower-quality onions shipped from other areas of the United States not regulated under Federal marketing orders. Onion prices are usually quite low during this period and these unregulated areas have a competitive advantage over District 2. Ending grade, size, quality, and maturity requirements on June 4, rather than July 15, relaxes regulation on District 2 shippers and helps them compete in the market with shippers from non-regulated production areas.

The Committee also recommended continuing inspection of onions through July 15. To identify the quality and quantity of onions being shipped in the latter part of the season, the Committee will continue assessing all South Texas onion shipments. Collecting assessments for the entire season will provide a consistent funding source for Committee operations and programs, and will help to ensure that all handlers pay an equitable share of assessments.

Section 8e of the Act provides that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This action will have no impact on the import regulation for onions.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Currently, there are approximately 84 producers of onions in the production area and approximately 31 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

Most of the South Texas handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2007–08 marketing year, the industry's 31 handlers shipped onions produced on 10,978 acres with the average and median volume handled being 202,245 and 176,551 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 31 handlers were estimated to be $174.7 million, with average and median revenues being $5.64 million and $4.92 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 31 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other farming enterprises could result in a number of these handlers being above the $7,000,000 annual receipt threshold. All of the 84 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule shortens the ending date of the order's regulatory period for Texas onions shipped to the fresh market from July 15 to June 4 of each year. This action, which was unanimously recommended by the Committee, shortens the regulatory period during which minimum grade, size, quality, and maturity requirements are in effect for onions grown under the order. Authorization to implement such regulations is provided in § 959.52(b) of the order. Regulatory requirements authorized under this section are provided in § 959.322.

This action provides that fresh onion shipments from the South Texas onion production area meet minimum grade, size, quality, and maturity requirements from March 1 through June 4 of each year. Inspection requirements will continue through July 15. The previous regulations require that onions grown in the production area meet order requirements from March 1 through July 15 of each year. Prior to the 2007 marketing season, the regulatory period was from March 1 through June 4. In 2007, the regulatory period was extended from June 4 to July 15. The Committee believed that applying quality requirements for a longer time period was necessary to accommodate an extended growing season.

After two seasons' experience, District 2 producers and handlers requested that the Committee reconsider the previous regulatory extension. Onions subject to quality requirements under the order from June 5 to July 15 have been competing in the market with non-regulated onions from growing areas outside the order. Relaxing the requirements by changing the ending

date of the regulatory period back to June 4 relieves District 2 handlers of the resulting inequity and enables them to be more competitive with shippers from other production areas.

Under the order, the Committee collects assessments from handlers based on inspection of onions to be shipped to market. The Committee's recommendation to continue the inspection requirement to July 15 will allow the Committee to continue to collect assessments through the end of the season. This revenue will continue to be used by the Committee to fund its operations, including consistent funding for onion promotion and research projects under the order.

One alternative to this action would be to not change the regulatory period back to June 4. However, the Committee believes that leaving the quality requirements in place for the entire season would not be as beneficial for those shipping onions in the latter part of the season.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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.

Further, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. All Committee meetings are public meetings and all entities, both large and small, are able to express their views. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a change to the regulatory period under the South Texas onion marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes regulatory requirements on handlers; (2) this rule should be implemented as soon as possible since the South Texas onion regulatory period begins March 1; (3) the Committee unanimously recommended these changes; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 959**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

## PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 959.322, the introductory text is revised to read as follows:

During the period beginning March 1 and ending June 4, no handler shall handle any onions, including onions for peeling, chopping, and slicing, unless they comply with paragraphs (a) through (c) or (d) or (e) of this section; except that onions handled during the period June 5 through July 15 shall comply with paragraphs (c) or (d) or (e) of this section.

* * * * *

Dated: April 20, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

[FR Doc. E9–9378 Filed 4–23–09; 8:45 am]

**BILLING CODE 3410–02–P**

## FEDERAL HOUSING FINANCE BOARD

**12 CFR Part 910**

## FEDERAL HOUSING FINANCE AGENCY

**12 CFR Part 1202**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1703**

**RIN 2590–AA05**

## Freedom of Information Act Implementation

**AGENCIES:** Federal Housing Finance Agency; Federal Housing Finance Board; Office of Federal Housing Enterprise Oversight.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** On January 15, 2009, the Federal Housing Finance Agency (FHFA) published a final rule implementing the Freedom of Information Act (FOIA). This technical rulemaking will delete the FOIA rules promulgated by the FHFA's predecessor agencies, the Federal Housing Finance Board (FHFB) and Office of Federal Housing Enterprise Oversight (OFHEO). It also will remove now obsolete references in the FHFA rule to the FHFB and OFHEO.

**DATES:** *Effective Date:* May 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Janice Kaye, Chief FOIA Officer, *janice.kaye@fhfa.gov*, 202–343–1514, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552. The telephone number for the telecommunications device for the deaf (TDD) is 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Effective July 30, 2008, Division A of the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008, created the Federal Housing Finance Agency as an independent agency of the Federal Government. HERA transferred supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (collectively,

Regulated Entities) from OFHEO and the FHFB to the FHFA. The Regulated Entities continue to operate under regulations promulgated by OFHEO and the FHFB until such time as the existing regulations are supplanted by regulations promulgated by the FHFA.

On January 15, 2009, the FHFA published a final rule to implement the FOIA. *See* 74 FR 2342 (Jan. 15, 2009). The FHFA's FOIA implementation rule is codified at 12 CFR part 1202. Because the FHFA FOIA rule now is effective, the agency is removing the FOIA rules of its predecessor agencies, the FHFB and OFHEO, codified respectively at 12 CFR parts 910 and 1703, subparts A through D. This rulemaking also deletes now obsolete references to the FHFA and OFHEO in section 1202.3 concerning the location of the FOIA-Reading Room.

### II. Notice and Public Participation

The notice and comment procedure required by the Administrative Procedure Act is inapplicable to this final rule because the rule is procedural and makes only technical changes. *See* 5 U.S.C. 553(b)(3)(A).

### III. Paperwork Reduction Act

The final regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### IV. Regulatory Flexibility Act

The FHFA is adopting this regulation in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2) and 603(a).

### List of Subjects

*12 CFR Part 910*

Confidential business information, Freedom of information, Reporting and recordkeeping requirements.

*12 CFR Part 1202*

Appeals, Confidential commercial information, Disclosure, Exemptions, Fees, Final action, Freedom of information, Judicial review, Records, Requests.

*12 CFR Part 1703*

Administrative practice and procedure, Confidential business information, Freedom of information.

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4526__, the FHFA is amending 12 CFR chapters IX, XII, and XVII as follows:

**CHAPTER IX—Federal Housing Finance Board**

## PART 910—[REMOVED]

■ 1. Remove part 910.

**CHAPTER XII—Federal Housing Finance Agency**

## PART 1202—FREEDOM OF INFORMATION ACT

■ 2. The authority citation for part 1202 continues to read as follows:

**Authority:** Pub. L. 110–289, 122 Stat. 2654; 5 U.S.C. 301, 552; 12 U.S.C. 4526; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

■ 3. Revise § 1202.3(c) to read as follows:

**§ 1202.3 What information can I obtain through FOIA?**

* * * * *

(c) *Reading rooms.* (1) FHFA maintains electronic and physical reading rooms. The physical reading room is located at 1700 G Street, NW., Fourth Floor, Washington, DC 20552, and is open to the public by appointment from 9 a.m. to 3 p.m. each business day. For an appointment, contact the FOIA Officer by calling 202–414–6425 or by e-mail at *foia@fhfa.gov*. The electronic reading room is part of the FHFA Web site at *http://www.fhfa.gov*.

(2) Each reading room has the following records created by FHFA or its predecessor agencies after November 1, 1996, and current indices to all of the following records created by FHFA or its predecessor agencies before or after November 1, 1996:

(i) Final opinions or orders issued in adjudication;

(ii) Statements of policy and interpretation that are not published in the **Federal Register**;

(iii) Administrative staff manuals and instructions to staff that affect a member of the public, and are not exempt from disclosure under FOIA; and

(iv) Copies of records released under FOIA that FHFA determines have become or are likely to become the subject of subsequent requests for substantially the same records.

**CHAPTER XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development**

## PART 1703—RELEASE OF INFORMATION

■ 4. The authority citation for part 1703 continues to read as follows:

**Authority:** Pub. L. 110–289, 122 Stat. 2654; 5 U.S.C. 301, 552; 12 U.S.C. 4526; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

### Subparts A–D [Removed and Reserved]

■ 5. Remove and reserve subparts A through D.

Dated: April 15, 2009.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

[FR Doc. E9–9424 Filed 4–23–09; 8:45 am]

BILLING CODE 8070–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 33

**[Docket No. NE129; Special Conditions No. 33–007–SC]**

### Special Conditions: General Electric Company GEnx–2B Model Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for General Electric Company (GE) GEnx–2B67 and GEnx–2B69 model turbofan engines. The fan blades of these engines will have novel or unusual design features when compared to the state of technology envisioned in the part 33 airworthiness standards. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the added safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is May 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kevin Donovan, ANE–111, Rulemaking and Policy Branch, Engine and Propeller Directorate Standards Staff, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7743; facsimile (781) 238–7199; e-mail *kevin.donovan@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 28, 2006, the General Electric Company (GE) applied to the FAA to amend the GEnx model type certificate to add GEnx–2B engine model series. Currently, the GEnx type

certificate consists of the GEnx–1B turbofan engine models GEnx–B54, GEnx–1B58, GEnx–1B64, GEnx–1B67, and GEnx–1B70. GE is requesting to add the GEnx–2B67 and GEnx–2B69 engine model series to the type certificate.

The GEnx–2B engine model series is a close derivative of the GEnx–1B engine models, and will utilize a significant number of common parts and systems. Some GEnx–2B engine model components, which differ from those on the GEnx–1B engine models, include a smaller diameter fan operating at a slightly higher speed, a lower guide vane count, fewer booster stages, lower bypass ratio, fewer low pressure turbine stages, lighter accessories gearbox, and a modified turbine rear frame. Those components do not introduce any unique materials, design concepts, or manufacturing processes.

The GEnx–2B engine models will also incorporate fan blades manufactured using carbon graphite composite material, with a bonded metal tip cap, and metal leading and trailing edge laminates. The design and manufacture of these fan blades are similar to those used on the GE90–76B, –77B, –85B, –90B, –94B baseline engines, the GE90–110B1, –113B, and –115B derivative engine model series, and the GEnx–1B engine model series. This novel and unusual design feature results in the fan blades having significant differences in material property characteristics when compared to conventionally designed fan blades using only metallic materials.

GE submitted data and analysis during the GE90 baseline and GE90–11 SB derivative engine model certification programs, and again during the recent GEnx–1B certification program. GE was able to show that the likelihood of these carbon graphite composite fan blades failing below the inner annulus flow path line is highly improbable. GE questioned the appropriateness of the requirement contained in § 33.94(a)(1) to show containment after a failure of the fan blade at the outermost retention feature.

The FAA responded during the GE90 baseline by reviewing the historical basis for the § 33.94(a)(1) test requirements, and determined that they are based on metallic blade characteristics and service history, and therefore were not appropriate for the unusual design features of the composite fan blade design planned for that engine model. The FAA determined that a more realistic blade retention test for the novel and unusual design characteristics of these carbon fiber composite fan blades would be achieved with a blade failure at the inner annulus flow path line (the complete airfoil only), instead of at the outermost blade retention feature as currently required by § 33.94(a)(1).

The FAA also determined that the composite fan blade design and construction characteristics present factors, other than the expected location of a blade failure, which must be considered. Consequently, the FAA required that tests and analyses must account for the anticipated effects of in-service deterioration and handling damage, manufacturing and materials variations in, and environmental effects on, the composite material. The FAA also required that tests and analyses must show that a lightning strike on a composite fan blade would not result in a hazardous condition to the aircraft, and that the engine would continue meet the requirements of § 33.75.

Therefore, the FAA issued special conditions SC–33–ANE–08 on February 1, 1995, for the GE90–75B, –76B, and –85B baseline engine models. These special conditions defined additional safety standards for the carbon graphite composite fan blades that were appropriate for the unusual design features of those fan blades, and that were determined to be necessary to establish a level of safety equivalent to that established by the airworthiness standards of § 33.94(a)(1). The FAA determined that these special conditions were also appropriate for the derivative GE90–77B and –90B engine models, the GE90–94B engine model, and the GE90 –110B1, –113B, and –115B engine models, which were added to the TCDS in July 1996, June 2000, and July 2003, respectively. Engine model series GE90–75B was deleted from the GE90 TCDS in February 1995.

The FAA later determined that, due to the similarity of the carbon fiber composite fan blade design and construction methods to the GE90 blades, these same special conditions continued to be appropriate for the recent GEnx–1B model series certification program. The FAA issued special conditions 33–006–SC on January 12, 2007, for the GEnx–1B engine model series, which retained the essential requirements of the previous GE90 engine model series special conditions. These special conditions were successfully applied during the GEnx–1B certification program.

Due to that success, GE now proposes to use a similar approach to demonstrate a level of safety equivalent to that established by the airworthiness standards of § 33.94(a)(1) for the GEnx–2B certification program. In lieu of direct compliance to § 33.94(a)(1) using an engine test, GE notified the FAA that it plans to utilize an analytical method that will be validated by data from the GEnx–1B § 33.94(a)(1) engine test, GEnx–1B fan blade rig tests, GEnx–2B fan blade rig tests, and other engine and component tests as needed.

Due to the similarity of the GEnx–2B model series fan blade design and manufacturing methods to the previously certified GE90 and GEnx–1B engine model series fan blades, the FAA is proposing to issue similar special conditions as part of the type certification basis for the GEnx–2B engine models in lieu of requiring direct compliance to § 33.94(a)(1) using an engine test. These special conditions define the additional requirements the Administrator considers necessary to establish a level of safety equivalent to direct compliance to the airworthiness standards of § 33.94(a)(1).

**Type Certification Basis**

14 CFR 21.17 requires GE to show the derivative GEnx–2B series turbofan engine models meet the requirements of the applicable provisions of 21.21 and part 33. The FAA has determined that the applicable airworthiness regulations in part 33 do not contain adequate or appropriate safety standards for the GEnx–2B series turbofan engine models because of its novel and unusual fan blade design features. Therefore, these special conditions are prescribed under the provisions of 14 CFR 11.19 and 14 CFR 21.16, and will become part of the type certification basis of the GEnx–2B engine in accordance with § 21.17(a)(2).

These special conditions apply only to the GEnx–2B series turbofan engine models. If the type certificate for those models is amended later to include any other models that incorporate the same novel or unusual design features, these special conditions also apply to the other models under the provisions of 14 CFR 21.101(a)(1).

**Novel or Unusual Design Features**

The GEnx–2B engine models will incorporate carbon graphite composite fan blades that will contain a bonded metal tip cap, and metal leading and trailing edge laminates. These design features are considered to be novel and unusual relative to the part 33 airworthiness standards.

**Discussion of Comments**

Notice of proposed special conditions No. 33–08–01–SC for the GEnx–2B engine models was published on November 24, 2008 (73 FR 70926). No comments were received, and the special conditions are adopted as proposed.

**Applicability**

These special conditions will apply only to the GEnx–2B series turbofan engine models. If GE applies later for a change to the type certificate to include another model incorporating the same novel or unusual fan blade design features, these special conditions may also become part of the type certification basis of that engine model series as well.

**Conclusion**

This action affects only the carbon fiber composite fan blade design features on the GEnx–2B series turbofan engine models. It is not a rule of general applicability, and it affects only the General Electric Company which has applied to the FAA for certification of these fan blade design features.

**List of Subjects in 14 CFR Part 33**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read 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 derivative GEnx–2B series turbofan engines.

1. In lieu of the fan blade containment test with the fan blade failing at the outermost retention groove as specified in § 33.94(a)(1), complete the following requirements:

(a) Conduct a fan blade containment test that is acceptable to the Administrator, with the fan blade failing at the inner annulus flow path line.

(b) Substantiate by test and analyses, or other methods acceptable to the Administrator, that the engine is capable of containing damage without catching fire and without failure of its mounting attachments when operated for at least 15 seconds, unless the resulting engine damage induces a self shutdown that initiates within 15 seconds of the fan blade failure.

(c) Substantiate by test and analyses, or other methods acceptable to the Administrator, that a minimum material properties fan disk and fan blade retention system can withstand without failure a centrifugal load equal to two times the maximum load which the retention system could experience within approved engine operating limitations.

(d) Using a procedure approved by the Administrator, establish an operating limitation that specifies the maximum allowable number of start-stop stress cycles for the fan blade retention system. The life evaluation shall include the combined effects of high cycle and low cycle fatigue. If the operating limitation is less than 100,000 cycles, that limitation must be specified in Chapter 05 of the Engine Manual Airworthiness Limitation Section. The fan blade retention system includes the portion of the fan blade from the inner annulus flow path line inward to the blade dovetail, the blade retention components, and the fan disk and fan blade attachment features.

(e) Substantiate that, during the service life of the engine, the total probability of the occurrence of a hazardous engine effect defined in § 33.75 due to an individual blade retention system failure resulting from all possible causes will be extremely improbable, with a cumulative calculated probability of failure of less than 10 per engine flight hour.

(f) Substantiate by test or analysis acceptable to the Administrator that not only will the engine continue to meet the requirements of § 33.75 following a lightning strike on the composite fan blade structure, but the lightning strike will also not cause damage to the fan blades that would prevent continued safe operation of the affected engine.

(g) Account for the effects of in-service deterioration, manufacturing variations, minimum material properties, and environmental effects during the tests and analyses required by paragraphs (a), (b), (c), (d), (e), and (f) of these special conditions.

(h) Propose fleet leader monitoring and field sampling programs for the GEnx–2B engine fan blades that will monitor the effects of usage on fan blade and retention system integrity. The sampling program should use the experience gained on current GE90 and GEnx–1B engine model series monitoring programs, and must be approved by the FAA prior to certification of the GEnx–2B engine models.

Issued in Burlington, Massachusetts, on April 13, 2009.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E9–9262 Filed 4–23–09; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 589

[Docket No. FDA–2002–N–0031] (formerly Docket No. 2002N–0273)

RIN 0910–AF46

## Substances Prohibited From Use in Animal Food or Feed; Confirmation of Effective Date of Final Rule

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of April 27, 2009, for the final rule that published in the **Federal Register** of April 25, 2008 (73 FR 22720), entitled "Substances Prohibited From Use in Animal Food or Feed." The agency is also establishing a compliance date of October 26, 2009, for this rule in order to allow additional time for renderers to comply with the new requirements. This additional time will also give other affected persons, including cattle producers and packers, more time to identify appropriate methods for disposing of material prohibited from use in animal feed by this rule.

**DATES:** *Effective Date*: The effective date of the final rule published in the **Federal Register** of April 25, 2008 (73 FR 22720), is April 27, 2009.

*Compliance Date*: The compliance date is October 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Burt Pritchett, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6860, e-mail: *burt.pritchett@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of April 25, 2008, FDA published a final rule entitled "Substances Prohibited From Use in Animal Food or Feed" (referred to herein as the April 25, 2008, final rule), that would become effective 1 year after the April 27, 2009, date of publication. These measures were established to further strengthen existing safeguards against bovine spongiform encephalopathy (BSE). FDA recently became aware that some affected persons are experiencing difficulties modifying their operations to comply with the new requirements contained in the April 25, 2008, final

rule and, therefore, may not be in full compliance by the April 27, 2009, effective date. Accordingly, in the **Federal Register** of April 9, 2009 (74 FR 16160) (referred to herein as the April 9, 2009, proposal), FDA published a proposal that would delay the effective date of the April 25, 2008, final rule for 60 days and provided a period for public comment on this proposal of 7 days.

## II. Comments

The agency received comments from over 400 organizations and individuals on the April 9, 2009, proposal. Many comments were received from state and national cattle producer organizations, as well as from individual cattle producers. A large number of individual consumers also submitted comments. Comments were also received from renderers, meat processors, dairy organizations, and State agriculture agencies.

Those opposed to a delay of the effective date primarily cited a heightened risk of BSE to U.S. consumers and the U.S. cattle herd from imports of live Canadian cattle, particularly those cattle over 30 months of age. Most of these comments also noted that the current U.S. feed ban implemented in 1997 is comparable to the initial Canadian feed ban, also implemented in 1997, which, according to these comments, has proven to be ineffective at preventing the spread of BSE in Canada. This position was echoed in the many comments received from persons concerned with Creutzfeldt-Jakob Disease.

Those in favor of a delay of the effective date cited the need for more time to identify alternative methods of disposal of cattle material prohibited in animal feed (CMPAF) from slaughter and dead stock cattle in areas of the country where rendering services are curtailed or no longer available because of the rule. Some renderers and dead stock haulers commented that they were choosing to discontinue picking up dead cattle due to difficulties complying with the new rule. Many of the comments suggested that the proposed 60-day delay was not adequate with some comments suggesting delays of 6 months to 1 year. Also, a number of comments asked that the effective date be delayed indefinitely until the carcass disposal problem was more fully resolved. Several comments urged FDA to work with other Government agencies to develop a disposal plan for CMPAF and dead stock cattle before implementing the rule.

## III. Discussion

FDA continues to believe that the new measures contained in the April 25, 2008, final rule are necessary to further strengthen existing safeguards against BSE. The underlying bases for these new measures were fully considered through the notice and comment rulemaking process. (See the October 6, 2005, proposed rule (70 FR 58570) and the April 25, 2008, final rule).

The April 9, 2009, proposal to delay the effective date was issued solely for the purpose of considering whether a delay should be provided to allow time to address concerns that some entities were not adequately prepared to comply with the April 25, 2008, final rule and that adequate alternative carcass disposal methods had not been developed. Therefore, any delay in the implementation of this rule is intended to help address these concerns and is not intended to signal that the agency is reconsidering the final rule. Based on the significant number of comments that oppose delaying the effective date of the April 25, 2008, final rule due to public and animal health concerns, FDA is confirming the original April 27, 2009, effective date of the final rule. However, although the final rule is effective on April 27, 2009, FDA has decided to establish a compliance date of October 26, 2009, for those who need it, to help address the compliance and implementation concerns.

In its rulemaking, FDA acknowledged that alternative disposal methods for CMPAF and dead stock cattle would be needed for a substantial volume of material that would be diverted from animal feed use by the new requirements. Accordingly, the rule provided a 12–month delayed effective date to allow sufficient time to arrange for alternative disposal. Where services to remove brain and spinal cord will not be available, such arrangements might include composting dead stock cattle, or disposing of dead stock cattle in landfills. To some extent, we believe the rendering, livestock, meat, and animal feed industries have addressed many of the compliance and carcass disposal challenges and are prepared to meet the April 27, 2009, effective date of the final rule.

By affirming the April 27, 2009, effective date, renderers can begin putting the new BSE safeguards into place by removing the prohibited cattle materials from the animal feed chain. However, it is apparent from the comments that a significant number of other stakeholders will not be ready to deal effectively with the new regulation when it goes into effect on April 27, 2009. In particular, smaller entities such as dead stock haulers, small meat processors, and some livestock producers have only recently become aware that their current disposal arrangements will no longer be available, or will be available at increased cost, as a result of the April 25, 2008, final rule. In addition, comments from certain State agencies have indicated that adequate alternative measures have not yet been developed for disposing of animal carcasses, particularly in areas where rendering is limited or may no longer be available. Generally, the disposal of animal carcasses is regulated at the State and local level. For example, State law may dictate whether dead animals can be buried or composted, or whether an incinerator needs to be approved before one is built. Furthermore, some landfill operators have indicated that they do not intend to accept dead animals or CMPAF because they consider it to be hazardous material. FDA has consulted with the Environmental Protection Agency (EPA) on this issue and EPA has recently published a statement on its Web site stating that, under the Resource Conservation and Recovery Act (RCRA), EPA considers CMPAF to be solid waste, not hazardous waste (*http://www.epa.gov/epawaste/nonhaz/municipal/landfill/cattle.htm*). (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Based on a consideration of all comments received in response to the April 9, 2009, proposal, FDA believes the most appropriate action is to confirm the April 27, 2009, effective date, and delay compliance until October 26, 2009. Confirming the April 27, 2009, effective date conveys the agency's clear intent to move forward with the implementation of the new measures. As stated previously, some affected parties are prepared to begin implementation. Providing for a 6–month delay for compliance acknowledges the significant number of affected stakeholders who will require more time to comply with the new regulation or adjust to the loss of rendering service. For renderers, who are directly impacted by this regulation, this means modifying their operations to effectively separate and dispose of CMPAF. For cattle producers, who are also impacted by this regulation, this may mean finding alternative means of disposing of dead stock cattle if rendering services are no longer available to them.

FDA acknowledges that carcass disposal problems exist in certain states or regions and that developing and implementing adequate solutions to these problems is challenging. Furthermore, FDA recognizes that in certain circumstances it may be particularly challenging to address such disposal problems by the October 26, 2009, compliance date. FDA intends to finalize the Draft Small Entities Compliance Guide for Renderers that was issued on November 26, 2008. In addition, FDA intends to engage in further outreach to the rendering industry, pertinent State agencies, and others affected by the rule. FDA is committed to working with all affected parties to the extent possible to assist efforts in mitigating the impacts associated with implementation of the rule.

### IV. Conclusion

At this time, the agency is confirming the April 27, 2009, effective date of the final rule published in the **Federal Register** of April 25, 2008, entitled "Substances Prohibited From Use in Animal Food or Feed." The agency is also establishing a compliance date of October 26, 2009, for this rule in order to allow additional time for affected persons to comply with the new requirements.

Dated: April 21, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–9466 Filed 4–22–09; 11:15 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF STATE

### 22 CFR Part 121

**[Public Notice 6589]**

### Amendment to the International Arms Traffic in Arms Regulations: The United States Munitions List; Correction

**AGENCY:** Department of State.

**ACTION:** Correcting amendment.

**SUMMARY:** The Department of State published a final rule in the **Federal Register** on May 21, 2004 (69 FR 29222), revising Category XII(c) of the United States Munitions List. A technical error in that rule resulted in the unintended removal of language in a note after Category XII paragraph (c). This document corrects the final regulations by restoring the language in the note.

**DATES:** Effective on April 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2792 or Fax (202) 261–8199; e-mail *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change, Category XII.

**SUPPLEMENTARY INFORMATION:** The Department of State published a final rule (Public Notice 4723) in the **Federal Register** of May 21, 2004, amending Category XII of the United States Munitions List. This document restores the language in the note after Category XII(c).

**List of Subjects in 22 CFR Part 121**

Arms and munitions, Exports, U.S. Munitions List.

■ Accordingly, 22 CFR part 121 is corrected by making the following correcting amendment:

### PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Public Law 105–261, 112 Stat. 1920.

■ 2. In § 121.1(c), Category XII, amend after paragraph (c) by adding a note to read as follows:

**§ 121.1 General. The United States Munitions List.**

(c) * * *

* * * * *

**Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment**

* * * * *

(c) * * *

**Note:** *Special Definition.* For purposes of this subparagraph, *second and third generation image intensification tubes* are defined as having:

A peak response within the 0.4 to 1.05 micron wavelength range and incorporating a microchannel plate for electron image amplification having a hold pitch (center-to-center spacing) of less than 25 microns and having either:

(a) An S–20, S–25 or multialkali photocathode; or

(b) A GaAs, GaInAs, or other compound semiconductor photocathode.

* * * * *

Dated: April 13, 2009.

**Frank J. Ruggiero,**

*Acting Assistant Secretary for Political Military Affairs, Department of State.*

[FR Doc. E9–9291 Filed 4–23–09; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2009–0132]**

**RIN 1625–AA09**

### Drawbridge Operation Regulation; Keweenaw Waterway, Houghton, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Commander, Ninth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the U.S. 41 (Sheldon Avenue) Lift Bridge, at Mile 16.0, across the Keweenaw Waterway, in Houghton, MI. Under this temporary deviation, the U.S. 41 (Sheldon Avenue) Lift Bridge will be allowed to remain in the closed-to-navigation position during specific dates and times. The deviation is necessary to perform reconstruction to the city streets that access the U.S. 41 (Sheldon Avenue) Lift Bridge.

**DATES:** This temporary final rule is effective from 6 a.m. on April 15, 2009, to 6 p.m. on November 15, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket USCG–2009–0132 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0132 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Blair Stanifer, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902–6086, e-mail *William.B.Stanifer@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

*Regulatory Information*

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment

pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as regular users of the waterway have already been identified and the schedule will not significantly impact navigation. Navigation on the waterway consists mainly of tugs with tows, charter fishing vessels and recreational craft. Commercial and public vessels will have unencumbered use of the waterway with the U.S. 41 (Sheldon Avenue) Lift Bridge opening on demand. Throughout the effective dates of this temporary deviation, the U.S. 41 (Sheldon Avenue) Lift Bridge will be in the intermediate position during the construction period, providing 31 feet of vertical clearance at all times, giving the majority of vessels unencumbered use of the waterway.

Under 5 U.S.C. 533(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. Similar schedules have been used in previous maintenance periods on the U.S. 41 (Sheldon Avenue) Lift Bridge with no adverse affects on vehicular or maritime traffic.

**Background and Purpose**

The Michigan Department of Transportation, on behalf of the City of Houghton, MI (who operates this lift-type bridge) requested a temporary deviation from the current operating schedule to perform reconstruction work on various City of Houghton streets that affect access to and from the U.S. 41 (Sheldon Avenue) Lift Bridge.

The U.S. 41 (Sheldon Avenue) Lift Bridge, at Mile 16.0, over the Keweenaw Waterway in Houghton, MI, has a vertical clearance of seven feet in the closed-to-navigation position. However, the lift span can be stopped at intermediate elevations and will be elevated to give 31-feet of vertical clearance for the duration of this temporary deviation. The bridge normally operates in accordance with 33 CFR 117.635; opening on signal. However, from January 1 through March 15, the draw opens on signal provided at least twenty-four hours notice is given.

This deviation will allow the bridge to stay in the closed-to-navigation position during peak daily vehicular traffic periods of: 6:30 a.m. to 8 a.m.; 11:30 a.m. to 1:00 p.m.; and 3:30 p.m. to 5:30 p.m. Except for these periods of time, openings for recreational traffic will be made once, on the hour, if needed. Commercial and Public vessels will continue to receive an opening on signal. For the duration of this temporary deviation, the U.S. 41 (Sheldon Avenue) Lift Bridge will be raised to the intermediate position giving 31-feet of vertical clearance. As a result of prior coordination with the waterway users and past experience, it has been determined that this temporary deviation will not have a significant impact on these vessels as the majority will be able to transit safely under the bridge.

The United States Coast Guard will inform the users of the waterway through our Local and Broadcast Notice to Mariners of the opening restrictions of the lift span to minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

**Discussion of Rule**

The reconstruction of Sheldon Avenue (U.S. 41) in Houghton, MI, will necessitate the closing of said route and the redirecting of vehicular traffic to other City of Houghton streets. Access to and from the bridge will be adversely affected due to the increase in vehicular traffic. Restricting the raising of the lift for recreational vessels during peak vehicular traffic periods will facilitate traffic flow and provide for minimal disruptions to the reconstruction of Sheldon Avenue. Navigation users of the waterway consist mainly of tugs with tows, commercial fishing vessels and recreational craft. As a result of prior coordination with the waterway users and past experience, it has been determined that this temporary deviation will not have a significant impact on these vessels. A majority will be able to transit safely under the bridge since it will be kept raised to an intermediate position, providing 31-feet of vertical clearance under the bridge, for the duration of the temporary deviation.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

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

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. However, this rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the bridge from 6:30 a.m. to 8 a.m., 11:30 a.m. to 1 p.m. and 3:30 p.m. to 5:30 p.m. from April 15, 2009, through November 15, 2009. This action will not have a significant economic impact on a substantial number of small entities for the following reasons. Most vessels that use this waterway will still be able to safely pass the draw while it is being kept in the intermediate position with 31-feet of vertical clearance provided at all times. Openings for all other vessels will still be provided on the hour. Commercial and Public vessels will continue to receive an opening on signal. Before the effective period, we will issue maritime advisories widely available to users of the river.

**Assistance for Small Entities**

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 6 a.m. on April 15, 2009, to 6 p.m. on November 15, 2009, in § 117.635, temporarily add paragraphs (a), (b), and (c).

**§ 117.635 Keweenaw Waterway.**

* * * * *

(a) From April 15 through November 15, from 6 a.m. to 8 a.m., 11:30 a.m. to 1 p.m. and 3:30 p.m. to 5:30 p.m., seven days a week, the bridge shall not be required to open for recreational craft.

(b) At all other times, the draw of the U.S. 41 Bridge need not be opened for the passing of recreational craft except for once an hour, on the hour.

(c) Public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress shall be passed through the draw of the bridge at all times.

Dated: March 19, 2009.

**D.R. Callahan,**

*Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.*

[FR Doc. E9–9448 Filed 4–23–09; 8:45 am]

BILLING CODE 4910–15–P

## POSTAL SERVICE

### 39 CFR Part 958

### Rules of Practice in Proceedings Relative to Mailing Hazardous Materials

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Accountability and Enhancement Act requires the Postal Service to prescribe regulations for the safe transportation of hazardous materials in the mail, and to prescribe regulations for the conduct of

proceedings to determine the implementation of civil penalties, clean-up costs and damages for violations of these hazardous materials regulations. Accordingly, the Postal Service is adopting new rules of practice for its Office of the Judicial Officer.

**DATES:** *Effective Date:* April 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Administrative Judge Gary E. Shapiro, (703) 812–1910.

**SUPPLEMENTARY INFORMATION:** Title X of the Postal Accountability and Enhancement Act, Public Law 109–435, enacted 39 U.S.C. 3018, concerning the mailing of hazardous material. Section 3018(a) requires the Postal Service "to prescribe regulations for the safe transportation of hazardous material in the mail." Section 3018(c) requires the Postal Service to implement procedures for the imposition of civil penalties, clean-up costs and damages for violations of these hazardous materials regulations. Section 3018(d) provides that the Postal Service may determine that a person has violated these regulations only after notice and an opportunity for a hearing in accordance with section 3001(m) of title 39, United States Code.

To further the implementation of this statute, on January 29, 2009, the Postal Service published for comment its proposed Rules of Practice in Proceedings Relative to Mailing Hazardous Materials (74 FR 5137). The time for comment on the proposed rules expired on March 2, 2009, and no comments have been received. Accordingly, the Postal Service has determined that it is appropriate to adopt the rules of practice as proposed, without further revision. The Postal Service has also determined that it is appropriate to make these rules of practice effective upon publication, in the interest of public safety and orderly administration of the statute.

**List of Subjects in 39 CFR Part 958**

Administrative practice and procedure, Penalties, Postal Service.

■ For the reasons stated in the preamble, the Postal Service adds 39 CFR part 958 to read as follows:

## PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO CIVIL PENALTIES, CLEAN-UP COSTS AND DAMAGES FOR VIOLATION OF HAZARDOUS MATERIAL REGULATIONS

Sec.



**Authority:** 39 U.S.C. 204; 39 U.S.C. 401; 39 U.S.C. 3001; 39 U.S.C. 3018.

### § 958.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

### § 958.2 Definitions.

As used in this part:

(a) *Complaint* refers to the determination by the Determining Official that an individual has violated the prohibition against mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

(b) *Initial Decision* refers to the written decision which the Presiding Officer renders.

(c) *Determining Official* refers to the Chief Postal Inspector or designee.

(d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or designee within the Judicial Officer Department.

(e) *Party* refers to the Postal Service or the respondent.

(f) *Person* refers to any individual, partnership, corporation, association, or private organization.

(g) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing.

(h) *Recorder* refers to the Recorder of the Judicial Office of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201–3078.

(i) *Representative* refers to an attorney or other advocate.

(j) *Respondent* refers to any person determined by the Determining Official to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

### § 958.3 Petition for hearing.

Within 30 days of being served the Postal Service's Complaint alleging liability under 39 U.S.C. 3018, the respondent may request a hearing by filing a written Hearing Petition with the Recorder. The respondent's Petition must include the following:

(a) The words "Petition for Hearing Related to Prohibitions Regarding the Mailing of Hazardous Material" or other words reasonably identifying it as such;

(b) The name of the respondent as well as his or her work and home addresses, and work and home telephone numbers; and other address and telephone number where the respondent may be contacted about the hearing proceedings;

(c) The date on which the respondent received the Complaint issued by the Determining Official;

(d) A statement indicating whether the respondent requests an oral hearing or a decision solely on the written record;

(e) If the respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the respondent intends to rely.

### § 958.4 Referral of complaint.

(a) If the respondent fails to request a hearing within the specified period, the Determining Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an Initial Decision based upon the information contained in the Complaint.

(b) If the respondent files a Hearing Petition, the Determining Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

### § 958.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record:

(1) To determine whether the respondent is liable under 39 U.S.C. 3018, and

(2) If so, to determine the amount of any civil penalties, clean-up costs and/or damages to be imposed.

(b) The Postal Service must prove its case against a respondent by a preponderance of the evidence.

(c) The parties may offer for insertion onto the record such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

**§ 958.6 Notice of docketing and hearing.**

(a) Within a reasonable time after receiving the respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve upon the respondent and the Determining Official, a Notice of Docketing and Hearing.

(b) The Notice of Docketing and Hearing required by paragraph (a) of this section may include:

(1) The tentative site, date, and time of the oral hearing, if one is requested;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

**§ 958.7 Hearing location.**

An oral hearing under this part shall be held:

(a) In the judicial district of the United States in which the respondent resides or transacts business;

(b) In the judicial district of the United States in which the incident or incidents occurred upon which the determination of liability under 39 U.S.C. 3018 was made by the Determining Official; or

(c) In such other place as may be determined by the Presiding Officer.

**§ 958.8 Rights of parties.**

Subject to the sound discretion of the Presiding Officer, acting under § 958.9, parties to a hearing under this part shall have the right:

(a) To be accompanied, represented, and advised, by an attorney or representative of his or her own choosing;

(b) To participate in any conferences held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the oral hearing;

(e) To present oral and documentary evidence relevant to the issues;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

**§ 958.9 Responsibilities and authority of presiding officer.**

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid unnecessary delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the oral hearing, if any, as well as, in accordance with § 958.7, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious resolution of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(6) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;

(7) Regulating the scope and timing of discovery;

(8) Regulating the course of the hearing and the conduct of the parties and their representatives;

(9) Examining witnesses;

(10) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(11) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(12) Establishing the record in the case; and

(13) Issuing a written Initial Decision containing findings of fact, conclusions of law, and determinations with respect to whether civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018 should be imposed, and if so, the amounts thereof, after taking into account the penalty considerations contained in 39 U.S.C. 3018(e).

**§ 958.10 Prehearing conferences.**

(a) At a reasonable time after issuing the Notice of Docketing and Hearing, and with adequate notice to the parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations or admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witness lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled oral hearing date, time or site, if requested; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

**§ 958.11 Respondent's access to information.**

Except as provided in this section, after receiving the Notice of Docketing and Hearing the respondent may review and obtain a copy of all relevant and material documents, transcripts, records, and other materials which relate to the determination of liability by the Determining Official under 39 U.S.C. 3018, and all exculpatory information in the possession of the Determining Official relating to liability for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018. The respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law. The Presiding Officer is

authorized to issue orders placing limitations on the scope, method, time and place for accessing this information, and provisions for protecting the secrecy of confidential information or documents.

**§ 958.12 Depositions; interrogatories; admission of facts; production and inspection of documents.**

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* After the issuance of a Notice of Docketing and Hearing, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for an order of the Presiding Officer under this paragraph shall specify whether the purpose of the deposition is discovery or for use as evidence.

(1) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(2) No testimony taken by depositions shall be considered as part of the record in the hearing unless and until such testimony is offered and received into evidence by order of the Presiding Officer. Deposition testimony will not ordinarily be received in evidence if an oral hearing is requested by either party, and the deponent is available to testify personally at the hearing. In such instances, however, deposition testimony may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on a written record, the Presiding Officer may, in his or her discretion, receive deposition testimony as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After the issuance of a Notice of Docketing and Hearing, a party may serve on the other party written interrogatories. Within 30 days after service, the party served shall answer each interrogatory separately in writing, signed under oath, or file objections thereto. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* After the issuance of a Notice of Docketing and Hearing, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. Upon timely objection by the party, the Presiding Officer will determine the extent to which the request for admission will be permitted. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) *Production and inspection of documents.* Upon motion of a party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Limitations.* A discovery procedure may not be used to reach documents, transcripts, records, or other material which a person is not entitled to review pursuant to § 958.11.

**§ 958.13 Sanctions.**

(a) *In general.* The Presiding Officer may sanction a person, including any party, attorney or representative, for:

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) *Reasonableness.* Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) *Failure to prosecute or defend.* If a party fails to prosecute or defend an action under this part, the Presiding Officer may dismiss the action, or enter an order of default and an Initial Decision.

(e) *Failure to file timely.* The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

**§ 958.14 Ex parte communications.**

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

**§ 958.15 Post-hearing briefs.**

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

**§ 958.16 Transcript of proceedings.**

Testimony and argument at oral hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

**§ 958.17 Initial decision.**

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written Initial Decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relies upon in determining whether the respondent is liable for civil penalties, clean-up costs and/or damages for mailing hazardous

materials and/or related violations under 39 U.S.C. 3018, and, if liability is found, shall set forth the amount of any civil penalties, clean-up costs and/or damages imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her Initial Decision. A party may, in accordance with § 958.18, appeal an adverse Initial Decision to the Judicial Officer. Unless a party timely appeals in accordance with § 958.18, the Presiding Officer's Initial Decision, including the findings and determinations, becomes the final agency decision.

**§ 958.18 Appeal of initial decision to Judicial Officer.**

(a) *Notice of appeal and supporting brief.* A party may appeal an adverse Initial Decision by filing, within 30 days after the Presiding Officer issues the Initial Decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period but only if the party files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(1) The Notice of Appeal must be accompanied by a written brief specifying the party's exceptions, and any reasons for such exceptions, to the Presiding Officer's Initial Decision.

(2) Within 30 days of receiving the party's brief, the opposing party may file with the Judicial Officer a response to the specified exceptions to the Presiding Officer's Initial Decision.

(b) *Form of review.* Review by the Judicial Officer will be based entirely on the record and written submissions.

(1) The Judicial Officer may affirm, reduce, reverse, or remand any determination about a penalty or assessment by the Presiding Officer.

(2) The Judicial Officer shall not consider any argument or objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the argument or objection before the Presiding Officer was caused by extraordinary circumstances.

(3) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer may remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of Judicial Officer.* The Judicial Officer shall promptly serve each party to the appeal with a copy of his or her decision. The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties.

**§ 958.19 Form and filing of documents.**

(a) Every pleading filed in a proceeding under this part must contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), an accurate designation of the document, and the name, address, and telephone number of the party on whose behalf the paper was filed. It shall also be signed by the party or party representative submitting the document.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201–3078. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or other document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (a) of this section, shall be made through the Determining Official or designated Postal Service attorney. If a notice of appearance by a representative is filed on behalf of the respondent, pleadings or document transmittals to, or communications with, the respondent shall be made through his or her representative.

**§ 958.20 Service of notice of docketing and hearing, other documents.**

Unless otherwise specified, service of a Notice of Docketing and Hearing or any other document under this part shall be effected by registered or certified mail, return receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

**§ 958.21 Computation of time.**

In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day. Except as otherwise provided in these rules or an applicable order, prescribed periods of time are measured in calendar days rather than business days.

**§ 958.22 Continuances and extensions.**

Continuances and extensions may be granted under these rules for good cause shown.

**§ 958.23 Settlement.**

Either party may make offers of settlement or proposals of adjustment at any time. The Determining Official has the exclusive authority to compromise or settle any determinations of liability for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, without the consent of the Presiding Officer or Judicial Officer.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. E9–9376 Filed 4–23–09; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2008–0239; FRL–8896–3]

## Approval and Promulgation of Air Quality Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving site specific revisions to the Minnesota sulfur dioxide ($SO_2$) State Implementation Plan (SIP) for the Federal Cartridge Company and Hoffman Enclosures, located in the city of Anoka, Anoka County, Minnesota. On March 3, 2008, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain portions of joint Title I/Title V documents into the Minnesota $SO_2$ SIP for Federal Cartridge Company and Hoffman Enclosures. The state is also requesting in this submittal that EPA rescind the Administrative Order issued to Federal Hoffman, Inc. which is currently included in Minnesota's SIP for $SO_2$. The emissions units previously owned by Federal Hoffman, Inc., are now owned by Federal Cartridge Company and Hoffman Enclosures. Because the sulfur dioxide emission limits are being reduced, the air quality of Anoka County will be protected.

**DATES:** This direct final rule will be effective June 23, 2009, unless EPA receives adverse comments by May 26, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0239, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2008–0239. 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.

*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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886–6143 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov.*

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



## I. What Is EPA Approving?

EPA is approving into the $SO_2$ SIP for Minnesota joint Title I/Title V documents for Federal Cartridge Company and Hoffman Enclosures, located in Anoka, Minnesota. This SIP amendment approval will replace the Administrative Order issued to Federal Hoffman, Inc. with the joint documents issued to Federal Cartridge Company and Hoffman Enclosures.

## II. What Is the Background for This Action?

### *A. What Are the Revisions to the SIP?*

The SIP is being amended to reflect a change in ownership of the facility and the emissions units that are subject to SIP conditions. The Administrative Order currently approved into the SIP was issued to Federal Hoffman, Inc. The emission units previously owned by Federal Hoffman, Inc. are now owned by two companies, Federal Cartridge Company and Hoffman Enclosures. The SIP revision rescinds the Administrative Order issued to Federal Hoffman, Inc. and replaces it with Title I SIP Conditions included in the Air Emission Permit No. 00300155–001, for Hoffman Enclosures, and Permit No. 00300156–003, for Federal Cartridge Company, which serve as joint Title I/Title V documents.

Federal Cartridge Company is a manufacturer of small arms, shotgun, rimfire and centerfire ammunitions. The facility currently owns the majority of emissions units that are subject to $SO_2$ emission limits or operating standards under the Order issued to Federal Hoffman, Inc. The only changes to the SIP for units owned by Federal Cartridge Company are fuel restrictions for two steam boilers. Previously, they were allowed to burn natural gas and residual fuel oil. They are now limited to burning natural gas and propane, both low sulfur fuels.

Hoffman Enclosures manufactures sheet metal electrical enclosures. Hoffman Enclosures previously owned and operated a single emergency diesel generator subject to SIP conditions through the Order issued to Federal Hoffman, Inc. This unit has been decommissioned and is no longer in use, resulting in a reduction in $SO_2$. Hoffman Enclosures installed one other combustion unit on the site, an emergency fire pump. This unit may only burn No. 2 diesel fuel, and at maximum capacity has the potential to emit 0.29 pounds per million British Thermal Units. This unit is very small and only operates under emergency conditions. Modeling performed in support of the original SIP for Federal Hoffman, Inc., attributed the majority of $SO_2$ emissions to the burning of residual fuel oil in one boiler. Since this type of fuel will no longer be burned, overall ambient concentrations of $SO_2$ are expected to decrease.

### *B. What Prior SIP Actions Are Pertinent to This Action?*

On December 28, 2007, MPCA issued an Air Emission Permit No. 00300156–003 to Federal Cartridge Company. The permit is a joint Title I/Title V document. The main emissions from the facility are nitrogen oxides ($NO_X$). The permit limits the $NO_X$ and Hazardous Air Pollutants (HAPs) emissions of the facility such that the facility is classified

as a non-major source under Federal New Source Review. The facility is part of the SIP to reach attainment of $SO_2$ National Ambient Air Quality Standards (NAAQS) in the Twin Cities area. The Title I conditions contained in the permit will ultimately be included in the SIP, and will replace the Administrative Order.

On January 31, 2008, MPCA issued an Air Emission Permit No. 00300155–001 to Hoffman Enclosures. The permit is a joint Title I/Title V document. The main emissions from the facility are VOCs and HAPs. The permit limits emissions of the facility such that the facility is classified as a non-major source under federal New Source Review. The facility is part of the SIP to reach attainment of $SO_2$ NAAQS in the Twin Cities area. The Title I conditions contained in the permit will ultimately be included in the SIP, and will replace the Administrative Order.

*C. Has Public Notice Been Provided?*

MPCA published public notices for the Federal Cartridge Company and Hoffman Enclosures actions on November 27, 2007, and December 20, 2007, respectively. No comments were received during the comment period which ended on January 22, 2008. In the public notices, MPCA stated it would hold a public hearing if one were requested during the comment period. This follows the alternative public participation process EPA approved on June 5, 2006 (71 FR 32274). For limited types of SIP revisions that the public has shown little interest in, a public hearing is not automatically required. If anyone requests a public hearing during the comment period, MPCA will hold a public hearing. Because no one requested a public hearing, MPCA did not hold a public hearing for these SIP revisions.

*D. What Are Title I Conditions and Joint Title I/Title V Documents?*

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not Federally-enforceable because the permits expire. MPCA then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

MPCA's consolidated permitting regulations, which EPA approved into the state SIP on May 2, 1995 (60 FR 21447), include the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *." The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any Title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

MPCA has initiated using joint Title I/Title V documents as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in joint Title I/Title V documents submitted by MPCA are cited as "Title I conditions," therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the state's procedure for using joint Title I/Title V documents to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Clean Air Act (CAA) (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). Further, a June 15, 2006, letter from EPA to MPCA clarifies procedures to transfer requirements from Administrative Orders to joint Title I/Title V documents.

## III. What Is EPA's Analysis of the State Submission?

Federal Hoffman, Inc., owned units included in the $SO_2$ SIP for the Twin Cities area. The changes made in this SIP revision are changes to the ownership of various units that are subject to SIP requirements, as well as changes to the enforceable document. The emissions units previously owned by Federal Hoffman, Inc. are now owned by Federal Cartridge Company and Hoffman Enclosures.

A modeling analysis conducted for the Federal Hoffman facility SIP revision showed that the majority of the $SO_2$ emissions impact came from the burning of residual fuel oil in one of the boilers. As this type of fuel will no longer be burned, the ambient concentration of $SO_2$ will decrease.

## IV. What Are the Environmental Effects of This Action?

Ambient $SO_2$ levels are expected to decrease because of the SIP revisions. Thus, the Anoka County area in Minnesota is expected to remain in attainment of the $SO_2$ NAAQS.

$SO_2$ causes breathing difficulties and aggravation of existing cardiovascular disease. It is also a precursor of acid rain and fine particulate matter formation. Sulfate particles are a major cause of visibility impairment in the United States. Acid rain damages lakes and streams, impairing aquatic life, and causes damage to buildings, sculptures, statues and monuments. $SO_2$ also causes the loss of chlorophyll leading to vegetation damage.

## V. What Action Is EPA Taking?

EPA is approving site specific revisions to the Minnesota $SO_2$ SIP for the Federal Cartridge Company and Hoffman Enclosures, located in the city of Anoka, Anoka County, Minnesota. The SIP revision also rescinds the Administrative Order issued to Federal Hoffman, Inc. and replaces it with a Title I SIP Conditions included in the Air Emission Permit No. 00300155–001, for Hoffman Enclosures, and Permit No. 00300156–003, for Federal Cartridge Company, which serves as joint Title I/Title V documents.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective June 23, 2009 without further notice unless we receive relevant adverse written comments by May 26, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective June 23, 2009.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting

Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 9, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by removing the entry for "Federal Hoffman, Incorporated" and adding entries, in alphabetical order, for "Federal Cartridge Company" and "Hoffman Enclosures" to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

| Name of source | Permit No. | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * * | * | * | * * | * * |
| Federal Cartridge Company ..... | 00300156–003 | 12/28/07 | 04/24/09, [Insert page number where the document begins]. | Only conditions cited as "Title I condition: SIP for $SO_2$ NAAQS." |
| * * | * | * | * * | * * |
| Hoffman Enclosures ..... | 00300155–001 | 01/31/08 | 04/24/09, [Insert page number where the document begins]. | Only conditions cited as "Title I condition: SIP for $SO_2$ NAAQS." |
| * * | * | * | * * | * * |

* * * * *

[FR Doc. E9–9361 Filed 4–23–09; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2008–0240; FRL–8896–5]

## Approval and Promulgation of Air Quality Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a site specific revision to the Minnesota sulfur dioxide ($SO_2$) State Implementation Plan (SIP) for the Rochester Public Utility's Cascade Creek Generating Facility (Cascade Creek), located in the city of Rochester, Olmsted County, Minnesota. On March 5, 2008, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain portions of a joint Title I/Title V document into the Minnesota $SO_2$ SIP for the Cascade Creek facility. This SIP revision includes the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine. This SIP revision will show reduced emissions of $SO_2$ from this facility and the $SO_2$ National Ambient Air Quality Standards (NAAQS) will be maintained in the area. Because the $SO_2$ emission limits are being reduced, the air quality of Olmsted County will be protected.

**DATES:** This direct final rule will be effective June 23, 2009, unless EPA receives adverse comments by May 26, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0240, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2008–0240. EPA's policy is that all comments received will be included in the public docket without change and may be made available online 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 *http://www.regulations.gov* or e-mail. The *http://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 *http://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.

*Docket:* All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886–6143 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov.*

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



### I. What Is EPA Approving?

EPA is approving into the $SO_2$ SIP for Minnesota a joint Title I/Title V document for the Rochester Public Utility's Cascade Creek Facility (Cascade Creek), located in Rochester, Olmsted County, Minnesota. This SIP amendment approval will replace the current Title I SIP conditions under Air Emission Permit No. 00000610–001.

### II. What Is the Background for This Action?

#### *A. What Prior SIP Actions Are Pertinent to This Action?*

Cascade Creek is an electrical generation facility consisting of three combustion turbines and a diesel starter engine. The facility was identified as a culpable source in the Rochester area at the time the area was designated as nonattainment for the $SO_2$ NAAQS. The facility is now part of the SIP to maintain attainment of the $SO_2$ NAAQS in the Rochester area. On February 7, 2008, the Minnesota Pollution Control Agency (MPCA) issued an Air Emission Permit No. 10900020–003 to Rochester Public Utilities. The permit is a joint Title I/Title V document and will replace Permit No. 00000610–001, the joint document currently approved into the SIP. Air Permit Nos. 10900020–001 and 002 were adopted at the state level, but the joint documents were not submitted to EPA for approval into the SIP. These permits authorized the modification of the existing turbine to allow for burning of natural gas and distillate fuel oil and established facility-wide Federally-enforceable

emission limits that restrict potential emissions to less than major source levels under the Federal Prevention of Significant Deterioration and New Source Review programs. These changes are being addressed through EPA's action on joint Title I/Title V document 10900020–003. Because the facility is located in the Rochester/Olmsted County $SO_2$ maintenance area, changes to the facility's operations must be submitted to EPA as SIP revisions.

*B. What Are the Revisions to the SIP?*

The revision involves changes to Cascade Creek's current operating conditions and revisions to the applicable $SO_2$ SIP conditions currently listed in the Joint Title I/Title V document and incorporated into Minnesota's SIP. The facility has accepted fuel sulfur content limits that reduce $SO_2$ beyond previously permitted levels. This SIP revision also includes the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine.

*C. Has Public Notice Been Provided?*

Minnesota published public notices for the Cascade Creek Facility on December 20, 2007. No comments were received during the comment period which ended on February 4, 2008. In the public notices, Minnesota stated it would hold a public hearing if one were requested during the comment period. This follows the alternative public participation process EPA approved on June 5, 2006 (71 FR 32274). For limited types of SIP revisions that the public has shown little interest in, a public hearing is not automatically required. If anyone requests a public hearing during the comment period, Minnesota will hold a public hearing. Because no one requested a public hearing, Minnesota did not hold a public hearing for this SIP revision.

*D. What Are Title I Conditions and Joint Title I/Title V Documents?*

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not Federally-enforceable because the permits expire. Minnesota then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's consolidated permitting regulations, approved into the state SIP on May 2, 1995 (60 FR 21447), include the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *." The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any Title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

Minnesota has initiated using joint Title I/Title V documents as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in joint Title I/Title V documents submitted by MPCA are cited as "Title I conditions," therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the state's procedure for using joint Title I/Title V documents to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Clean Air Act (CAA) (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). Further, a June 15, 2006, letter from EPA to MPCA clarifies procedures to transfer requirements from Administrative Orders to joint Title I/Title V documents.

## III. What Is EPA's Analysis of the State Submission?

Cascade Creek owned units included in the $SO_2$ SIP for the Rochester area. The facility has accepted fuel sulfur content limits that reduced $SO_2$ beyond previously permitted levels. This SIP revision also includes the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine.

A modeling analysis conducted for the Cascade Creek Facility SIP revision showed that incorporating a reduced fuel oil sulfur limit resulted in less total $SO_2$ impacts from operation of the modified three-turbine system, as opposed to the single-turbine system. Additionally, modeling shows that the location of the significant impact area is much smaller for the modified facility and does not include any new areas. Based on these modeled results, MPCA concluded that the addition of the two new turbines did not jeopardize NAAQS attainment.

## IV. What Are the Environmental Effects of This Action?

Due to the decrease in fuel oil sulfur content, overall emissions of $SO_2$ will decrease from current SIP conditions. Thus, the Rochester area in Minnesota is expected to remain in attainment of the $SO_2$ NAAQS.

$SO_2$ causes breathing difficulties and aggravation of existing cardiovascular disease. It is also a precursor of acid rain and fine particulate matter formation. Sulfate particles are a major cause of visibility impairment in the United States. Acid rain damages lakes and streams, impairing aquatic life, and causes damage to buildings, sculptures, statues and monuments. $SO_2$ also causes the loss of chlorophyll leading to vegetation damage.

## V. What Action Is EPA Taking?

EPA is approving site specific revisions to the Minnesota $SO_2$ SIP for the Cascade Creek Facility, located in the city of Rochester, Olmsted County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the joint Title I/Title V document cited as "Title I condition: State Implementation Plan for $SO_2$."

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective June 23, 2009 without further notice unless we receive relevant adverse written comments by May 26, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective June 23, 2009.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 9, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by revising the entry for "Rochester Public Utilities, Cascade Creek Combustion" to read as follows:

**§ 52.1220 Identification of plan.**

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

| Name of source | Permit No. | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * * * | * | * | * | * |
| Rochester Public Utilities, Cascade Creek Combustion. | 100900020–003 | 12/28/07 | 4/24/09, [Insert page number where the document begins]. | Only conditions cited as "Title I condition: SIP for $SO_2$ NAAQS." |
| * * * | * | * | * | * |

[FR Doc. E9–9368 Filed 4–23–09; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2008–0683; FRL–8895–8]

### Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Finding of Attainment for 1-Hour Ozone for the Milwaukee-Racine, WI Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a July 28, 2008, request from the Wisconsin Department of Natural Resources (WDNR) that EPA find that the Milwaukee-Racine, Wisconsin (WI) nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS).

**DATES:** This direct final rule will be effective June 23, 2009, unless EPA receives adverse comments by May 26, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0683, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2008–0683. EPA's policy is that all comments received will be included in the public docket without change and may be made available online 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 *http://www.regulations.gov* or e-mail. The *http://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 *http://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.

*Docket:* All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886–6143 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov.*

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



### I. What Is EPA Approving?

EPA is approving a July 28, 2008, request from WDNR that EPA find that the Milwaukee-Racine, WI nonattainment area attained the revoked 1-hour ozone NAAQS.

### II. What Is the Background for This Action?

Under section 107(d)(1)(C) of the Clean Air Act (CAA), the Milwaukee-Racine, WI area was designated nonattainment for the 1-hour ozone NAAQS by operation of law upon enactment of the 1990 CAA amendments. Under section 181(a) of the CAA, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as "marginal," "moderate," "serious," "severe-15," "severe-17", or "extreme," depending on the severity of the area's air quality problem and the number of years needed to reach attainment from the 1990 CAA amendments. These nonattainment designations and classifications were codified in Title 40 of the Code of Federal Regulations (CFR) Part 81 (see 56 FR 56994, November 6, 1991).

The ozone design value for an area, which characterizes the severity of the air quality problem, is represented by the highest ozone design value at any of the individual ozone monitoring sites in the area. Table 1 in section 181(a) of the CAA provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.190 parts per million (ppm) and 0.280 ppm for the three-year period, 1987–1989, were classified as severe-17. Because the Milwaukee-Racine, WI area's 1988 ozone design value fell between 0.190 and 0.280 ppm, this area was classified as severe-17 nonattainment for the 1-hour ozone NAAQS. Under section 182(c) of the CAA, states containing areas that were classified as severe-17 nonattainment were required to submit State Implementation Plans (SIPs) to provide for certain emission controls, to show progress toward attainment, and to

provide for attainment of the ozone NAAQS as expeditiously as practicable, but no later than November 15, 2007.

In 1997, EPA adopted a new 8-hour ozone NAAQS. The implementation rule for the standard, referred to as the Phase 1 Implementation Rule, was published on April 30, 2004 (69 FR 23951). More detail on this rule and how it pertains to this action is provided below.

### III. What Is the Impact of a December 22, 2006, United States Court of Appeals Decision Regarding EPA's Phase 1 Ozone Implementation Rule on This Rule?

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA*, the U.S. Court of Appeals for the District of Columbia Circuit (the court) vacated the Phase 1 Implementation Rule for the 1997 8-hour ozone NAAQS (69 FR 23951, April 30, 2004). 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Id., Docket No. 04–1201. With respect to the challenges to the anti-backsliding provisions of the rule, the court vacated three provisions that would have allowed states to remove from the SIP or to not adopt three 1-hour obligations once the 1-hour ozone NAAQS was revoked to transition to the implementation of the 8-hour ozone NAAQS: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour ozone NAAQS by the 1-hour attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour ozone NAAQS or for failure to attain the 1-hour ozone NAAQS. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

The provisions in 40 CFR 51.905(a)–(c) concerning anti-backsliding remain in effect and areas must continue to meet those requirements. However, the three provisions noted above, which are specified in 40 CFR 51.905(e), were vacated by the court. As a result, states must continue to meet: (1) The obligations for 1-hour NSR; (2) 1-hour contingency measures; and, (3) for severe and extreme areas, the obligations related to a section 185 fee program. Currently, EPA is developing two proposed rules to address the court's vacatur and remand with respect to these three requirements. We address below how the 1-hour obligations that currently continue to apply under EPA's anti-backsliding rule (as interpreted by the court) apply where EPA has made a determination that the area attained the 1-hour ozone NAAQS by its attainment date.

Therefore, of the three provisions vacated by the court, today's action addresses two of them using existing policy: Section 185 penalty fees and contingency measures. The third issue, NSR requirements, will be addressed in a separate agency rulemaking which is currently under development.

### IV. Attainment Finding

In 1991, the Milwaukee-Racine, WI area was classified as severe-17 for the 1-hour ozone NAAQS. The area consists of the following counties: Milwaukee, Waukesha, Washington, Ozaukee, Kenosha, and Racine.

An area is considered to have attained the 1-hour ozone NAAQS if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR 50.9, based on three consecutive calendar years of complete, quality-assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1.0) average expected exceedance per year at any site in the area. An exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. The data should be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System so that they are available to the public for review.

The finding of attainment for the Milwaukee-Racine, WI area is based on an analysis of 1-hour ozone air quality data from three separate three-year periods including 2003–2005, 2004–2006, and 2005–2007. Table 1 below summarizes these data.

TABLE 1—1-HOUR OZONE VIOLATION ASSESSMENT AT MONITORING SITES IN THE MILWAUKEE-RACINE, WI AREA (2003–2007)

| Site code | County | Site | Number 2003–2005 exceedances | Number 2004–2006 exceedances | Number 2005–2007 exceedances | In violation? |
|---|---|---|---|---|---|---|
| 55–059–0019 | Kenosha | Pleasant Prairie | 0 | 0 | 0 | No. |
| 55–079–0010 | Milwaukee | 16th St Health Center | [a] 0 | 0 | 0 | No. |
| 55–079–0026 | Milwaukee | SER–HQ | 1 | 1 | 1 | No. |
| 55–079–0041 | Milwaukee | UWM North | 2 | 2 | 2 | No. |
| 55–079–0044 | Milwaukee | Appleton Avenue | 0 | [b] | [b] | No. |
| 55–079–0085 | Milwaukee | Bayside | 2 | 2 | 2 | No. |
| 55–089–0008 | Ozaukee | Grafton | 1 | 1 | 1 | No. |
| 55–089–0009 | Ozaukee | Harrington Beach | 2 | 1 | 1 | No. |
| 55–101–0017 | Racine | Racine | 0 | 0 | 0 | No. |
| 55–131–0009 | Washington | Slinger | 0 | 0 | 0 | No. |
| 55–133–0017 | Waukesha | Carroll College | 0 | [c] | [c] | No. |
| 55–133–0027 | Waukesha | Cleveland Avenue | [d] | 0 | 0 | No. |

**Notes:**

[a] Data completeness at 55–079–0010 in 2003 was 62%. This does not meet US EPA's 75% completeness criterion. Hence, the 3rd high ozone value was used to determine the design value for 2003–2005. That value is 0.097 ppm.

[b] The ozone monitor at Appleton Avenue in Milwaukee (55–079–0044) was removed from service after the 2005 monitoring season. Therefore a violation determination can be made only for the period 2003–2005.

[c] The Carroll College site (55–133–0017) was shut down after the 2005 ozone monitoring season because the building where the monitor was located was razed.

[d] Ozone monitoring at the Cleveland Avenue site (55–133–0027) began in 2004. A violation assessment cannot be completed for 2003–2005 due to the lack of data.

Based on ambient ozone season (April–October) 1-hour ozone air quality data for these three-year periods, EPA is approving a request to find that the Milwaukee-Racine, WI area attained the 1-hour ozone NAAQS prior to its attainment deadline of November 15, 2007. An analysis of preliminary, non-quality assured data for 2008 indicates that the area continues to attain the 1-hour ozone NAAQS.

## V. What Action Is EPA Taking?

EPA is approving a July 28, 2008 request from WDNR that EPA find that the Milwaukee-Racine, WI nonattainment area attained the revoked 1-hour ozone NAAQS. Under Section 181(b)(2) of the CAA, EPA must determine whether ozone nonattainment areas have attained the ozone NAAQS by their attainment date. This determination must be based on the area's design value as of the attainment date.[1]

Because the area has attained the 1-hour ozone NAAQS by the applicable attainment date, it is not subject to the requirement to implement contingency measures for failure to attain the standard by its attainment date. Since the area has met its attainment deadline, even if the area subsequently lapses into nonattainment, it would not be required to implement the contingency measures for failure to attain the standard by its attainment date.

If a severe or extreme 1-hour ozone nonattainment area attains by its attainment date, it would not be required to implement the section 185 penalty fees program. Section 185(a) of the CAA states that a severe or extreme ozone nonattainment area must implement a program to impose fees on certain stationary sources of air pollution if the area "has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date." Consequently, if such an area has attained the standard by its applicable attainment date, even if it subsequently lapses into nonattainment, the area would not be required to implement the section 185 penalty fees program. Because EPA finds that the area has attained the 1-hour ozone NAAQS by its applicable attainment date, we also find that the area is not subject to the imposition of the section 185 penalty fees.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective June 23, 2009 without further notice unless we receive relevant adverse written comments by May 26, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective June 23, 2009.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of

[1] EPA remains obligated under section 181(b)(2) to determine whether an area attained the 1-hour ozone NAAQS by its attainment date. However, after the revocation of the 1-hour ozone NAAQS, EPA is no longer obligated to reclassify an area to a higher classification for the 1-hour ozone NAAQS based upon a determination that the area failed to attain the 1-hour ozone NAAQS by the area's attainment date for the 1-hour ozone NAAQS. (40 CFR section 51.905(e)(2)(i)(B). Thus, even if we make a finding that an area has failed to attain the 1-hour ozone NAAQS by its attainment date, the area would not be reclassified to a higher classification.

proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: April 9, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart YY—Wisconsin

■ 2. Section 52.2585 is amended by adding paragraph (v) to read as follows:

**§ 52.2585 Control Strategy: Ozone.**

* * * * *

(v) On July 28, 2008, the Wisconsin Department of Natural Resources requested that EPA find that the Milwaukee-Racine, WI nonattainment area, attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). After review of this submission, EPA approves this request.

[FR Doc. E9–9364 Filed 4–23–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0526; FRL–8411–9]**

### Penoxsulam; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of penoxsulam in or on almond hulls; grape; nut, tree, group 14; and pistachio. Dow AgroSciences, LLC., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective April 24, 2009. Objections and requests for hearings must be received on or before June 23, 2009, 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–2008–0526. All documents in the docket are listed in the docket index available at *http://www.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:** Philip V. Errico, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6663; e-mail address: *errico.philip@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).
- 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 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 electronically available documents 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 e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, 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–2008–0526 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 June 23, 2009.

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–2008–0526, 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 Facility'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 August 13, 2008 (73 FR 47186) (FRL–8375–8), 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 8F7369) by Dow AgroSciences, LLC., 9330 Zionsville Rd., Indianapolis, IN 46268. The petition requested that 40 CFR 180.605 be amended by establishing tolerances for residues of the herbicide penoxsulam, 2-(2,2-difluoroethoxy)-*N*-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl) benzenesulfonamide in or on nut, tree, group14; grape; almond, hulls, and pistachio all at 0.1 parts per million (ppm). That notice referenced a summary of the petition prepared by Dow AgroSciences LLC, 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.

## 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...."

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 tolerances for residues of penoxsulam on almond hulls; grape; nut, tree, group 14, and pistachio all at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing tolerances 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.

Penoxsulam exhibited minimal acute toxicity in the available studies. In subchronic and chronic feeding studies in rats and dogs, the most sensitive target organ was the urothelium of the urinary system. In subchronic and chronic feeding studies in mice, no effects of toxicological significance were observed. No developmental toxicity was observed in the developmental toxicity studies in rats and rabbits and there was no increased quantitative or qualitative susceptibility of fetuses, as compared to dams. In a two-generation reproduction study in rats, delays in preputial separation were noted; however, no other endpoints of reproductive toxicity or offspring growth and survival were affected by treatment. There was no increased quantitative or qualitative susceptibility of fetuses or offspring, as compared to adults. No treatment-related neurotoxicity was observed in acute or chronic neurotoxicity studies in rats, or in any of the other available studies on penoxsulam. No systemic or dermal toxicity was noted in a 28–day dermal toxicity study in rats.

With respect to carcinogenicity, penoxsulam was classified as having suggestive evidence of carcinogenicity. The classification was based on an increase in large granular lymphocyte leukemia (also called mononuclear cell leukemia (MNCL)). EPA concluded that the cancer risk to humans is negligible. The MNCL seen in the Fisher 344 rat study appears not to be treatment related because it was only seen in male rats, there was a lack of dose-response across the treatment groups (i.e., incidence did not increase with increasing dose), and Fisher 344 rats are known to be susceptible to MNCL, especially as they age. MNCL in Fisher 344 rats has not been found in other mammals, and there is no comparable tumor seen in humans. Finally, there is no other evidence on penoxsulam to indicate a cancer concern, including the fact that no cancer concerns were identified in the mouse carcinogenicity study; there is no evidence that penoxsulam is genotoxic; and other chemicals in the class of compounds (triazolopyrimidines) have not shown evidence of MNCL in Fisher 344 rats. EPA determined that the chronic assessment is considered to be protective of potential cancer risks. Penoxsulam did not demonstrate any mutagenic potential in a battery of four mutagenicity studies. There is not a concern for mutagenicity resulting from exposure to penoxsulam.

Specific information on the studies received and the nature of the adverse effects caused by penoxsulam 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* in the document *Penoxsulam Risk Assessment* at Appendix A in docket ID number EPA–HQ–OPP–2008–0526 and in the final rule published in the **Federal Register** of September 24, 2004 (EPA–HQ–OPP–2004–0286), (FRL–7678–6).

### *B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as 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) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD 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 dietary risks by comparing aggregate food and water 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 POD by all applicable UFs. Aggregate short–, intermediate–, and chronic–term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. 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/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for penoxsulam used for human risk assessment can be found at *http://www.regulations.gov* in document Penoxsulam Risk Assessment at Appendix A in docket ID number EPA–HQ–OPP–2008–0526 and in the final rule published in the **Federal Register** of September 24, 2004 (EPA–HQ–OPP–2004–0286), (FRL–7678–6).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to penoxsulam, EPA considered exposure under the petitioned-for tolerances as well as all existing penoxsulam tolerances in 40 CFR 180.605.

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.

No such effects were identified in the toxicological studies for penoxsulam; 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 U.S. Department of Agriculture 1994–1996 and 1998 Continuiing Survey of Food Intake by Individuals. As to residue levels in food, EPA used tolerance level residues and 100% crop treated, and incorporated default processing factors for processed food forms.

iii. *Cancer.* Penoxsulam has been classified as having "suggestive evidence for carcinogenic potential" based on some evidence of mononuclear cell leukemia (MNCL) in a penoxsulam cancer study in Fisher 344 rats. However, the Agency concluded that the cancer risk to humans is negligible based on the following considerations. First, it is questionable that the MNCL seen in the Fisher 344 rat study was treatment related because it was only seen in male rats, there was a lack of dose-response across the treatment groups (i.e., incidence did not increase with increasing dose), and Fisher 344 rats are known to be susceptible to MNCL, especially as they age. Second, MNCL in Fisher 344 rats is of questionable significance for humans because it has not been found in other mammals, and there is no comparable tumor seen in humans. Finally, there is no other evidence on penoxsulam to indicate a cancer concern, including the fact that no cancer concerns were identified in the mouse carcinogenicity study; there is no evidence that penoxsulam is genotoxic; and other chemicals in the class of compounds (triazolopyrimidines) have not shown evidence of MNCL in Fisher 344 rats.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for penoxsulam. Tolerance level residues and/or 100% crop treated were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency considered screening level water exposure models in the dietary exposure analysis and risk assessment for penoxsulam in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of penoxsulam. 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 FIRST model for surface water and the Screening Concentratin in Ground Water (SCI-GROW) model for ground water, the estimated drinking water concentrations (EDWCs) of penoxsulam for chronic exposures for non-cancer assessments are estimated to be 0.9 parts per billion (ppb) for surface water and 23.3 ppb for ground water.

In addition to uses that may result in the transport of penoxsulam residues to surface and/or ground water, penoxsulam may be applied directly to water, at a maximum rate of 150 ppb, for aquatic weed control. For chronic dietary risk assessment, the water concentration value of 150 ppb from the registered aquatic use 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).

Penoxsulam is currently registered for the following uses that could result in residential exposures following use on lawns and treatment of residential aquatic sites. EPA assessed residential exposure using the following assumptions: exposures can be of short- and intermediate-term durations and can be through dermal or oral routes.

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."

EPA has not found penoxsulam to share a common mechanism of toxicity with any other substances, and penoxsulam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that penoxsulam does not have 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(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) 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 (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No developmental toxicity was observed in the developmental toxicity studies in rats and rabbits and there was no increased quantitative or qualitative susceptibility of fetuses, as compared to dams. In a two-generation reproduction study in rats, delays in preputial separation were noted; however, no other endpoints of reproductive toxicity or offspring growth and survival were affected by treatment. There was no increased quantitative or qualitative susceptibility of fetuses or offspring, as compared to adults. There are no residual uncertainties for pre- and/or post-natal toxicity resulting from exposure to penoxsulam and there is no

evidence of quantitative or qualitative susceptibility in the toxicological data.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for penoxsulam is complete, except for immunotoxicity testing. EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since this requirement went into effect well after the tolerance petition was submitted, these studies are not yet available for penoxsulam. In the absence of specific immunotoxicity studies, EPA has evaluated the available penoxsulam toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There was no evidence of adverse effects on the organs of the immune system in any study with penoxsulam. Based on these considerations, EPA does not believe that conducting a special series 870.7800 immunotoxicity study will result in a point of departure less than the NOAEL of 14.7 milligrams/kilograms/day (mg/kg/day) used in calculating the cPAD for penoxsulam; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. There is no indication that penoxsulam 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 penoxsulam results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment utilizes proposed tolerance level residues and 100% crop treated for all commodities. EPA made conservative (protective) assumptions in the residue estimates used to assess exposure to penoxsulam in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by penoxsulam.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, penoxsulam 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 chronic exposure to penoxsulam from food and water will utilize 7.1% of the cPAD for all infants, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Penoxsulam is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to penoxsulam.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 1,500 to children from oral post application exposure from turf treated with penoxsulam and 5,500 from adults applying penoxsulam to residential turf. As the aggregate MOE is greater than 100, the short-term aggregate risks to children and adults do not exceed EPA's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Penoxsulam is currently registered for use(s) that could result in intermediate-term residential exposure. However, the Agency has determined that it is not appropriate to aggregate these intermediate-term exposures with chronic exposure to penoxsulam through food and water. Therefore, intermediate-term aggregate risk estimates are equivalent to the chronic aggregate risk estimates discussed above.

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 penoxsulam residues.

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (high performance liquid chromatography with tandem mass spectroscopy-mass spectroscopy detector (LC/MS/MS),) 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 maximum residue limits (MRLs) for residues of penoxsulam in almond, hulls; grape; nut, tree, group 14, and pistachio.

## V. Conclusion

Therefore, tolerances are established for residues of penoxsulam on almond hulls; grape; nut, tree, group 14, and pistachio all at 0.01 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances 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 final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *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 tolerances 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 9, 2000) do not apply to this final rule. In addition, this final 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: April 17, 2009.

**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 180.605 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

**§ 180.605 Penoxsulam; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| Almond, hulls | 0.01 |
| * * * * * | |
| Grape | 0.01 |
| Nut, tree, group 14 | 0.01 |
| Pistachio | 0.01 |
| * * * * * | |

* * * * *

[FR Doc. E9–9441 Filed 4–23–09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

**[EPA–R10–OW–2008–0826; FRL–8893–1]**

### Ocean Dumping; Designation of Ocean Dredged Material Disposal Sites Offshore of the Umpqua River, Oregon

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action finalizes the designation of the Umpqua River ocean dredged material sites pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The new sites are needed primarily to serve the long-term need for a location to dispose of material dredged from the Umpqua River navigation channel, and to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The newly designated sites will be subject to ongoing monitoring and management specified in this rule and in the Site Management and Monitoring Plan, which is also finalized as part of this action. The monitoring and management requirements will help to ensure ongoing protection of the marine environment.

**DATES:** *Effective Date:* This final rule will be effective May 26, 2009.

**ADDRESSES:** For more information on this final rule, Docket ID No. EPA–R10–OW–2008–0826 use one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for accessing the docket and materials related to this final rule.
- *E-mail: Freedman.Jonathan@epa.gov*
- *Mail:* Jonathan Freedman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Publicly available docket materials are available either electronically at *http://www.regulations.gov*, or in hard copy during normal business hours at the U.S. Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553–1289, between the hours of 9 a.m. to 11:30 a.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Freedman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–0266, e-mail: *freedman.jonathan@epa.gov*, or contact Jessica Winkler, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–7369, e-mail: *winkler.jessica@epa.gov*.

**SUPPLEMENTARY INFORMATION:** On November 25, 2008, EPA published a proposed rule at 73 FR 71575 to designate two new ocean dredged material disposal sites near the mouth of the Umpqua River, Oregon and to withdraw an earlier proposed rule to designate a single site. EPA received one comment on the proposed rule.

**1. Potentially Affected Persons**

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of the Umpqua River, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) would be most affected by this action. Potentially affected categories and persons include:

| Category | Examples of potentially regulated persons |
|---|---|
| Federal Government | U.S. Army Corps of Engineers Civil Works Projects, and other Federal Agencies. |
| Industry and General Public | Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners. |
| State, local and tribal governments. | Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**2. Background**

*a. History of Disposal Sites Offshore of the Umpqua River, Oregon*

Two ocean dredged material disposal sites, an Interim Site and an Adjusted Site, were formerly used by the U.S. Army Corps of Engineers (Corps) for the disposal of sediments dredged from the Umpqua River navigation project. An "Interim Site" was included in the list of approved ocean disposal sites for dredged material in the **Federal Register** in 1977 (42 FR 2461), a status superseded by later statutory changes to the MPRSA. A realignment of the approach channel to the Umpqua River estuary re-routed the navigation channel over the Interim Site so that in 1991 an Adjusted Site was selected by the Corps pursuant to Section 103 of the MPRSA. That authority allows the Corps to select a site for disposal when a site has not been designated. Selection of the Adjusted Site was intended to reduce potential hazards associated with navigational conflicts in the channel and associated with mounding of dredged material at the Interim Site. The selection of the Adjusted Site was also intended to increase long-term disposal site capacity near the mouth of the Umpqua River. EPA concurred on the selection of the Adjusted Site and approved the Corps' request to continue to use the site through the end of the 2008 dredging season. The Adjusted Site is not a suitable candidate for designation by EPA pursuant to section 102 of the MPRSA because use of the Adjusted Site resulted in mounding that severely limited site capacity. In 1996, shoaling and breaking waves associated with mounding at the Adjusted Site were reported. Subsequently a site utilization study was conducted by the Corps in 1998. That study found evidence of mounding sufficient to warrant serious concern regarding impact on the wave environment near the Umpqua River entrance channel. To address that concern the volume of dredged material placed at the Adjusted Site was reduced from an average annual volume of 188,000 cubic yards (cy) prior to 1999 to an average annual volume of 108,000 cy from 1999 to 2007. EPA determined that alternatives to the Adjusted Site would be needed for long-term disposal capacity near the mouth of the Umpqua River.

*b. Location and Configuration of Umpqua River Ocean Dredged Material Disposal Sites*

This action finalizes the withdrawal of the rule the Agency proposed on October 2, 1991, at 56 FR. 49858, to designate an Umpqua River site, and finalizes the designation of two Umpqua River ocean dredged material sites to the north and south, respectively, of the mouth of the Umpqua River. The coordinates for the two sites are listed below and the figure below shows the location of the two Umpqua River ocean dredged material disposal sites (Umpqua River ODMD Sites or Sites). The configuration of the Sites is expected to allow dredged material disposed in shallower portions of each Site to naturally disperse into the littoral zone without creating mounding conditions that could contribute to adverse impacts to navigation. This will allow EPA to manage the Sites to keep as much material disposed at the Sites as possible in the active littoral drift area to augment shoreline building processes.

The coordinates for the two Umpqua River ODMD Sites are, in North American Datum 83 (NAD 83).

| North Umpqua ODMD site | South Umpqua ODMD site |
|---|---|
| 43°41′23.09″ N., 124°14′20.28″ W. | 43°39′32.31″ N., 124°14′35.60″ W. |
| 43°41′25.86″ N., 124°12′54.61″ W. | 43°39′35.23″ N., 124°13′11.01″ W. |
| 43°40′43.62″ N., 124°14′17.85″ W. | 43°38′53.08″ N., 124°14′32.94″ W. |
| 43°40′46.37″ N., 124°12′52.74″ W. | 43°38′55.82″ N., 124°13′08.36″ W. |

The two Sites are situated in approximately 30 to 120 feet of water located to the north and south of the entrance to the Umpqua River on the southern Oregon Coast (see Figure 1). The dimensions of each of the Sites are 6,300 by 4,000 feet. Each disposal Site will contain a drop zone, defined by a 500-foot setback inscribed within all sides of the boundary of each Site, reducing the permissible disposal area to a zone 5,300 feet long by 3,000 feet wide. The drop zone will ensure that dredged material initially stays within each Site.

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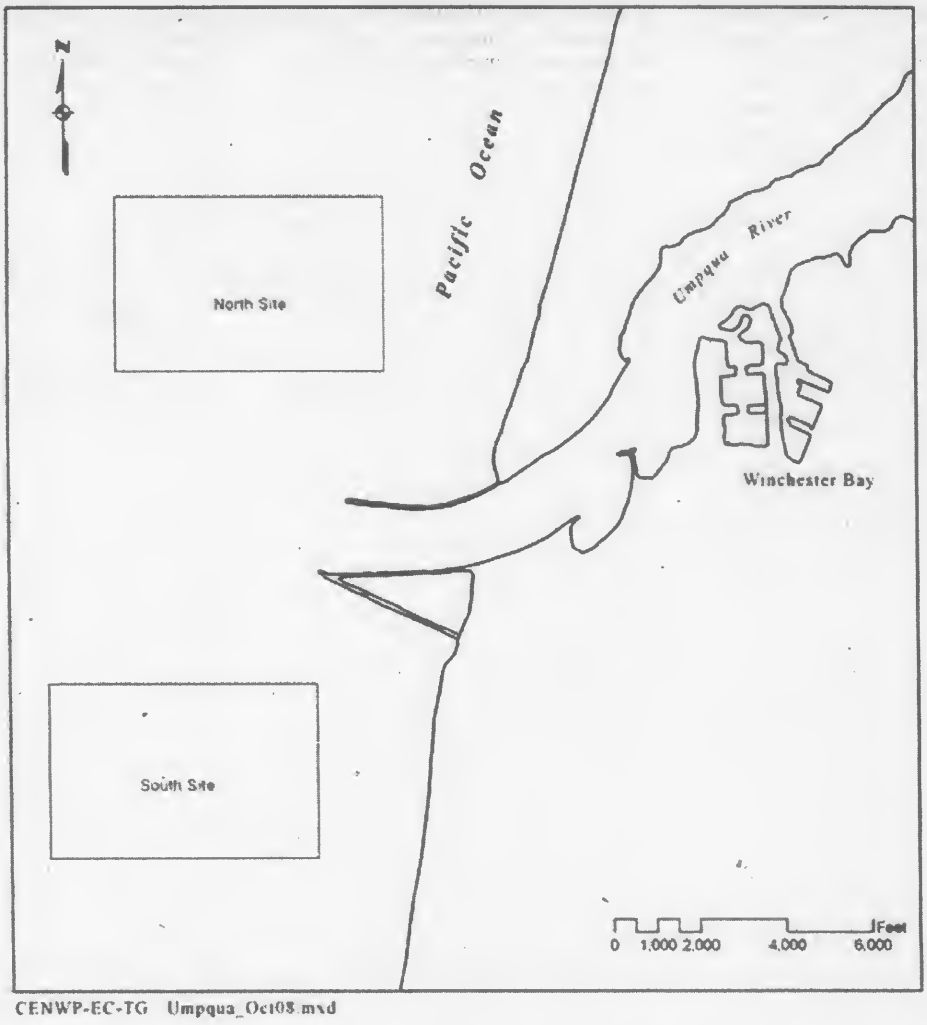


**Figure 1 is a diagram of the Final North and South Sites**

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*c. Management and Monitoring of the Sites*

The final Umpqua River ODMD Sites are expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at the Umpqua River, Oregon and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Sites. The ocean dumping regulations do not require a modification of any existing permits issued before this final action. All persons using the Sites are required to follow the Site Management and Monitoring Plan (SMMP) for the Umpqua River ODMD Sites. The SMMP is available to the public as part of this action. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the Sites are suitable for disposal in the ocean. The final SMMP also addresses management of the Sites to ensure adverse mounding does not occur and to ensure that disposal events are timed to minimize interference with other uses of ocean waters in the vicinity of the Sites.

*d. MPRSA Criteria*

EPA assessed this action against the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine that the final site designations satisfied those criteria.

General Criteria (40 CFR 228.5)

(1) *Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).*

EPA reviewed the potential for the Sites to interfere with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas and found low potential for conflicts. The Sites are located away from the approach to the Umpqua River entrance channel and are unlikely to cause interference with navigation near the mouth of the Umpqua River. Commercial crab and salmon fishing have the potential to take place in the Sites because of overlapping disposal and fishing seasons, but conflicts are not

anticipated based on the past history of fishing and disposal operations in this area. Other recreational users, for example, surfers, boarders, and divers, may use the near-shore area in the vicinity of the Sites. EPA does not expect disposal operations at the Sites to conflict with these recreationists.

(2) *Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).*

Based on EPA's review of modeling, monitoring data, analysis of sediment quality, and history of use, no detectable contaminant concentrations or water quality effects, e.g., suspended solids, would be expected to reach any beach, shoreline, or other area outside of the Sites. The drop zones at each of the Sites will help ensure this criterion is satisfied. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by EPA and the Corps. In general, dredged material which meets the criteria under 40 CFR 227.13(b) is deemed environmentally acceptable for ocean dumping without further testing. Dredged material which does not meet the criteria of 40 CFR 227.13(b) must be further tested as required by 40 CFR 227.13(c). Suitable material can be disposed at the Sites. Modeling work performed by the Corps at the Umpqua River demonstrates that water column turbidity, a temporary perturbation during disposal, would be expected to dissipate for an anticipated 97% of the coarser material within a few minutes of disposal. The remaining 3% of the material, which would be classified as fine-grained, would be expected to dissipate within a half hour. Over time, some of the suitable disposed material would be expected to migrate into the littoral system, and potentially to coastal shorelines. Bottom movement of material, based on historic trends near the mouth of the Umpqua River, is expected to show a net movement to the north at the depth of the disposal Sites with rapid dispersion after movement.

(3) *If Site designation studies show that any interim disposal sites do not meet the site selection criteria, use of such sites shall be terminated as soon as any alternate site can be designated (40 CFR 228.5(c)).*

EPA's recent final rule at 73 FR 74983 (December 10, 2008) repealed obsolete regulations under the MPRSA regarding interim ocean dumping sites and interim ocean dumping criteria. EPA stated in the proposed rule that the use of the Interim Site near the Umpqua River Sites was terminated upon selection of the 103-selected site, the Adjusted Site, by the Corps. However, the category of "interim site" has now been removed from the ocean dumping regulations.

(4) *The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).*

EPA sized the final Sites to meet this criterion. The Sites tend to be moderately dispersive in the near-shore area and less dispersive farther from shore. The Sites were designed to be large enough to minimize the potential for adverse mounding and to allow for a minimum twenty-year capacity. Effective monitoring of the Sites is necessary and annual bathymetric surveys are required for each Site. Those surveys are expected to be used to document the fate of the dredged material disposed at the Sites and to provide information for active management of the Sites.

(5) *EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).*

The Sites are located near where historic disposal occurred with only minimal impact to the environment. Locations off the continental shelf in the Pacific Ocean as a general rule are inhabited by stable benthic and pelagic ecosystems on steeper gradients that are not well adapted to the type of frequent disturbance events that are typical of dredged material disposal in ocean waters. Monitoring and surveillance of these Sites do not pose the challenges inherent in locations beyond the edge of the continental shelf. Material disposed at a location beyond the continental shelf would not be available to the littoral system. The loss of material would potentially have a negative impact on the mass balance of the system with a resulting negative impact on erosion/accretion patterns along this limited area of coastline near the Umpqua River.

Specific Criteria (40 CFR 228.6)

(1) *Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).*

The geographical position, including the depth, bottom topography and distance from the coastline in the vicinity of the Sites will not cause adverse effects to the marine environment. Based on EPA's understanding of currents at the Sites and the influence of those currents on the movement of material in the area, there is a high likelihood that much of the material disposed at the Sites will be transported to the littoral sediment circulation system. Limited onshore transport of material disposed of at the Sites is expected because of the nature of the prevailing currents and wave transport in the vicinity of the Sites. Net predicted material transport at the Sites is southward in the summer months and northward during the remainder of the year. These transport mechanisms are expected to move material into the active littoral drift area and to significantly decrease or eliminate mounding as an issue for disposal of dredged material near the mouth of the Umpqua River. This movement is expected to allow for long-term disposal without creation of adverse mounding conditions at either of the Sites.

To help avoid adverse mounding at the Sites, the site management strategy will include placing the majority of dredged material within drop zones at each Site and in shallower portions of the Sites closer to shore where the material can return to the regional littoral sediment system. Disposal runs will be managed to avoid multiple dumps in any location to further minimize mounding. Management may include establishing "cells" along the nearshore portions of each Site and assigning numbers of "dumps" to each cell to minimize material accumulation and avoid excessive or persistent mounding. Disposal will also alternate as necessary between the two Sites to allow for maximum dispersal of material and minimal impact to each Site.

(2) *Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).*

The Sites are not located in exclusive breeding, spawning, nursery, feeding or passage areas for adult or juvenile phases of living resources. Near the Sites, a variety of pelagic and demersal fish species, as well as shellfish, are found. Modeling of the water column over the Sites indicates that turbidity from a disposal event is expected to dissipate rapidly and consequently avoidance behavior by any species in the Sites or in the surrounding area at

the time of a disposal event would be short-term.

(3) *Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).*

The Sites, although located in close proximity to the Umpqua River navigation channel, are located a sufficient distance offshore to avoid adverse impacts to beaches and other amenity areas. Transportation of dredges or barges to and from the Sites to dispose of dredged material will be coordinated to avoid disturbance of other activities near the Umpqua River entrance channel. Dredged material disposed of at the Sites is expected to disperse into the littoral system, with a possible positive effect over time of reducing erosion of coastal beaches. There are no rocks or pinnacles in the vicinity of either Site. The Oregon Dunes National Recreation Area, a part of the Siuslaw National Forest, is located on the beach adjacent to the South ODMD Site, but does not extend into the water. Use of the South ODMD Site is not expected to interfere with any upland uses.

The ocean area north and south of the south jetty is utilized for wave-dependent near-shore recreation, such as surfing, diving, kayaking, boogie-boarding, skim boarding, and body surfing. While some of these uses may overlap with the Sites, resulting in temporary usage conflict during disposal activities, the SMMP contains provisions to minimize or avoid such conflicts. The Sites are sized and located to provide long-term capacity for the disposal of dredged material without causing any impacts to the wave environment at, or near, the Sites. Site monitoring and adaptive management are components of the final SMMP.

(4) *Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).*

Dredged material found suitable for ocean disposal pursuant to the regulatory criteria for dredged material or characterized by chemical and biological testing and found suitable for disposal into ocean waters will be the only material allowed to be disposed of at the Sites. No material defined as "waste" under the MPRSA will be allowed to be disposed of at the Sites. The dredged material to be disposed of at the Sites will be predominantly marine sand, far removed from known sources of contamination. With respect to methods of releasing material at the Sites, material will be released just below the surface and the disposal vessel will be required to be under power and to slowly transit the disposal location during disposal. This method of release is expected to spread material at the Sites to minimize mounding and to minimize impacts to the benthic community and to species at the Sites at the time of a disposal event.

(5) *Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).*

EPA expects monitoring and surveillance at the Sites to be feasible and readily performed from small surface research vessels. The Sites are accessible for bathymetric and side-scan sonar surveys. At a minimum, annual bathymetric surveys will be conducted at each of the Sites to confirm that no unacceptable mounding is taking place within the Sites or in their immediate vicinity. Routine monitoring will concentrate on examining how the distribution of material in the near-shore portions of the Sites is working to minimize mounding of material and how the distribution of material augments littoral processes. Monitoring will also examine the distribution of material in the deeper portions of the Sites to avoid or minimize mounding.

(6) *Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).*

Dispersal, horizontal transport and vertical mixing characteristics of the area at and in the vicinity of the Sites indicate that the marine sands and fluvial gravels from the Umpqua River distribute away from the river mouth rapidly. The beaches do not show significant accretion or loss, suggesting the system is in equilibrium and that littoral transport is in balance. The bottom current records suggest a bias in transport to the north. Fine grained material tends to remain in suspension and to experience rapid offshore transport compared to other sediment sizes. Sediment transport of sand-sized or coarser material tends to move directly as bedload, but is occasionally suspended by wave action near the seafloor. The final Sites are not expected to change these characteristics.

(7) *Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).*

The two Sites have not been used before for any type of disposal activity. Disposal of dredged material is not expected to result in unacceptable environmental degradation at the Sites or in the vicinity of the Sites. The final SMMP includes requirements, including bathymetric surveys and preventative steps, for managing the Sites to address potential mounding issues.

(8) *Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).*

The Sites are not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Disposals at the new Sites will be managed according to the final SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the Sites. Commercial and recreational fishing and commercial navigation are the primary uses for which such timing will be needed. No plans for mineral extraction offshore of the Umpqua River are planned or proposed for this area. Wave-dependent near shore recreation may possibly overlap with the Sites resulting in temporary usage conflict during disposal activities but the Sites will be managed to minimize such potential conflicts. Use of the Sites is not expected to change the wave conditions for any recreational uses. Two wave energy projects are in the preliminary permitting phases near the Sites. EPA would expect to revise the SMMP if necessary in the event the proposed wave energy projects moved forward and potential conflicts seemed likely. Fish and shellfish culture operations are not under consideration for the area. There are no known areas of scientific importance in the vicinity of the Sites.

(9) *The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).*

EPA did not identify any adverse water quality impacts from ocean disposal of dredged material at the Sites based on water and sediment quality analyses conducted in the study area of the Sites and based on experience with past disposals near the mouth of the Umpqua River. Fisheries and benthic data show the ecology of the area to be that of a mobile sand community typical of the Oregon Coast.

(10) *Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))*

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the Sites. Material expected to be disposed at the Sites will be uncontaminated marine sands similar to the sediment present at the Sites. Some fine-grained material, finer than natural background, may also be disposed. While this finer-

grained material could have the potential to attract nuisance species to the Sites, no such recruitment occurred in the past at either the Interim or the Adjusted Site. The final SMMP includes specific biological monitoring requirements, which will act to identify any nuisance species and allowing EPA to direct special studies and/or operational changes to address the issue if it arises.

(11) *Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11))*

No significant cultural features have been identified at, or in the vicinity of, the Sites. EPA coordinated with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the Sites to identify any cultural features but none were identified. No shipwrecks were observed or documented within the Sites or their immediate vicinity.

**3. Response to Comments**

EPA received one indirect comment on the proposed rule. The commenter objected generally to any dumping in the ocean and criticized shipping companies for dumping rather than recycling. EPA's action designates sites for the disposal of dredged material meeting the ocean dumping criteria for environmental acceptability in the ocean environment. No other material is allowed at these Sites. The Sites will not be available to users for any purpose other than the disposal of dredged material meeting the regulatory criteria for suitability.

**4. Environmental Statutory Review—National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)**

*(1) NEPA*

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires that Federal agencies prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. EPA has, by policy, determined that the preparation of non-EIS NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. EPA's "Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents," (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the policy and procedures EPA uses when preparing such environmental review documents. EPA's primary voluntary NEPA document for designating the Sites is the final *Umpqua River, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, April 2009* (EA), jointly prepared by EPA and the Corps. The final EA and its Technical Appendices, which are part of the docket for this action, provide the threshold environmental review for designation of the two Sites. The information from the final EA is used extensively, above, in the discussion of the ocean dumping criteria.

*(2) MSA and MMPA*

In the spring of 2008, EPA initiated consultation with the National Marine Fisheries Service (NMFS) concerning essential fish habitat and protected marine mammals. EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d. NMFS reviewed EPA's EFH assessment and ESA Biological Assessment for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389.

With respect to marine mammals, NMFS found that all potential adverse effects to ESA-listed marine mammals are discountable or insignificant. Those findings are documented in Appendix B. Marine Mammal Determinations of the Biological Opinion issued by NMFS to EPA on March 20, 2009. With respect to EFH, NMFS found that disposal of dredge material, an indirect effect of EPA's action to designate the two Umpqua River ODMD Sites, will affect suspended sediment levels over background and temporarily decrease food resources within the Sites during disposal events. However, these effects are not expected to functionally change or alter the habitat or habitat value of designated EFH at or in the vicinity of the Sites. NMFS concluded that safe passage of the EFH managed species will not be functionally changed by this action or by subsequent disposal at the Sites. These findings are documented in the Magnuson-Stevens Fishery Conservation and Management Act section of the NMFS Biological Opinion. NMFS included a "conservation recommendation" to develop a plan for monitoring fish interactions with the disposed dredged material at the Sites. EPA will respond in a separate written response to NMFS' recommendation.

*(3) CZMA*

EPA initiated consultation with the State of Oregon on coastal zone management issues in June of 2008. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP) to meet the requirements of the Coastal Zone Management Act, as amended, (CZMA), 16 U.S.C. 1451 to 1465, and submitted that determination formally to the Oregon Department of Land Conservation and Development (DLCD) for review on November 12, 2008. DLCD published an initial public notice on the consistency determination on November 14, 2008, and in a notice on December 10, 2008, extended the public comment period to January 2, 2009. DLCD received one comment letter from the Oregon Department of Fish and Wildlife (ODFW) expressing support for the designation of the Umpqua River Sites and supporting ocean disposal of dredged material as the best alternative. ODFW did express concern with potential impacts to habitat near the mouth of the Umpqua River and expressed support for "pinpoint dumping" over "uniform placement" of disposal material at the Sites.

DLCD concurred on EPA's determination of consistency with one condition. The condition calls for the final SMMP to assure that monitoring measures for the Umpqua River Sites are reasonably likely to identify significant unanticipated adverse affects on renewable marine resources, biological diversity of marine life and functional integrity of the marine ecosystem at the Sites, and further asks that the SMMP include adaptive management measures to avoid significant impairment of the Sites and significant decreases in abundance of commercial or recreationally caught species from direct or indirect effects on important or essential habitat at the Sites. The final SMMP for the Umpqua River Sites provides the assurances and adaptive management measures requested by DLCD. DLCD responded to the ODFW concern about impacts to habitat by including the condition, above, in its consistency concurrence. DLCD also noted that "pinpoint dumping" has been replaced with the disposal technique of "uniform placement." DLCD suggested that future site designations include opportunities for EPA and ODFW to coordinate on issues.

*(4) ESA*

EPA initiated informal consultation with NMFS and the U.S. Fish and Wildlife Service on its action to designate the Umpqua River ODMD Sites beginning in the spring of 2008. EPA prepared a Biological Assessment to assess the potential effects of designating the two Umpqua River Sites on aquatic and wildlife species to determine whether or not its action might adversely affect species listed as endangered or threatened and/or adversely modify or destroy their designated critical habitat. EPA found that its action would not be likely to adversely affect aquatic or wildlife species listed pursuant to the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, or the critical habitat of such species. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered. These indirect impacts included a short-term increase in suspended solids and turbidity in the water column when dredged material was disposed at the new Sites and an accumulation of material on the ocean floor when material was disposed at the Sites. EPA concluded that while its action may affect ESA-listed species, the action would not be likely to adversely affect ESA-listed species or critical habitat.

The U.S. Fish and Wildlife Service (USFWS) concurred with EPA's finding that EPA's action to designate the Umpqua River ODMD Sites would not likely adversely affect listed species or critical habitat. Consultation with the USFWS for this action was completed on July 25, 2008.

The National Marine Fisheries Service (NMFS) did not concur with EPA's NLAA finding and subsequently prepared a Biological Opinion (BO), issued March 20, 2009. NMFS concluded that EPA's site designations are not likely to jeopardize the continued existence of Oregon Coast (OC) coho salmon or Southern Distinct Population Segment (DPS) green sturgeon and are not likely to destroy or adversely modify designated or proposed critical habitat. However, NMFS found that the indirect effects of designating the Umpqua River Sites related to the exposure fish could experience from the disposal of dredged material could have consequences for listed fish. Based on NMFS' estimate of ensuing indirect effects of designating the Sites, NMFS estimated that injury and death of as many as 990 yearling OC coho salmon and a smaller number of small sub-adult southern DPS green sturgeon could occur. For Steller sea lions, blue whales, fin whales, humpback whales, Southern Resident killer whales, as described in Appendix B to the BO, NMFS concurred with EPA's determination of NLAA. For Southern Oregon/Northern California Coasts (SONNC) coho salmon, as described in Appendix A to the BO, NMFS also concurred with EPA's determination of NLAA. NMFS found no effect for four species of marine turtles, sperm whales, and sei whales because NMFS did not anticipate the species would be present in the action area.

NMFS acknowledged in the BO that EPA's action, designation of the Umpqua River Sites, does not authorize and will not itself result in disposal of dredged material. NMFS stated that it does not anticipate any take will be caused by the designation of the Sites and the adoption of the SMMP. Consequently, NMFS did not include an incidental take statement in the BO. Rather, NMFS stated that any further analysis of the effect of disposal of dredged material at the disposal sites and issuance of an incidental take statement with reasonable and prudent measures and non-discretionary terms and conditions to minimize take would be prepared when a disposal permit is requested by the action agency. NMFS did include a discretionary conservation recommendation in the BO seeking a study of fish interactions with disposed material. Such recommendations are purely advisory in nature. EPA appreciates that such a study could contribute to the scientific knowledge base but believes that NMFS, the expert Federal agency on fish behavior, would be better suited than EPA to carry out such a study.

*(5) NHPA*

EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) to address National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a–2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. EPA determined that no historic properties were affected, or would be affected, by designation of the Sites. EPA did not find any historic properties within the geographic area of the Sites. This determination was based on an extensive review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of cultural resources near the Sites. Side scan sonar of the Sites did not reveal the presence of any shipwrecks or other cultural or historic properties. The SHPO responded to EPA's determination on September 11, 2008, without objection. The SHPO clarified on October 13, 2008, that the designation of the Sites did not require further archeological investigation.

**5. Action**

EPA designates the Umpqua River Sites as EPA-approved dredged material ocean disposal sites in this action. The monitoring and management requirements that will apply to these Sites are described in the final SMMP. EPA received one comment on the proposed rule from a commenter who objected to disposing of harmful material in the ocean. The Sites designated in this action are only available for the disposal of material deemed suitable for ocean disposal. The designation of ocean disposal sites for dredged material does not constitute or imply Corps or EPA approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at either of the Umpqua River Sites may commence by any person, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA independently evaluates proposed dumping in accordance with those criteria pursuant to 40 CFR part 225. EPA has the right to disapprove of the actual disposal of dredged material if EPA determines that environmental requirements under the MPRSA have not been met.

**6. Statutory and Executive Order Reviews**

This rule designates two ocean dredged material disposal sites pursuant to Section 102 of the MPRSA. This rule complies with applicable executive orders and statutory provisions as follows:

*(1) Executive Order 12866*

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or

safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*(2) Paperwork Reduction Act*

This final action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, because this rule does not establish or modify any information or recordkeeping requirements for the regulated community.

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 Title 40 of the CFR are listed in 40 CFR Part 9.

*(3) Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires Federal agencies 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 rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size 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. EPA determined that this final action will not have a significant economic impact on small entities because the final rule will only have the effect of regulating the location of sites to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*(4) Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

*(5) Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255), 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 various levels of government." This rule does not have federalism implications. 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

*(6) Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule does not have tribal implications, as specified in Executive Order 13175 because the designation of the two ocean dredged material disposal Sites will not have a direct effect on 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. Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this final rule, EPA consulted with tribal officials in the development of this rule, particularly as the rule relates to potential impacts to historic or cultural resources.

*(7) Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885) as applying only to those regulatory actions that concern 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 action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action concerns the designation of two ocean dredged material disposal Sites and only has the effect of providing designated locations to use for ocean disposal of dredged material pursuant to Section 102(c) of the MPRSA.

*(8) Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) because it is not a "significant regulatory action" as defined under Executive Order 12866.

*(9) 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), 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 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 final action includes environmental monitoring and measurement as described in EPA's final SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated Sites. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the final SMMP.

*(10) Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*

Executive Order 12898 (59 FR 7629) 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 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 does not affect the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of designating the disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

*(11) Congressional Review Act*

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

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

**Authority:** This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: April 9, 2009.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

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

## PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by adding paragraph (n)(7) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

* * * * *

(n) * * *

(7) Umpqua River, OR—North and South Dredged Material Disposal Sites.

(i) North Umpqua River Site.

(A) *Location:* 43°41′23.09″ N, 124°14′20.28″ W; 43°41′25.86″ N, 124°12′54.61″ W; 43°40′43.62″ N, 124°14′17.85″ W; 43°40′46.37″ N, 124°12′52.74″ W.

(B) *Size:* Approximately 1.92 kilometers long and 1.22 kilometers wide, with a drop zone which is defined as a 500-foot setback inscribed within all sides of the site boundary, reducing the permissible disposal area to a zone 5,300 feet long by 3,000 feet wide.

(C) *Depth:* Ranges from approximately 9 to 37 meters.

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing Use.

(F) *Restrictions:* (*1*) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Umpqua River navigation channel and adjacent areas;

(*2*) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(*3*) Monitoring, as specified in the SMMP, is required.

(ii) South Umpqua River Site.

(A) *Location:* 43°39′32.31″ N, 124°14′35.60″ W; 43°39′35.23″ N, 124°13′11.01″ W; 43°38′53.08″ N, 124°14′32.94″ W; 43°38′55.82″ N, 124°13′08.36″ W.

(B) *Size:* Approximately 1.92 kilometers long and 1.22 kilometers wide, with a drop zone which is defined as a 500-foot setback inscribed within all sides of the site boundary, reducing the permissible disposal area to a zone 5,300 feet long by 3,000 feet wide.

(C) *Depth:* Ranges from approximately 9 to 37 meters.

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing Use.

(F) *Restrictions:* (*1*) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Umpqua River navigation channel and adjacent areas;

(*2*) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(*3*) Monitoring, as specified in the SMMP, is required.

* * * * *

[FR Doc. E9–9434 Filed 4–23–09; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 447 and 455

**[CMS–2198–F2]**

**RIN–0938–AN09**

## Medicaid Program; Disproportionate Share Hospital Payments; Correcting Amendment

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This correcting amendment corrects a technical error in the regulations text in the final rule published in the **Federal Register** on December 19, 2008 (73 FR 77904) entitled, "Disproportionate Share Hospital Payments." In that final rule, we set forth data elements necessary to

comply with the requirements of section 1923(j) of the Social Security Act (the Act) related to auditing and reporting of disproportionate share hospital payments under State Medicaid programs. The effective date was January 19, 2009.

**DATES:** *Effective Date:* This correcting amendment is effective April 24, 2009.

**FOR FURTHER INFORMATION CONTACT:**
Venesa Day, (410) 786–8281.
Rory Howe, (410) 786–4878.
Rob Weaver, (410) 786–5914.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In FR Doc. E8–30000 issued on December 19, 2008 (73 FR 77904), there was a technical error that is identified and corrected in this correcting amendment. The correction in this document is effective April 24, 2009.

## II. Summary of Error in the Regulations Text

On page 77950 of the final rule, we made a technical error in the regulation text of § 447.299(c)(16). In this paragraph, the text provides a narrative description of how "total annual uncompensated care costs" are to be calculated from component data elements. The first sentence accurately names the component data elements and correctly describes the calculation. The last sentence attempts to condense the previous sentence by substituting references for component data elements as identified in previous paragraphs of § 447.299(c). However, the references are unintentionally incorrect.

The last sentence of the original final text indicates that the sum of paragraphs (c)(11) and (c)(15) should be subtracted from (c)(9), (c)(12), and (c)(13). This calculation would sum Medicaid uncompensated care costs and total uninsured inpatient and outpatient uncompensated care costs, then subtract this total from the sum of total Medicaid inpatient and outpatient payments, uninsured inpatient and outpatient revenue, and total applicable Section 1011 payments. This calculation is incorrect and could not be interpreted reasonably to result in "total annual uncompensated care costs". Additionally, it erroneously contradicts section 1923(g) of the Social Security Act (the Act), § 447.299 and § 455 subpart D, and longstanding CMS policy.

The corrected text of the last sentence should read as follows: "This should equal the sum of paragraphs (c)(9), (c)(12), and (c)(13) subtracted from the sum of paragraphs (c)(10) and (c)(14) of this section." This correction includes the correct references necessary to calculate accurately "total uncompensated care costs" consistent with section 1923(g) of the Act, § 447.299 and § 455 Subpart D, and longstanding CMS policy.

## IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This action merely corrects a technical error in the December 19, 2008 final rule. We are not changing the policy contained in that rule, and further public comment is unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this action.

**List of Subjects in 42 CFR Part 447**

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, and Rural areas.

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendment to part 447:

## PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

**Authority:** Secs. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 447.299 is amended by revising paragraph (c)(16) to read as follows:

**§ 447.299 Reporting Requirements**

(c) * * *

(16) *Total annual uncompensated care costs.* The total annual uncompensated care cost equals the total cost of care for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and to individuals with no source of third party coverage for the hospital services they receive less the sum of regular Medicaid FFS rate payments, Medicaid managed care organization payments, supplemental/enhanced Medicaid payments, uninsured revenues, and Section 1011 payments for inpatient and outpatient hospital services. This should equal the sum of paragraphs (c)(9),(c)(12), and (c)(13) subtracted from the sum of paragraphs (c)(10) and (c)(14) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 13, 2009.

**Ashley Files Flory,**

*Acting Executive Secretary to the Department.*

[FR Doc. E9–9232 Filed 4–23–09; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 300

**[Docket No. 0812311655–9645–03]**

**RIN 0648–AX44**

## Pacific Halibut Fisheries; Catch Sharing Plan; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects the text of a final rule published on March 19, 2009, that implemented annual management measures governing the Pacific halibut fishery. This final rule established season dates off of Alaska, Washington, Oregon and California. This action is necessary to correct errors in dates listed in the areas from Leadbetter Point, WA to Cape Falcon, OR and from Cape Falcon to Humbug Mountain, OR.

**DATES:** Effective April 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sarah Williams, 206–526–4646.

**SUPPLEMENTARY INFORMATION:** A final rule published March 19, 2009 (74 FR 11681), included annual management measures for managing the harvest of Pacific halibut (*Hippoglossus*

*stenolepis*) in the sport fishery in International Pacific Halibut Commission (IPHC) Regulatory Area 2A off of Washington, Oregon and California. This correcting amendment revises the season dates in the two areas from Leadbetter Point, WA to Cape Falcon, OR and from Cape Falcon to Humbug Mountain, OR.

**Need for Correction**

The final rule (74 FR 11681), Section 26, Sport Fishing for Halibut-Area 2A, describes dates and days of the week for sport fishing for halibut off Washington, Oregon, and California. Three of the dates published for the area from Leadbetter Point, WA to Cape Falcon, OR (section 8(d)) were inconsistent with the days of the week and several dates published for the area from Cape Falcon to Humbug Mountain, OR (section 8(e)) were inconsistent with the days of the week and one week later than the dates as adopted by the Pacific Fishery Management Council. On page 11693, in paragraph (8)(d)(i), the changes are as follows:

(1) July 19 is corrected to July 18,

(2) August 1 is corrected to August 7,

(3) September 30 is corrected to September 27.

The corrected paragraph reads as follows:

The fishing season commences on May 1, and continues 3 days a week (Thursday through Saturday) until 11,014 lb (4.9 mt) are estimated to have been taken and the season is closed by the Commission or until July 18, whichever is earlier. The fishery will reopen on August 7 and continue 3 days a week (Friday through Sunday) until 4,720 lb (2.1 mt) have been taken and the season is closed by the Commission, or until September 27, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

On page 11694, three sets of dates were listed incorrectly in paragraph (8)(e)(i)(C). The corrections are as follows:

(1) August 16–18 is corrected to August 14–16,

(2) September 18–20 is corrected to September 11–13.

(3) August 23 is deleted as a day after which additional fishing will be evaluated.

The corrected paragraph reads as follows:

If sufficient unharvested catch remains, the third season (summer season), which is for the "all-depth" fishery, will be open on August 7, 8, 9, 21, 22, 23 and September 4, 5, 6, 18, 19, 20 and October 2, 3, 4, 16, 17, 18, 30, 31 , or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling165,681 lb (75.1 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 9. If after August 9, greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, the fishery may re-open every Friday through Sunday, beginning August 14–16, and ending October 31. If after September 6, greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, and the fishery is not already open every Friday through Sunday, the fishery may re-open every Friday through Sunday, beginning September 11–13, and ending October 31. After September 6, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

**Classification**

Pursuant to 5 U.S.C. 553(b)(B), the Acting Assistant Administrator for Fisheries finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to public interest. Notice and comment are unnecessary and contrary to the public interest because this action makes only minor changes to the dates of the fishery and does not alter the total number of days the fishery will be open. These corrections will not affect the results of analyses conducted to support management decisions in the halibut fishery nor change the total catch of halibut. In paragraph (8)(e)(i)(C) the correct dates were in the proposed rule, so this correction will clear up confusion that may be caused by the difference in dates between the proposed and final rules. In section (8)(d)(i), one of the dates had been correct in the proposed rule, and the other two were not. No change in operating practices in the fishery is required. For the same reasons, the Acting AA has determined that good cause exists to waive the 30–day dealy in effectiveness pursuant to 5 U.S.C. 553(d).

This final rule complies with the Halibut Act and the Pacific Fishery Management Council's authority to implement allocation measures for the management of the halibut fishery.

Dated: April 21, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E9–9446 Filed 4–23–09; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 74, No. 78
Friday, April 24, 2009

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

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 4

**[Docket ID OCC–2009–0008]**

**RIN 1557–AD22**

### Freedom of Information Act

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is proposing to amend its regulations governing the disclosure of information pursuant to requests made under the Freedom of Information Act (FOIA) to reflect recent changes to the FOIA made by the Openness Promotes Effectiveness in Our National Government Act of 2007 (OPEN Government Act) and to make other changes that update the OCC's FOIA regulations.

**DATES:** Comments must be received by June 23, 2009.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Freedom of Information Act Regulations" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":* Go to *http://www.regulations.gov*, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC–2009–0008" to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The "How to Use This Site" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail:* *regs.comments@occ.treas.gov*.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

*Instructions:* You must include "OCC" as the agency name and "Docket Number OCC–2009–0008" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, under the "More Search Options" tab click next to the "Advanced Document Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC–2009–0008" to view public comments for this rulemaking action.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

**FOR FURTHER INFORMATION CONTACT:** Lee Walzer, Counsel, or Michele Meyer, Assistant Director, Legislative and Regulatory Activities Division, (202)–874–5090; or Frank Vance, Manager, Disclosure Services and Administrative Operations, Communications Division, (202)–874–5378.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The OPEN Government Act,[1] enacted on December 31, 2007, made several amendments to the FOIA. The OPEN Government Act: revised definitions contained in the FOIA; changed standards for recovering attorneys fees in FOIA litigation; revised time limits for agencies to act on FOIA requests; provided that search fees would not be charged if an agency fails to comply with time limits if no unusual or exceptional circumstances apply to the processing of the request; required agencies to establish a tracking system enabling requesters to check the status of their request; added new reporting requirements to agencies' annual FOIA reports; and required agencies to describe the FOIA disclosures relied upon in redacting records that they release to requesters. Many provisions of the OPEN Government Act took effect upon enactment; others (including some related to the proposed amendments to Part 4 in this NPRM) were effective as of December 31, 2008. The legislation did not require implementing regulations.

Twelve CFR part 4, subpart B, sets forth OCC policies regarding the availability of information under the FOIA and procedures for requesters to follow when seeking such information. The OCC is proposing to amend subpart B of 12 CFR part 4 to reflect the changes to the FOIA made by the OPEN Government Act and to make additional changes to subpart B that would update or simplify existing regulations.

## II. Description of the Proposal

### *Required Description of FOIA Exemptions Used To Justify Non-Disclosure*

The FOIA requires agencies to indicate the amount of information

[1] Public Law 110–175, 110th Cong., 1st Sess., 121 Stat. 2524 (2007).

deleted from any material released pursuant to a FOIA request, unless that disclosure would harm an interest protected by one of the enumerated exemptions under which the deletion was initially made.[2] Prior to the OPEN Government Act, the FOIA required agencies, when technically feasible, to indicate the amount of information deleted at the place in the record where the deletion was made.

The OPEN Government Act amended the FOIA by adding the requirement that an agency detail the specific FOIA exemption under which material is deleted from information sought by a FOIA requester. If technically feasible, the agency should indicate the exemption under which the deletion was made at the place in the record where the agency deleted the material, and should indicate the amount of material that has been deleted.[3] This provision took effect upon enactment of the OPEN Government Act.

The OCC is therefore proposing to amend its FOIA regulation at 12 CFR 4.12(d) to provide that the OCC will list any exemption under which material was deleted, unless doing so would harm an interest protected by an exemption under § 4.12(b). Where technically feasible, the OCC will indicate the amount of information redacted and the exemption relied upon for the redaction.

*Time Period for Responding to a FOIA Request*

The FOIA provides that an agency must determine whether to comply with a FOIA request within 20 days (not including Saturdays, Sundays, and legal holidays) of receipt of the request.[4] The OPEN Government Act further provides that the 20-day period may not be tolled, except that an agency may make one request to the requester for additional information. An agency also may toll the 20-day period to clarify issues related to the fees being charged for a FOIA request. The OPEN Government Act states that the tolling period ends once an agency has received the requested information or resolved any fee issues. Finally, the OPEN Government Act provides that an agency may not assess search or duplication fees if the agency fails to comply with FOIA time limits, if no "unusual or exceptional circumstances" apply to the processing of the request. All of these amendments are effective as of December 31, 2008.

The OCC is proposing to revise 12 CFR 4.15 to provide for the 20-day response period permitted by the statute and to specify that the 20-day period does not include Saturdays, Sundays, and holidays. The OCC is also proposing to amend 12 CFR 4.15 to provide for the 20-day time period to be tolled when the OCC: (1) makes a one-time request for additional information from the requester; or (2) needs to clarify a fee-related issue with the requester. The tolling period would end upon receipt of the requested information or resolution of the fee issue, as the case may be.[5]

Finally, the OCC is proposing to amend 12 CFR 4.17 to clarify that a requester will not be required to pay any otherwise applicable search or duplication fees if the OCC fails to comply with applicable time limits, if no "unusual" or "exceptional" circumstances, as described in the FOIA and set forth in OCC regulations, apply to the processing of the FOIA request.[6]

*Definition of "Representative of the News Media"*

The OCC is proposing to amend 12 CFR 4.17(a)(8) to amend the definition of "representative of the news media" to comport with the new definition in FOIA, as amended by the OPEN Government Act, that took effect upon the legislation's enactment. Prior to enactment of the OPEN Government Act, the FOIA allowed an agency to assess "reasonable standard charges"[7] for document duplication when a FOIA request is made by a representative of the media,[8] but the statute did not define what it meant to be a "representative of the news media," particularly with respect to freelance journalists who might be working independently.

The OCC's current definition of "requester who is a representative of the news media" defines such a person as one "who seeks records for the purpose of gathering news (*i.e.*, information about current events or of current interest to the public) on behalf of, or a freelance journalist who reasonably expects to have his or her work product published or broadcast by, an entity organized and operated to publish or broadcast news to the public."[9]

The OPEN Government Act amended FOIA to add a definition of "representative of the news media" and clarifies that a freelance journalist should be deemed as working for the media if the journalist can demonstrate a "solid basis" for expecting publication.[10] The OPEN Government Act further permitted an agency to consider the past publication history of a requester in determining whether the requester in fact qualifies as a "representative of the news media." The OPEN Government Act also recognized that such representatives could work in new forms of media, including electronic dissemination of news through telecommunications providers.

The NPRM would amend the existing definition to clarify the circumstances in which a freelance writer is deemed to be working as a representative of the news media. Consistent with the OPEN Government Act, freelance writers would be regarded as representatives of the news media if they can demonstrate a "solid basis" for expecting publication. The revised definition furthermore would permit the OCC to consider a requester's publication history in assessing whether the requester should be deemed a representative of the news media. The OCC invites comment on whether the new regulatory definition could be enhanced or clarified with, for example, additional examples of bases for expecting publication that would satisfy the standard for a requester to be recognized as a representative of a media outlet.

*Tracking and Contact Information*

The OPEN Government Act requires agencies to provide tracking numbers for requesters to follow the progress of their FOIA requests.[11] To facilitate the ability of requesters to determine the progress of their FOIA requests, the OPEN Government Act likewise required agencies to establish by December 31, 2008, a telephone line or Internet service providing information about the status of a FOIA request to the person using the assigned tracking number.[12]

The OCC has developed an Internet Web site at *https://appsec.occ.gov/*

[2] 5 U.S.C. 552(b) (2007).

[3] OPEN Government Act, § 12, *amending* 5 U.S.C. 552(b).

[4] 5 U.S.C. 552(a)(6)(A)(i).

[5] The OPEN Government Act did not amend or repeal the FOIA provisions permitting agencies to extend the time for replying to FOIA requests in unusual circumstances. *Id.* at 552(a)(6)(B) and (C). Therefore the OCC's rules continue to extend the time in such cases for up to an additional 10 business days. 12 CFR 4.15(f)(3).

[6] *See id.* at 552(a)(6)(B)–(C); 12 CFR 4.15(f)(3).

[7] For commercial FOIA requesters, in contrast, an agency can assess document search and review charges, in addition to the duplication fees. 5 U.S.C. 552(a)(4)(A)(ii)(I).

[8] *Id.* at 552(a)(4)(A)(ii)(II) (2006), *amended by* OPEN Government Act, § 3.

[9] 12 CFR 4.17(a)(8).

[10] *See* OPEN Government Act, § 3, *amending* 5 U.S.C. 552(a)(4)(A).

[11] *Id.*, § 7, *amending* 5 U.S.C. 552(a).

[12] *Id.*

*publicaccesslink/* designed to provide tracking services to FOIA requesters so that they can monitor the status of their requests. This rulemaking proposes to establish a new section 4.18 that provides the Internet address and explains that a tracking number will be assigned to every FOIA request. The new section 4.18 also addresses how individuals without Internet access could continue to receive status updates about their FOIA requests. To facilitate the operation of the new tracking service, the OCC is also proposing to amend 12 CFR 4.15(c) to include a request for an electronic mail address in the requester's contact information, where such information is available and the requester chooses to provide it.

The OCC invites comments on any aspect of the proposed rule.

### III. Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the proposed rule is written clearly and is easy to understand. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and interim rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106–102 requires each Federal agency to use plain language in all proposed and interim rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

### IV. Regulatory Analysis

*Regulatory Flexibility Act*

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. The proposed rule would not have such an impact on small entities because the changes being proposed affect mainly the OCC and its processing of FOIA requests, and impose no costs on filers of these requests. Accordingly, pursuant to Section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

*Executive Order 12,866*

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12,866. We have concluded that the changes made by this rule will not have an annual effect on the economy of $100 million or more. The OCC further concludes that this proposal does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

*Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), we have reviewed the proposed rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act.

*Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this proposed rule will not result in expenditures by State, local, and Tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this proposal is not subject to Section 202 of the Unfunded Mandates Act.

**List of Subjects**

*12 CFR Part 1*

Banks, Banking, National banks.

*12 CFR Part 4*

National banks, Reporting and recordkeeping requirements, Administrative practice and procedure, Freedom of Information Act, Records.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 4—ORGANIZATION AND AVAILABILITY OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 4 continues to read as follows:

**Authority:** 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

2. Amend § 4.12(d) by adding two sentences at the end of the paragraph to read as follows:

**§ 4.12 Information available under the FOIA.**

* * * * *

(d) *Segregability.* * * * The OCC will note the location and extent of any deletion, and identify the FOIA exemption under which material has been redacted, unless doing so would harm an interest protected by the exemption under paragraph (b) of this section pursuant to which the redaction was made. Where technically feasible, the amount of information redacted and the exemption pursuant to which the redaction was made will be indicated at the site(s) of the redaction.

3. Amend § 4.15 by:

a. Revising the section heading, paragraph (c)(1) introductory text, paragraph (c)(1)(i), and paragraph (f)(1); and

b. Removing the word "or" at the end of paragraph (f)(3)(ii), removing the period at the end of paragraph (f)(3)(iii) and by adding in lieu thereof "; or", and adding paragraph (f)(3)(iv).

The revisions and addition read as follows.

**§ 4.15 How to request records.**

* * * * *

(c) *Request for records*—(1) *Contact information and what the request for records must include.* A person requesting records under this section must state, in writing:

(i) The requester's full name, address, telephone number and, at the requester's option, electronic mail address.

* * * * *

(f) *Time limits for responding to FOIA requests.* — (1) *Request.* The OCC makes an initial determination to grant or deny a request for records within 20 days

(excluding Saturday, Sundays, and holidays) after the date of receipt of the request, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.

* * * * *

(3) * * *

(iv) *Tolling of time limits.* (A) The OCC may toll the 20-day time period to:

(*1*) Make one request for additional information from the requester; or

(*2*) Clarify the applicability or amount of any fees, if necessary, with the requester.

(B) The tolling period ends upon the OCC's receipt of information from the requester or resolution of the fee issue.

* * * * *

4. Amend § 4.17 by:

a. Revising the section heading, and paragraph (a)(8);

b. Adding paragraph (b)(6); and

c. Removing, in the parenthetical in paragraph (d), the phrase "10 business days", and by adding in lieu thereof the phrase "20 business days".

The revisions and addition are set forth below.

**§ 4.17 FOIA request fees.**

(a) * * *

(8) *Requester who is a representative of the news media* means any person who, or entity that, gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A freelance journalist shall be regarded as working for a news media entity if the person can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity. A publication contract is one example of a basis for expecting publication that ordinarily would satisfy this standard. The OCC also may consider the past publication record of the requester in determining whether she or he qualifies as a "representative of the news media."

* * * * *

(b) * * *

(6) *No fee if the time limit passes and the requester has not received a response.* The OCC will not assess search and/or duplication fees, as applicable, if it fails to respond to a requester's FOIA request within the time limits specified under 12 CFR 4.15, and no "unusual" circumstances (as defined in 5 U.S.C. 552(a)(6)(B) and § 4.15(f)(3)(i)) or "exceptional" circumstances (as defined in 5 U.S.C. 552(a)(6)(C)) apply to the processing of the request

* * * * *

5. Add § 4.18 to read as follows:

**§ 4.18 How to track a FOIA request.**

(a) *Tracking number.* The OCC will issue a tracking number to all FOIA requesters within 5 days of the receipt of the request (as described in § 4.15(g)) in the OCC's Communications Department. The tracking number will be sent via electronic mail if the requester has provided an electronic mail address. Otherwise, the OCC will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Web site.* FOIA requesters may check the status of their FOIA request(s) at *https://appsec.occ.gov/publicaccesslink/.*

(c) *If a requester does not have Internet access.* Requesters without Internet access may continue to contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at (202) 874–4700 to check the status of their FOIA request(s).

Dated: April 17, 2009.

**John C. Dugan,**

*Comptroller of the Currency.*

[FR Doc. E9–9375 Filed 4–23–09; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2008–0174; Directorate Identifier 2008–NE–03–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; CFM International, S.A. CFM56–5B1/P; –5B2/P; –5B3/P; –5B3/P1; –5B4/P; –5B4/P1; –5B5/P; –5B6/P; –5B7/P; –5B8/P; –5B9/P; –5B1/3; –5B2/3; –5B3/3; –5B4/3; –5B5/3; –5B6/3; –5B7/3; –5B8/3; –5B9/3; –5B3/3B1; and –5B4/3B1 Turbofan Engines

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** This supplemental NPRM revises an earlier proposed airworthiness directive (AD), applicable to CFM International, S.A. CFM56–5B1/P; –5B2/P; –5B3/P; –5B3/P1; –5B4/P; –5B4/P1; –5B5/P; –5B6/P; –5B7/P; –5B8/P; and –5B9/P turbofan engines. That proposed AD would have required initial and repetitive eddy current inspections (ECIs) of certain part number (P/N) low-pressure (LP) turbine rear frames. That proposed AD resulted from a refined lifing analysis by the engine manufacturer that shows the need to identify initial and repetitive inspection thresholds for inspecting certain LP turbine rear frames. This supplemental NPRM revises the proposed AD to add two LP turbine rear frame P/Ns to the applicability, to add 11 engine models to the applicability, and to clarify the commercial and corporate engines/LP turbine rear frames applicability. This supplemental NPRM results from CFM International, S.A. revising the service information to add LP turbine rear frame P/Ns and engine models, and from comments received on the proposed AD. This supplemental NPRM also results from a refined lifing analysis by the engine manufacturer that shows the need to identify initial and repetitive inspection thresholds for inspecting certain LP turbine rear frames. We are proposing this AD to detect low-cycle-fatigue cracks in the LP turbine rear frame, which could result in an engine separating from the airplane, causing damage to, and possibly leading to loss of control of, the airplane.

**DATES:** We must receive any comments on this proposed AD by June 8, 2009.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You can get the service information identified in this proposed AD from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816.

**FOR FURTHER INFORMATION CONTACT:** Stephen Sheely, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *stephen.k.sheely@faa.gov;* telephone (781) 238–7750; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2008–0174; Directorate Identifier 2008–NE–03–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**Discussion**

On April 29, 2008, we issued a proposal to amend part 39 of the Code of Federal Regulations (14 CFR part 39) to add an AD, applicable to CFM International, S.A. CFM56–5B1/P; –5B2/P; –5B3/P; –5B3/P1; –5B4/P; –5B4/P1; –5B5/P; –5B6/P; –5B7/P; –5B8/P; and –5B9/P turbofan engines. The proposed AD published as an NPRM in the **Federal Register** on May 7, 2008 (73 FR 25597). That NPRM proposed to require initial and repetitive ECIs of certain P/N LP turbine rear frames.

Since we issued that NPRM, we became aware of two additional LP turbine rear frame P/Ns affected, and 11 additional engine models affected that were not listed in the proposed AD applicability. CFM International, S.A. subsequently superseded Service Bulletin (SB) No. CFM56–5B S/B 72–0620, Revision 1, dated December 20, 2007, to add those LP turbine rear frame P/Ns and engine models. We added LP turbine rear frame P/Ns 338–171–751–0; and 338–171–752–0, and CFM56–5B1/3; –5B2/3; –5B3/3; –5B4/3; –5B5/3; –5B6/3; –5B7/3; –5B8/3; –5B9/3; –5B3/3B1; and –5B4/3B1 engine models to the applicability of the supplemental NPRM. We also clarified the commercial and corporate engines/LP turbine rear frames applicability. Because we added those CFM56 engine models and added those LP turbine rear frame P/Ns, this supplemental NPRM reopens the comment period to include those added engine models and added P/Ns, and to reference the superseding service bulletin.

As we stated in the original proposed AD, CFM International, S.A. performed a refined lifing analysis that shows the need to identify initial and repetitive inspection thresholds for inspecting LP turbine rear frames. This condition, if not corrected, could result in an engine separating from the airplane, causing damage to, and possibly leading to loss of control of the airplane.

**Comments**

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

**Consider Expanding the Engine Model Applicability**

One commenter, Virgin Airlines, requests that we consider expanding the applicability in the proposed AD by adding the CFM56–5B4/3 and CFM56–5B6/3 turbofan engines.

We agree that those engines are affected. We added them to this supplemental NPRM.

**Disagreement With Proposed AD Applicability**

One commenter, CFM International S.A., disagrees with the proposed AD applicability, specifically, the listing of all of the engines as certified for corporate application. They state that only the CFM56–5B6/P and CFM56–5B7/P engine models certified for corporate application need to be covered by the proposed AD, because they were initially certified with a 22,500-cycle life. They now have a first inspection at 19,000 cycles. All of the other –5B/P engine models in the corporate application were certified with the first inspection at 19,000 cycles, and do not need to be covered by the proposed AD.

We agree. We corrected and clarified the applicability in the supplemental NPRM.

**Request To Give Credit**

One commenter, Airbus, requests that we give credit for inspections previously done using CFM International, S.A. Service Bulletin No. CFM56–5B S/B 72–0620, dated May 3, 2007.

We agree. We changed the supplemental NPRM to give credit for previous initial and repetitive inspections of turbine rear frames done before the effective date of the proposed AD using the original or Revision 1 of CFM International, S.A. Service Bulletin No. CFM56–5B S/B 72–0620.

**Correction to How Many Engines Affected**

Since we issued the original NPRM, we discovered that we incorrectly estimated how many engines are affected. We stated that about 426 engines are affected that are installed on airplanes of U.S. registry. That number actually reflects how many engines are installed on airplanes of U.S. registry, regardless of the LP turbine rear frame P/N. We corrected the estimated number of affected engines to 282, which reflects those engines with the affected LP turbine rear frames listed in this supplemental NPRM.

**FAA's Determination and Requirements of the Proposed AD**

We evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which will require initial and repetitive ECIs of certain P/N LP turbine rear frames. This proposed AD results from a refined lifing analysis by the engine manufacturer that shows the need to identify initial and repetitive inspection thresholds for inspecting certain LP turbine rear frames. This proposed AD would require you to use the service information described previously to perform the inspections.

**Costs of Compliance**

We estimate that this proposed AD would affect 282 CFM56–5B series turbofan engines installed on airplanes of U.S. registry. We estimate that it would take about 3 work-hours to perform an eddy current inspection of an LP turbine rear frame. The average labor rate is $80 per work-hour. A replacement LP turbine rear frame costs

about $102,240. If all 282 LP turbine rear frames needed replacement, we estimate the total cost of the proposed AD to U.S. operators to be $28,899,360.

**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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**CFM International, S.A.:** Docket No. FAA–2008–0174; Directorate Identifier 2008–NE–03–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 8, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to:

(1) CFM International, S.A. turbofan engines with a low-pressure (LP) turbine rear frame, part number (P/N) 338–171–703–0; 338–171–704–0; 338–171–705–0; or 338–171–706–0 installed, as follows:

(i) Commercial application CFM56–5B1/P; –5B2/P; –5B3/P; –5B3/P1; –5B4/P; –5B4/P1; –5B5/P; –5B6/P; –5B7/P; –5B8/P; –5B9/P turbofan engines.

(ii) Corporate application CFM56–5B6/P and –5B7/P turbofan engines.

(2) CFM International, S.A. turbofan engines with an LP turbine rear frame, P/N 338–171–751–0; or 338–171–752–0 installed, on corporate and commercial applications of CFM56–5B1/P; –5B2/P; –5B3/P; –5B3/P1; –5B4/P; –5B4/P1; –5B5/P; –5B6/P; –5B7/P; –5B8/P; –5B9/P; –5B1/3; –5B2/3; –5B3/3; –5B4/3; –5B5/3; –5B6/3; –5B7/3; –5B8/3; –5B9/3; –5B3/3B1; and –5B4/3B1 turbofan engines.

(3) These engines are installed on, but not limited to, Airbus A318, A319, A320, and A321 series airplanes.

**Unsafe Condition**

(d) This AD results from a refined lifing analysis by the engine manufacturer that shows the need to identify initial and repetitive inspection thresholds for inspecting certain LP turbine rear frames. We are issuing this AD to detect low-cycle-fatigue cracks in the LP turbine rear frame, which could result in an engine separating from the airplane, causing damage to, and possibly leading to loss of control of the airplane.

**Compliance**

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

**Initial Inspection**

(f) Perform an initial eddy current inspection (ECI) of the LP turbine rear frame using paragraphs 3.A. through 3.A.(7)(d) of the Accomplishment Instructions of CFM International, S.A. Service Bulletin (SB) No. CFM56–5B S/B 72–0620, Revision 2, dated December 1, 2008, at the following compliance times:

(1) For commercial engine applications, within 25,000 cycles-since-new (CSN) on the LP turbine rear frame.

(2) For corporate engine applications, within 19,000 CSN on the LP turbine rear frame.

(3) For engines with unknown LP turbine rear frame CSN, within 300 cycles-in-service from the effective date of this AD.

**Repetitive Inspections**

(g) Perform repetitive ECIs of the LP turbine rear frame using paragraphs 3.A. through 3.A.(7)(d) of the Accomplishment Instructions of CFM International, S.A. SB No. CFM56–5B S/B 72–0620, Revision 2, dated December 1, 2008. Use the inspection intervals in paragraph 3.A.(8) of the Accomplishment Instructions of CFM International, S.A. SB No. CFM56–5B S/B 72–0620, Revision 2, dated December 1, 2008.

**LP Turbine Rear Frame Removal Criteria**

(h) Remove LP turbine rear frames from service that have a single crack length of 2.56 inches (65 mm) or longer, or multiple cracks with an accumulated crack length of 2.56 inches (65 mm) or longer.

**Previous Credit**

(i) Initial and repetitive inspections done before the effective date of this AD using CFM International, S.A. SB No. CFM56–5B S/B 72–0620, dated May 3, 2007, or SB No. CFM56–5B S/B 72–0620, Revision 1, dated December 20, 2007, comply with the initial and repetitive inspection requirements specified in this AD. Operators must continue performing the repetitive inspections required in paragraph (g) of this AD.

**Alternative Methods of Compliance**

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(k) European Aviation Safety Agency AD 2007–0221, dated August 13, 2007, also addresses the subject of this AD.

(l) Contact Stephen Sheely, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *stephen.k.sheely@faa.gov;* telephone (781) 238–7750; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on April 17, 2009.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E9–9443 Filed 4–23–09; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG–2009–0204]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Mantua Creek, Paulsboro, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation regulations of the S.R. 44 Bridge, at mile 1.7, across Mantua Creek at Paulsboro, NJ. This proposal would allow the drawbridge to operate on an advance notice basis year-round. The proposed change would result in more efficient use of the bridge.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 8, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2009–0204 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the 'Public Participation and Request for Comments' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0204), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit you comments and material Online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment Online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered has having been received by the Coast Guard when it is received at the Docket Management Facility.

To submit your comment Online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert "USCG–2009–0204" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule in view of them.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0204 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays or at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The New Jersey Department of Transportation (NJDOT) is responsible for the operation of the S.R. 44 Bridge, at mile 1.7, across Mantua Creek at Paulsboro, NJ. Due to the decrease in vessel opening requests of the drawbridge in recent years, NJDOT requested to change the current operating regulations by requiring that the draw need open only if at least four hours advanced notice is given year round.

The S.R. 44 Bridge has a vertical clearance of five feet above mean high water in the closed-to-navigation position. The existing operating regulation is set out in 33 CFR 117.729(b), which requires the draw to open on signal from March 1 through November 30 from 7 a.m. to 11 p.m., and shall open on signal at all times upon four hours notice.

From the 1920s to the 1960s, Mantua Creek was the waterway route for commercial vessel traffic servicing refineries and factories along the waterfront in Paulsboro, NJ. There are no longer any commercial navigational interests requiring daily access upstream of the Route 44 Bridge.

Bridge opening data, supplied by NJDOT, revealed a significant decrease in yearly openings. For the years from 2003 to 2007, inclusive, from March 1 through November 30 between 7 a.m. to 11 p.m., the bridge opened for vessels 204, 206, 83, 120 and 113 times, respectively. (See Table A)

TABLE A

| MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV |
|---|---|---|---|---|---|---|---|---|
| BRIDGE OPENINGS FOR 2003 | | | | | | | | |
| 7 | 1 | 10 | 31 | 38 | 64 | 36 | 12 | 5 |
| BRIDGE OPENINGS FOR 2004 | | | | | | | | |
| 0 | 2 | 28 | 30 | 42 | 43 | 35 | 15 | 11 |
| BRIDGE OPENINGS FOR 2005 | | | | | | | | |
| 0 | 1 | 19 | 27 | 29 | 7 | 0 | 0 | 0 |
| BRIDGE OPENINGS FOR 2006 | | | | | | | | |
| 0 | 0 | 14 | 14 | 38 | 30 | 14 | 6 | 4 |
| BRIDGE OPENINGS FOR 2007 | | | | | | | | |
| 4 | 4 | 13 | 30 | 17 | 19 | 26 | 0 | 0 |

**Discussion of Proposed Rule**

The Coast Guard proposes to amend 33 CFR 117.729(b), by revising the paragraph to read that the draw of the S.R. 44 Bridge, mile 1.7 at Paulsboro, need open only if at least four hours notice is given. The proposed change would result in more efficient use of the bridge.

**Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the proposed scheduled bridge openings, to minimize delays.

**Small Entities**

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge from March 1 through November 30 from 7 a.m. to 11 p.m.

This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the proposed scheduled bridge openings can minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, 757–398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1, and Commandant Instruction M16475.D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.729(b) to read as follows:

**§ 117.729 Mantua Creek**

* * * * *

(b) The draw of the S.R. Bridge, mile 1.7, at Paulsboro, need open only if at least four hours notice is given.

Dated: April 6, 2009.

**Fred M. Rosa, Jr.,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. E9–9447 Filed 4–23–09; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[EPA–R05–OAR–2008–0239; FRL–8896–4]**

## Approval and Promulgation of Air Quality Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve site-specific revisions to the Minnesota sulfur dioxide ($SO_2$) State Implementation Plan (SIP) for the Federal Cartridge Company and Hoffman Enclosures, located in the city of Anoka, Anoka County, Minnesota. On March 3, 2008, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain portions of joint Title I/Title V documents into the Minnesota $SO_2$ SIP for Federal Cartridge Company and Hoffman Enclosures. The State is also requesting in this submittal that EPA rescind the Administrative Order issued to Federal Hoffman, Inc. which is currently included in Minnesota's SIP for $SO_2$. The emissions units previously owned by Federal Hoffman, Inc., are now owned by Federal Cartridge Company and Hoffman Enclosures. Because the sulfur dioxide emission limits are being reduced, the air quality of Anoka County will be protected.

**DATES:** Comments must be received on or before May 26, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0239, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 692–2551.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 9, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9–9360 Filed 4–23–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2008–0240; FRL–8896–6]**

### Approval and Promulgation of Air Quality Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a site specific revision to the Minnesota sulfur dioxide ($SO_2$) State Implementation Plan (SIP) for the Rochester Public Utility's Cascade Creek Generating Facility (Cascade Creek), located in the city of Rochester, Olmsted County, Minnesota. On March 5, 2008, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain portions of a joint Title I/Title V document into the Minnesota $SO_2$ SIP for the Cascade Creek facility. This SIP revision includes the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine. This SIP revision will show reduced emissions of $SO_2$ from this facility and the $SO_2$ National Ambient Air Quality Standards will be maintained in the area. Because the $SO_2$ emission limits are being reduced, the air quality of Olmsted County will be protected.

**DATES:** Comments must be received on or before May 26, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0240, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 9, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9–9366 Filed 4–23–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2008–0683; FRL–8895–9]**

### Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Finding of Attainment for 1-Hour Ozone for the Milwaukee-Racine, WI Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a July 28, 2008, request from the Wisconsin Department of Natural Resources (WDNR) that EPA find that the Milwaukee-Racine, Wisconsin (WI) nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS).

**DATES:** Comments must be received on or before May 26, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0683, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 9, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9–9363 Filed 4–23–09; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 46 CFR Part 401

**[Docket No. USCG–2008–1126]**

**RIN 1625–AB29**

## 2009 Rates for Pilotage on the Great Lakes

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to update the rates for pilotage on the Great Lakes by 9.41%, effective August 1, 2009, to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. The proposed update reflects an August 1, 2009, increase in benchmark contractual wages and benefits, as well as an increase in the ratio of pilots to "bridge hours." This rulemaking promotes the Coast Guard strategic goal of maritime safety.

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 26, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–1126 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, call Mr. Woo S. Kim, Program Analyst, Great Lakes Pilotage Branch, Commandant (CG–54122), U.S. Coast Guard, at 202–372–1538, by fax 202–372–1929, or by e-mail at *Woo.S.Kim@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

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### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### *A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, (USCG–2008–1126), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received

during the comment period. We may change this proposed rule in view of them.

*B. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–1126) in the Search box, and click "Go >>." If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*C. Privacy Act*

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

*D. Public Meeting*

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## II. Abbreviations

AMOU American Maritime Officers Union
MISLE Coast Guard Marine Inspection, Safety, and Law Enforcement
NAICS North American Industry Classification System
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
NVMC National Vessel Movement Center
OMB Office of Management and Budget

## III. Background and Purpose

This notice of proposed rulemaking (NPRM) is issued pursuant to Coast Guard regulations in 46 CFR Parts 401–404. Those regulations implement the Great Lakes Pilotage Act of 1960, 46 U.S.C. Chapter 93, which requires foreign-flag vessels and U.S.-flag vessels engaged in foreign trade to use federally registered Great Lakes pilots while transiting the St. Lawrence Seaway and the Great Lakes system, and which requires the Secretary of Homeland Security to "prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services." 46 U.S.C. 9303(f).

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage Districts. Pilotage in each District is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while the Coast Guard sets rates, it does not control the actual compensation that pilots receive. This is determined by each of the three District associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Great Lakes Pilotage Act of 1960, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. Under the Great Lakes Pilotage Act of 1960, pilots assigned to vessels in these areas are only required to "be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master." 46 U.S.C. 9302(a)(1)(B).

The Coast Guard pilotage regulations require annual reviews of pilotage rates and the setting of new rates at least once every five years, or sooner, if annual reviews show a need. 46 CFR 404.1. To assist in calculating pilotage rates, the pilotage associations are required to submit to the Coast Guard annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the mandatory rate adjustment, the Coast Guard contracts with an independent accounting firm to conduct a full audit of the accounts and records of the pilotage associations and prepare and submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, the Coast Guard generates the pilotage rates using Appendix A to 46 CFR Part 404. Between the five-year full ratemaking intervals, the Coast Guard annually reviews the pilotage rates using Appendix C to Part 404, and adjusts rates when deemed appropriate. Terms and formulas used in Appendix A and Appendix C are defined in Appendix B to Part 404.

The last full ratemaking using the Appendix A methodology was published on April 3, 2006 (71 FR 16501). Rates for the 2007 season were adjusted based on an Appendix C review and the final rule was published on September 18, 2007 (72 FR 53158). Rates for the 2008 shipping season were also adjusted based on an Appendix C review published in an interim rule (73 FR 15092) on March 21, 2008 and a final rule (74 FR 220) on January 5, 2009. The present rulemaking proposes rate adjustments for the 2009 shipping season, based once again on an Appendix C review.

## IV. Discussion of the Proposed Rule

The pilotage regulations require that pilotage rates be reviewed annually. If the annual review shows that pilotage rates are within a reasonable range of the base target pilot compensation set in the previous ratemaking, no adjustment to the rates will be initiated. However, if the annual review indicates that an adjustment is necessary, then the Coast Guard will establish new pilotage rates pursuant to 46 CFR 404.10.

*A. Proposed Pilotage Rate Changes—Summarized*

The Appendix C to 46 CFR 404 ratemaking methodology is intended for use during the years between Appendix A full ratemaking reviews and adjustments. This section summarizes the rate changes proposed for 2009, and then discusses in detail how the proposed changes were calculated under Appendix C. We are proposing an increase of 9.41% across all Districts over the last pilotage rate adjustment. This reflects an August 1, 2009, increase in benchmark contractual wages and benefits, as well as an increase in the ratio of pilots to "bridge hours," which are the number of hours a pilot is aboard a vessel providing pilotage service. Actual rate increases vary by Area, and are summarized in Table 1.

TABLE 1—2009 AREA RATE CHANGES

| If pilotage service is required in: | Then the proposed percentage increases over the current rate is: |
|---|---|
| Area 1 (Designated waters) | 3.89 |
| Area 2 (Undesignated waters) | 4.44 |
| Area 4 (Undesignated waters) | 4.54 |
| Area 5 (Designated waters) | 4.12 |
| Area 6 (Undesignated waters) | 12.14 |
| Area 7 (Designated waters) | 23.07 |
| Area 8 (Undesignated waters) | 2.18 |
| Overall Rate Change (percentage change in overall prospective unit costs/base unit costs; see Table 18) | 9.41 |

Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420), and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), have been increased by 9.41% in all Areas.

*B. Calculating the Rate Adjustment*

The Appendix C ratemaking calculation involves eight steps:

*Step 1:* Calculate the total economic costs for the base period (*i.e.*, pilot compensation expense plus all other recognized expenses plus the return element) and divide by the total bridge hours used in setting the base period rates;

*Step 2:* Calculate the "expense multiplier," the ratio of other expenses and the return element to pilot compensation for the base period;

*Step 3:* Calculate an annual "projection of target pilot compensation" using the same procedures found in Step 2 of Appendix A;

*Step 4:* Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

*Step 5:* Adjust the result in Step 4, as required, for inflation or deflation;

*Step 6:* Divide the result in Step 5 by projected bridge hours to determine total unit costs;

*Step 7:* Divide prospective unit costs in Step 6 by the base period unit costs in Step 1; and

*Step 8:* Adjust the base period rates by the percentage changes in unit cost in Step 7.

The base data used to calculate each of the eight steps comes from the 2008 Appendix C review. The Coast Guard also used the most recent union contracts between the American Maritime Officers Union (AMOU) and vessel owners and operators on the Great Lakes to determine target pilot compensation. Bridge hour projections for the 2009 season have been obtained from historical data, pilots, and industry. All documents and records used in this rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses listed under **ADDRESSES**.

Some values may not total exactly due to format rounding for presentation in charts and explanations in this section. The rounding does not affect the integrity or truncate the real value of all calculations in the ratemaking methodology described below.

*Step 1: Calculate the total economic cost for the base period.* In this step, for each Area, we divide total economic costs for the base period by the total bridge hours used in setting the base period rates, to yield the base cost per bridge hour. Total base period economic costs include pilot compensation expenses, plus all other recognized expenses, plus the return on investment element set during the last Appendix A review (2006). The calculations providing the total base period economic costs for each Area are summarized in Table 16 of the 2008 final rule (74 FR 220; Jan. 5, 2009). Total bridge hours use in setting the base period rates were calculated in Table 13 of the 2008 final rule. Tables 2 through 4 summarize the Step 1 calculations:

TABLE 2—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT ONE

| | Area 1 St. Lawrence River | Area 2 Lake Ontario | Total District One |
|---|---|---|---|
| Total base period economic costs | $2,078,551 | $1,474,806 | $3,553,357 |
| Base bridge hours | + 5,661 | + 5,650 | + 11,311 |
| Base cost per bridge hour | = $367.17 | = $261.03 | = $314.15 |

TABLE 3—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT TWO

| | Area 4 Lake Erie | Area 5 Southeast Shoal to Port Huron, MI | Total District Two |
|---|---|---|---|
| Total base period economic costs | $1,251,203 | $2,334,169 | $3,585,372 |
| Base bridge hours | + 7,320 | + 5,097 | + 12,417 |
| Base cost per bridge hour | = $170.93 | = $457.95 | = $288.75 |

TABLE 4—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT THREE

| | Area 6 Lakes Huron and Michigan | Area 7 St. Mary's River | Area 8 Lake Superior | Total District Three |
|---|---|---|---|---|
| Total base period economic costs | $2,884,724 | $1,427,515 | $1,944,032 | $6,256,273 |
| Base bridge hours | + 18,000 | + 3,863 | + 11,390 | + 33,253 |
| Base cost per bridge hour | = $160.26 | = $369.54 | = $170.68 | = $188.14 |

*Step 2. Calculate the expense multiplier.* In this step, for each Area, we calculate an expense multiplier by dividing the base operating expense, shown in Table 16, Column B of the 2008 final rule, by base pilot compensation, shown in Table 16, Column C of the 2008 final rule. Tables 5 through 7 show the Step 2 calculations.

TABLE 5—EXPENSE MULTIPLIER, DISTRICT ONE

| | Area 1 St. Lawrence River | Area 2b Lake Ontario | Total District One |
|---|---|---|---|
| Base operating expense | $516,138 | $529,046 | $1,045,185 |
| Base target pilot compensation | + $1,562,413 | + $945,760 | + $2,508,173 |
| Expense multiplier | = .33035 | = .55939 | = .41671 |

TABLE 6—EXPENSE MULTIPLIER, DISTRICT TWO

| | Area 4 Lake Erie | Area 5 Southeast Shoal to Port Huron, MI | Total District Two |
|---|---|---|---|
| Base operating expense | $494,595 | $771,756 | $1,266,351 |
| Base target pilot compensation | + $756,608 | + $1,562,413 | + $2,319,021 |
| Expense multiplier | = .65370 | = .49395 | = .54607 |

TABLE 7—EXPENSE MULTIPLIER, DISTRICT THREE

| | Area 6 Lakes Huron and Michigan | Area 7 St. Mary's River | Area 8 Lake Superior | Total District Three |
|---|---|---|---|---|
| Base operating expense | $993,207 | $384,201 | $619,968 | $1,997,375 |
| Base target pilot compensation | + $1,891,520 | + $1,041,609 | + $1,324,064 | + $4,257,193 |
| Expense multiplier | = .52508 | = .36885 | = .46823 | = .46918 |

*Step 3. Calculate annual projection of target pilot compensation.* In this step, we determine the new target rate of compensation and the new number of pilots needed in each pilotage Area, to determine the new target pilot compensation for each Area.

*(a) Determine new target rate of compensation.* Target pilot compensation is based on the average annual compensation of first mates and masters on U.S. Great Lakes vessels. Compensation includes wages and benefits. For pilots in undesignated waters, we approximate the first mates' compensation and, in designated waters, we approximate the master's compensation (first mates' wages multiplied by 150% plus benefits). To determine first mates' and masters' average annual compensation, we use data from the most recent AMOU contracts with the U.S. companies engaged in Great Lakes shipping. Where different AMOU agreements apply to different companies, we apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement.

On August 16, 2007, the Coast Guard received the two most recent AMOU contracts. "Agreement A" covers vessels operated by American Steamship Co. and Inland Lakes Management, Inc. Inland Lakes Management operations continue to be covered by Agreement A, despite that company's 2008 acquisition by Mittal Steel USA, Inc. "Agreement B" covers vessels operated by Key Lakes, Inc., and all other vessels operated by Mittal Steel.

Both Agreement A and Agreement B provide for a 3% wage increase effective August 1, 2009. Under Agreement A, the daily wage rate will be increased from $255.28 to $262.73. Under Agreement B, the daily wage rate will be increased from $314.42 to $323.86.

To calculate monthly wages, we apply Agreement A and Agreement B monthly multipliers of 54.5 and 49.5, respectively, to the daily rate. Agreement A's 54.5 multiplier represents 30.5 average working days, 15.5 vacation days, 4 days for four weekends, 3 bonus days, and 1.5 holidays. Agreement B's 49.5 multiplier represents 30.5 average working days, 16 vacation days, and 3 bonus days.

To calculate average annual compensation, we multiply monthly figures by 9 months, the length of the Great Lakes shipping season.

Table 8 shows new wage calculations based on Agreements A and B effective August 1, 2009.

TABLE 8—WAGES

| Monthly component | Pilots on undesignated waters | Pilots on designated waters (undesignated × 150%) |
|---|---|---|
| AGREEMENT A: $262.73 daily rate × 54.5 days | $14,319 | $21,478 |
| AGREEMENT A: Monthly total × 9 months = total wages | 128,870 | 193,305 |
| AGREEMENT B: 323.86 daily rate × 49.5 days | 16,031 | 24,046 |
| AGREEMENT B: Monthly total × 9 months = total wages | 144,278 | 216,417 |

Both Agreements A and B include a health benefits contribution rate of $80.69 effective August 1, 2009. Agreement A includes a pension plan contribution rate of $33.35 per man-day. Agreement B includes a pension plan contribution rate of $43.55 per man-day. Both Agreements A and B provide a 401K employer matching rate, 5% of the wage rate. Neither Agreement A nor Agreement B includes a clerical contribution that appeared in earlier contracts. Per the AMOU, the multiplier used to calculate monthly benefits is 45.5 days.

Table 9 shows new benefit calculations based on Agreements A and B, effective August 1, 2009.

TABLE 9—BENEFITS

| Monthly component | Pilots on undesignated waters | Pilots on designated waters |
|---|---|---|
| AGREEMENT A: Employer contribution, 401(K) plan (Monthly Wages × 5%) | $715.95 | $1,073.92 |
| Pension = 33.35 × 45.5 days | 1,517.43 | 1,517.43 |
| Health = 80.69 × 45.5 days | 3,671.40 | 3,671.40 |
| AGREEMENT B: Employer contribution, 401(K) plan (Monthly Wages × 5%) | 801.54 | 1,202.32 |
| Pension = 43.55 × 45.5 days | 1,981.53 | 1,981.53 |
| Health = 80.69 × 45.5 days | 3,671.40 | 3,671.40 |
| AGREEMENT A: Monthly total benefits | = 5,904.77 | = 6,262.74 |
| AGREEMENT A: Monthly total benefits × 9 months | = 53,143 | = 56,365 |
| AGREEMENT B: Monthly total benefits | = 6,454.46 | = 6,855.24 |
| AGREEMENT B: Monthly total benefits × 9 months | = 58,090 | = 61,697 |

Table 10 totals the wages and benefits under each agreement.

TABLE 10—TOTAL WAGES AND BENEFITS

| | Pilots on undesignated waters | Pilots on designated waters |
|---|---|---|
| AGREEMENT A: Wages | $128,870 | $193,305 |
| AGREEMENT A: Benefits | + 53,143 | + 56,365 |
| AGREEMENT A: Total | = 182,013 | = 249,670 |
| AGREEMENT B: Wages | 144,278 | 216,417 |
| AGREEMENT B: Benefits | + 58,090 | + 61,697 |
| AGREEMENT B: Total | = 202,368 | = 278,114 |

Table 11 shows that approximately one third of U.S. Great Lakes shipping deadweight tonnage operates under Agreement A, with the remaining two thirds operating under Agreement B.

TABLE 11—DEADWEIGHT TONNAGE, AGREEMENT A AND AGREEMENT B

| Company | Agreement A | Agreement B |
|---|---|---|
| American Steamship Company | | 664,215 |
| Mittal Steel USA, Inc. (including Inland Lakes Management, Inc., vessels acquired by Mittal and continuing to operate under Agreement A) | 12,656 | 96,544 |
| Key Lakes, Inc | 361,385 | |
| Total tonnage, each agreement | 374,041 | 760,759 |
| Percent tonnage, each agreement | 374,041 ÷ 1,134,800 = 32.9600% | 760,759 ÷ 1,134,800 = 67.0400% |

Table 12 applies the percentage of tonnage represented by each agreement to the wages and benefits provided by each agreement, to determine the projected target rate of compensation on a tonnage-weighted basis.

TABLE 12—PROJECTED TARGET RATE OF COMPENSATION, WEIGHTED BY AGREEMENT

| | Undesignated waters | Designated waters |
|---|---|---|
| AGREEMENT A: | | |
| Total wages and benefits × percent tonnage | $182,013 × 32.96% = $59,993 | $249,670 × 32.96% = $82,294 |
| AGREEMENT B: | | |
| Total wages and benefits × percent tonnage | $202,368 × 67.04% = $135,666 | $278,114 × 67.04% = $186,445 |
| Total weighted average wages and benefits = projected target rate of compensation | $59,993 + $135,666 = $195,659 | $82,294 + $186,445 = $268,738 |

*(b) Determine number of pilots needed.* Subject to adjustment by the Coast Guard Director of Great Lakes Pilotage to ensure uninterrupted service, we determine the number of pilots needed in each Area by dividing each Area's projected bridge hours, either by 1,000 (designated waters) or by 1,800 (undesignated waters).

Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. Based on historical data and information provided by pilots and industry, the Coast Guard projects that vessel traffic in Districts 1 and 2, for the 2009 navigation season, will remain at the same level as in 2007. In District 3, the actual bridge hours for Areas 6 and 7 were down by more than 17% and 6%, respectively, when compared to the projected bridge hours in 2007. Consequently, District 3 has recommended, and we have agreed, to reduce the projected 2009 Area 6 and Area 7 bridge hours by 10% from 2007. Consistent with this decrease in projected bridge hours, we are also reducing the number of pilots in Area 6 by two. We are projecting the same number of bridge hours for 2009 in Area 8 as we did in 2007.

Table 13 shows the projected bridge hours needed for each Area, and the total number of pilots needed after dividing those figures either by 1,000 or 1,800 and rounding up to the next whole pilot:

TABLE 13—NUMBER OF PILOTS NEEDED

| Pilotage area | Projected 2009 bridge hours | Divided by 1,000 (designated waters) or 1,800 (undesignated waters) | Pilots needed (total = 40) |
|---|---|---|---|
| Area 1 | 5,661 | 1,000 | 6 |
| Area 2 | 5,650 | 1,800 | *5 |
| Area 4 | 7,320 | 1,800 | 4 |
| Area 5 | 5,097 | 1,000 | 6 |
| Area 6 | 13,406 | 1,800 | 8 |
| Area 7 | 3,259 | 1,000 | 4 |
| Area 8 | 11,630 | 1,800 | 7 |

*As indicated in the 2008 Final Rule, the Director has exercised his discretion to maintain 5 pilots in Area 2, to ensure facilitation of traffic.

*(c) Determine the projected target pilot compensation for each Area.* The projection of new total target pilot compensation is determined separately for each pilotage Area by multiplying the number of pilots needed in each Area (see Table 13) by the projected target rate of compensation (see Table 12) for pilots working in that Area. Table 14 shows this calculation.

TABLE 14—PROJECTED TARGET PILOT COMPENSATION

| Pilotage area | Pilots needed (total = 40) | Multiplied by target rate of compensation | Projected target pilot compensation |
|---|---|---|---|
| Area 1 | 6 | × $268,738 | $1,612,431 |
| Area 2 | 5 | × 195,659 | 978,294 |
| Total, District One | 11 | | 2,590,725 |
| Area 4 | 4 | × 195,659 | 782,635 |
| Area 5 | 6 | × 268,738 | 1,612,431 |
| Total, District Two | 10 | | 2,395,066 |
| Area 6 | 8 | × 195,659 | 1,565,271 |
| Area 7 | 4 | × 268,738 | 1,074,954 |
| Area 8 | 7 | × 195,659 | 1,369,612 |
| Total, District Three | 19 | | 4,009,836 |

*Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2.* This step yields a projected increase in operating costs necessary to support the increased projected pilot compensation. Table 15 shows this calculation.

TABLE 15—PROJECTED PILOT COMPENSATION, MULTIPLIED BY THE EXPENSE MULTIPLIER EQUALS PROJECTED OPERATING EXPENSE

| Pilotage area | Projected target pilot compensation | Multiplied by expense multiplier | Projected operating expense |
|---|---|---|---|
| Area 1 | $1,612,431 | × .33035 | $532,661 |
| Area 2 | 978,294 | × .55939 | 547,246 |
| Total, District One | 2,590,725 | × .41671 | 1,079,585 |
| Area 4 | 782,635 | × .65370 | 511,609 |
| Area 5 | 1,612,431 | × .49395 | 796,463 |
| Total, District Two | 2,395,066 | × .54607 | 1,307,877 |
| Area 6 | 1,565,271 | × .52508 | 821,898 |
| Area 7 | 1,074,954 | × .36885 | 396,501 |
| Area 8 | 1,369,612 | × .46823 | 641,295 |
| Total, District Three | 4,009,836 | × .46918 | 1,881,322 |

*Step 5: Adjust the result in Step 4, as required, for inflation or deflation, and calculate projected total economic cost.* Based on data from the U.S. Department of Labor's Bureau of Labor Statistics, we have multiplied the results in Step 4 by a 1.027 inflation factor, reflecting an average inflation rate of 2.7% in "Midwest Economy—Consumer Prices" between 2006 and 2007, the latest years for which data are available. Table 16 shows this calculation and the projected total economic cost.

TABLE 16—PROJECTED OPERATING EXPENSE, ADJUSTED FOR INFLATION, AND ADDED TO PROJECTED TARGET PILOT COMPENSATION EQUALS PROJECTED TOTAL ECONOMIC COST

| Pilotage area | A. Projected operating expense | B. Increase, multiplied by inflation factor (= A × 1.027) | C. Projected target pilot compensation | D. Projected total economic cost (= B + C) |
|---|---|---|---|---|
| Area 1 | $532,661 | $547,043 | $1,612,431 | $2,159,474 |
| Area 2 | 547,246 | 562,021 | 978,294 | 1,540,315 |
| Total, District One | 1,079,585 | 1,108,734 | 2,590,725 | 3,699,790 |
| Area 4 | 511,609 | 525,422 | 782,635 | 1,308,058 |
| Area 5 | 796,463 | 817,967 | 1,612,431 | 2,430,398 |
| Total, District Two | 1,307,877 | 1,343,190 | 2,395,066 | 3,738,456 |

TABLE 16—PROJECTED OPERATING EXPENSE, ADJUSTED FOR INFLATION, AND ADDED TO PROJECTED TARGET PILOT COMPENSATION EQUALS PROJECTED TOTAL ECONOMIC COST—Continued

| Pilotage area | A. Projected operating expense | B. Increase, multiplied by inflation factor (= A × 1.027) | C. Projected target pilot compensation | D. Projected total economic cost (= B + C) |
|---|---|---|---|---|
| Area 6 | 821,898 | 844,090 | 1,565,271 | 2,409,360 |
| Area 7 | 396,501 | 407,206 | 1,074,954 | 1,482,160 |
| Area 8 | 641,295 | 658,610 | 1,369,612 | 2,028,221 |
| Total, District Three | 1,881,322 | 1,932,117 | 4,009,836 | 5,941,954 |

*Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs.* Table 17 shows this calculation.

TABLE 17—PROSPECTIVE (TOTAL) UNIT COSTS

| Pilotage area | A. Projected total economic cost | B. Projected 2009 bridge hours | Prospective (total) unit costs (A divided by B) |
|---|---|---|---|
| Area 1 | $2,159,474 | 5,661 | $381.47 |
| Area 2 | 1,540,315 | 5,650 | 272.62 |
| Total, District One | 3,699,790 | 11,311 | 327.10 |
| Area 4 | 1,308,058 | 7,320 | 178.70 |
| Area 5 | 2,430,398 | 5,097 | 476.83 |
| Total, District Two | 3,738,456 | 12,417 | 301.08 |
| Area 6 | 2,409,360 | 13,406 | 179.72 |
| Area 7 | 1,482,160 | 3,259 | 454.79 |
| Area 8 | 2,028,221 | 11,630 | 174.40 |
| Total, District Three | 5,941,954 | 28,295 | 210.00 |
| Overall | 13,380,200 | 52,023 | 257.19 |

*Step 7: Divide prospective unit costs (total unit costs) in Step 6 by the base period unit costs in Step 1.* Table 18 shows this calculation, which expresses the percentage change between the total unit costs and the base unit costs. The results, for each Area, are identical with the percentage increases listed in Table 1.

TABLE 18—PERCENTAGE CHANGE, PROSPECTIVE VS. BASE PERIOD UNIT COSTS

| Pilotage area | A. Prospective unit costs | B. Base period unit costs | C. Percentage change from base (A divided by B; result expressed as percentage) |
|---|---|---|---|
| Area 1 | $381.47 | $367.17 | 3.89 |
| Area 2 | 272.62 | 261.03 | 4.44 |
| Total, District One | 327.07 | 314.15 | 4.11 |
| Area 4 | 178.70 | 170.93 | 4.54 |
| Area 5 | 476.83 | 457.95 | 4.12 |
| Total, District Two | 301.06 | 288.75 | 4.26 |
| Area 6 | 179.72 | 160.26 | 12.14 |
| Area 7 | 454.79 | 369.54 | 23.07 |
| Area 8 | 174.40 | 170.68 | 2.18 |
| Total, District Three | 210.00 | 188.14 | 11.62 |
| Overall | 257.19 | 235.08 | 9.41 |

*Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7.* Table 19 shows this calculation.

TABLE 19—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS *

| Pilotage Area | A. Base period rate | B. Percentage change in unit costs (Multiplying factor) | C. Increase in base rate (A × B%) | D. Adjusted rate (A + C, rounded to nearest dollar) |
|---|---|---|---|---|
| Area 1 | | 3.89 (1.0389) | | |
| —Basic pilotage | $14.94/km, $26.44/mi | | $0.58/km, $1.04/mi | $15.52/km, $27.48/mi |
| —Each lock transited | 331.03 | | 12.89 | 343.92 |
| —Harbor movage | 1,083.89 | | 42.20 | 1,126.09 |
| —Minimum basic rate, St. Lawrence River | 722.98 | | 28.15 | 751.12 |
| —Maximum rate, through trip | 3,173.51 | | 123.55 | 3,297.07 |
| Area 2 | | 4.44 (1.0444) | | |
| —6-hr. period | 780.23 | | 34.66 | 814.89 |
| —Docking or undocking | 744.24 | | 33.06 | 777.30 |
| Area 4 | | 4.54 (1.0454) | | |
| —6-hr. period | 688.35 | | 31.28 | 719.63 |
| —Docking or undocking | 530.49 | | 24.11 | 554.60 |
| —Any point on Niagara River below Black Rock Lock | 1,354.15 | | 61.53 | 1,415.68 |
| Area 5 between any point on or in | | 4.12 (1.0412) | | |
| —Toledo or any point on Lake Erie W. of Southeast Shoal | 1,243.75 | | 51.28 | 1,295.03 |
| —Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal | 2,104.72 | | 86.77 | 2,191.49 |
| —Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River | 2,732.79 | | 112.66 | 2,845.45 |
| —Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat | 2,104.72 | | 86.77 | 2,191.49 |
| —Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat) | 3,665.60 | | 151.12 | 3,816.72 |
| —Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat) | 4,246.60 | | 175.07 | 4,421.67 |
| —Port Huron Change Point & Detroit River | 2,753.85 | | 113.53 | 2,867.38 |
| —Port Huron Change Point & Detroit Pilot Boat | 2,141.88 | | 88.30 | 2,230.18 |
| —Port Huron Change Point & St. Clair River | 1,522.48 | | 62.77 | 1,585.25 |
| —St. Clair River | 1,243.75 | | 51.28 | 1,295.03 |
| —St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat) | 3,665.60 | | 151.12 | 3,816.72 |
| —St. Clair River & Detroit River/Detroit Pilot Boat | 2,753.85 | | 113.53 | 2,867.38 |
| —Detroit, Windsor, or Detroit River | 1,243.75 | | 51.28 | 1,295.03 |
| —Detroit, Windsor, or Detroit River & Southeast Shoal | 2,104.72 | | 86.77 | 2,191.49 |
| —Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal | 2,732.79 | | 112.66 | 2,845.45 |
| —Detroit, Windsor, or Detroit River & St. Clair River | 2,753.85 | | 113.53 | 2,867.38 |
| —Detroit Pilot Boat & Southeast Shoal | 1,522.48 | | 62.77 | 1,585.25 |
| —Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal | 2,104.72 | | 86.77 | 2,191.49 |
| —Detroit Pilot Boat & St. Clair River | 2,753.85 | | 113.53 | 2,867.38 |
| Area 6 | | 12.14 (1.1214) | | |
| —6-hr. period | 553.62 | | 67.22 | 620.84 |
| —Docking or undocking | 525.88 | | 63.86 | 589.74 |
| Area 7 between any point on or in | | 23.07 (1.2307) | | |
| —Gros Cap & De Tour | 1,975.83 | | 455.84 | 2,431.67 |
| —Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour | 1,975.83 | | 455.84 | 2,431.67 |
| —Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap | 744.10 | | 171.67 | 915.77 |
| —Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour | 1,656.11 | | 382.08 | 2,038.19 |
| —Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap | 744.10 | | 171.67 | 915.77 |
| —Sault Ste. Marie, MI & De Tour | 1,656.11 | | 382.08 | 2,038.19 |
| —Sault Ste. Marie, MI & Gros Cap | 744.10 | | 171.67 | 915.77 |
| —Harbor movage | 744.10 | | 171.67 | 915.77 |
| Area 8 | | 2.18 (1.0218) | | |
| —6-hr. period | 535.92 | | 11.67 | 547.59 |

TABLE 19—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS*—Continued

| Pilotage | A. Base period rate | B. Percentage change in unit costs | C. Increase in base rate (A × B%) | D. Adjusted rate (A + C, rounded to nearest dollar) |
|---|---|---|---|---|
| Area | | (Multiplying factor) | | |
| —Docking or undocking | 509.36 | | 11.09 | 520.45 |

*Rates for "Cancellation, delay or interruption in rendering services (§ 401.420)" and "Basic Rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (§ 401.428)" are not reflected in this table but have been increased by 9.41% across all areas.

## V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on 13 of these statutes or executive orders.

### *A. Regulatory Planning and Review*

Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rulemaking is not significant under Executive Order 12866 and will not be reviewed by OMB.

The Coast Guard is required to conduct an annual review of pilotage rates on the Great Lakes and, if necessary, adjust these rates to align compensation levels between Great Lakes pilots and industry. See the "Background and Purpose" section for a detailed explanation of the legal authority and requirements for the Coast Guard to conduct an annual review and provide possible adjustments of pilotage rates on the Great Lakes. Based on our annual review for this rulemaking, we are proposing an adjustment to the pilotage rates for the 2009 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment.

This proposed rule would implement a 9.41 percent overall rate adjustment for the Great Lakes system over the current rate as adjusted in the 2008 final rule. These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for inflation and changes in association expenses to maintain these compensation levels.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease would result in a cost reduction or savings for shippers in that area. This proposed rule would result in a distributional effect that transfers payments (income) from affected shippers (vessel owners and operators) to the Great Lakes' pilot associations through Coast Guard regulated pilotage rates.

The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. However, the Coast Guard issued a policy position several years ago stating that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this proposed rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers.

We reviewed a sample of pilot source forms, which are the forms used to record pilotage transactions on vessels, and discovered very few cases of U.S. Great Lakes vessels (*i.e.*, domestic vessels without registry operating only in the Great Lakes) that purchased pilotage services. We found a case where the vessel operator purchased pilotage service in District One to presumably leave the Great Lakes system. We assume some vessel owners and operators may also choose to purchase pilotage services if their vessels are carrying hazardous substances or were navigating the Great Lakes system with inexperienced personnel. Based on information from the Coast Guard Office of Great Lakes Pilotage, we have determined that these vessels voluntarily chose to use pilots and, therefore, are exempt from pilotage requirements.

We used 2006–2007 vessel arrival data from the Coast Guard's Marine Inspection, Safety, and Law Enforcement (MISLE) system to estimate the average annual number of vessels affected by the rate adjustment to be 208 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 208 vessels, there were approximately 923 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2006-2007 vessel data from MISLE.

The impact of the rate adjustment to shippers is estimated from the district pilotage revenues. These revenues represent the direct and indirect costs ("economic costs") that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage.

We estimate the additional impact (costs or savings) of the rate adjustment in this proposed rule to be the difference between the total projected revenue needed to cover costs based on the 2008 rate adjustment and the total projected revenue needed to cover costs in this proposed rule for 2009. Table 20 details additional costs or savings by area and district.

TABLE 20—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF PROPOSED RULE

[$U.S.; non-discounted] [1]

| | Projected revenue in 2008 | Proposed rate change | Projected revenue in 2009 | Additional costs or savings of proposed rule [2] |
|---|---|---|---|---|
| Area 1 | $2,078,551 | 1.0389 | $2,159,474 | $80,923 |
| Area 2 | 1,474,806 | 1.0444 | 1,540,315 | 65,509 |
| District 1 | 3,553,357 | 1.0412 | 3,699,790 | 146,433 |
| Area 4 | 1,251,203 | 1.0454 | 1,308,058 | 56,855 |
| Area 5 | 2,334,169 | 1.0412 | 2,430,398 | 96,229 |
| District 2 | 3,585,372 | 1.0427 | 3,738,456 | 153,084 |
| Area 6 | 2,884,724 | 0.8352 | 2,409,360 | [3] (475,364) |
| Area 7 | 1,427,515 | 1.0383 | 1,482,160 | 54,645 |
| Area 8 | 1,944,032 | 1.0433 | 2,028,221 | 84,189 |
| District 3 | 6,256,273 | 0.9498 | 5,941,954 | [3] (314,319) |

[1] Some values may not total due to rounding.
[2] Additional cost or savings of this rule = 'Projected revenue in 2009' − 'Projected Revenue in 2008'.
[3] Area 6 incurs a substantial cost savings that results in a net cost savings for pilotage services in District 3 and the system. The sum of the additional impacts from this rulemaking result in a net savings for the system of about $15,000.

After applying the rate change in this proposed rule, the resulting difference between the projected revenue in 2008 and the projected revenue in 2009 is the annual impact to shippers from this proposed rule. This figure will be equivalent to the total additional payments or savings that shippers will incur for pilotage services from this proposed rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the rate adjustment in this proposed rule to shippers varies by area and district. The annual costs of the rate adjustments in Districts 1 and 2 are approximately $146,000 and $153,000, respectively, while District 3 will experience an annual savings of approximately $314,000. To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators will pay more and some will pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost or savings reported above does capture all of the additional cost the shippers face as a result of the rate adjustment in this proposed rule.

As Table 20 indicates, all areas will experience an increased annual cost due to this proposed rate change except Area 6, which will experience a savings. The projected savings for Area 6 is approximately $475,000. This will cause a net savings for District 3, and is due to a decrease in actual bridge hours in Area 6 from 2008 to 2009. This decrease in bridge hours led to a decrease in the number of pilots needed, from 10 pilots in 2008 to 8 pilots in 2009. This decrease in the number of pilots would reduce the projected revenue needed to cover costs of pilotage services in Area 6.

The effects of a rate adjustment on costs and savings vary by year and area. A decrease in projected expenses for individual areas or districts is common in past pilotage rate adjustments. Most recently, in the 2008 Final Rule, District 2 experienced a decrease in projected expenses due to an adjustment in bridge hours from the 2008 Interim Rule, which led to a savings for that district. However, this savings was not large enough to outweigh the costs to the other districts.

This proposed rate adjustment will result in a savings for District 3 that will outweigh the combined costs of Districts 1 and 2. We measure the impact of this rulemaking by examining the changes in costs to shippers for pilotage services. With savings in District 3 exceeding the combined costs in Districts 1 and 2, the net impact of this rulemaking would be a cost savings for pilotage services in the Great Lakes system.

*B. Small Entities*

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

We expect entities affected by the proposed rule would be classified under the North American Industry Classification System (NAICS) code subsector 483-Water Transportation, which includes one or all of the following 6-digit NAICS codes for freight transportation: 483111-Deep Sea Freight Transportation, 483113-Coastal and Great Lakes Freight Transportation, and 483211-Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For the proposed rule, we reviewed recent company size and ownership data from 2006–2007 Coast Guard MISLE data and business revenue and size data provided by Reference USA and Dunn and Bradstreet. We were able to gather revenue and size data or link the entities to large shipping conglomerates for 22 of the 24 affected entities in the United States. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants will be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the proposed rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are classified with the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500

employees: approximately 65 total employees combined. We expect no adverse impact to these entities from this proposed rule since all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

Therefore, the Coast Guard has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b). If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Mr. Woo Kim, Great Lakes Pilotage Branch, (CG–54122), U.S. Coast Guard, telephone 202–372–1538 or send him e-mail at *Woo.S.Kim@uscg.mil*. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*D. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

*F. Unfunded Mandates Reform Act*

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

*G. Taking of Private Property*

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

*H. Civil Justice Reform*

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

*I. Protection of Children*

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

*J. Indian Tribal Governments*

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

*K. Energy Effects*

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

*L. Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*M. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment, and that therefore the proposed rule will be categorically excluded, under figure 2–1, paragraph (34)(a) of the Instruction, from further environmental documentation. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. A preliminary "Environmental Analysis Check List" supporting this determination is

available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 46 CFR Part 401**

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR Part 401 as follows:

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

2. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

**§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.**

* * * * *

(a) Area 1 (Designated Waters):

| Service | St. Lawrence River |
|---|---|
| Basic Pilotage | $15.52 per Kilometer or $27.48 per mile [1] |
| Each Lock Transited | $344 [1] |
| Harbor Movage | $1,126 [1] |

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $751, and the maximum basic rate for a through trip is $3,298.

(b) Area 2 (Undesignated Waters):

| Service | Lake Ontario |
|---|---|
| Six-Hour Period | $815 |
| Docking or Undocking | $777 |

* * * * *

3. In § 401.407 revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

**§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.**

* * * * *

(a) Area 4 (Undesignated Waters):

| Service | Lake Erie (east of southeast Shoal) | Buffalo |
|---|---|---|
| Six-Hour Period | $720 | $720 |
| Docking or Undocking. | $555 | $555 |
| Any Point on the Niagara River below the Black Rock Lock. | N/A | $1,416 |

(b) Area 5 (Designated Waters):

| Any point on or in | Southeast Shoal | Toledo or any Point on Lake Erie west of Southeast Shoal | Detroit River | Detroit pilot boat | St. Clair River |
|---|---|---|---|---|---|
| Toledo or any port on Lake Erie west of Southeast Shoal | $2,192 | $1,295 | $2,846 | $2,192 | N/A |
| Port Huron Change Point | [1] $3,817 | [1] $4,422 | $2,868 | $2,230 | $1,586 |
| St. Clair River | [1] $3,817 | N/A | $2,868 | $2,868 | $1,295 |
| Detroit or Windsor or the Detroit River | $2,192 | $2,846 | $1,295 | N/A | $2,868 |
| Detroit Pilot Boat | $1,585 | $2,192 | N/A | N/A | $2,868 |

[1] When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

**§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St Mary's River.**

* * * * *

(a) Area 6 (Undesignated Waters):

| Service | Lakes Huron and Michigan |
|---|---|
| Six-Hour Period | $621 |
| Docking or Undocking | $590 |

(b) Area 7 (Designated Waters):

| Area | De tour | Gros cap | Any harbor |
|---|---|---|---|
| Gros Cap | $2,432 | N/A | N/A |
| Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario | $2,432 | $916 | N/A |
| Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf | $2,038 | $916 | N/A |
| Sault Ste. Marie, MI | $2,038 | $916 | N/A |
| Harbor Movage | N/A | N/A | $916 |

(c) Area 8 (Undesignated Waters):

| Service | Lake Superior |
|---|---|
| Six-Hour Period | $548 |
| Docking or Undocking | $521 |

**§ 401.420 [Amended]**

5. In § 401.420—

a. In paragraph (a), remove the number "$102" and add, in its place, the number "$112"; and remove the number "$1,604" and add, in its place, the number "$1,755".

b. In paragraph (b), remove the number "$102" and add, in its place, the number "$112"; and remove the number "$1,604" and add, in its place, the number "$1,755".

c. In paragraph (c)(1), remove the number "$606" and add, in its place, the number "$663"; in paragraph (c)(3), remove the number "$102" and add, in its place, the number "$112"; and, also in paragraph (c)(3), remove the number "$1,604" and add, in its place, the number "$1,755".

**§ 401.428 [Amended]**

6. In § 401.428, remove the number "$618" and add, in its place, the number "$676".

Dated: April 21, 2009.

**James A. Watson,**

*Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.*

[FR Doc. E9–9432 Filed 4–21–09; 4:15 pm]

BILLING CODE 4910–15–P

# Notices

Federal Register
Vol. 74, No. 78
Friday, April 24, 2009

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

### Office of the Assistant Secretary for Civil Rights

### Request for an Extension to a Currently Approved Information Collection

**AGENCY:** Office of the Assistant Secretary for Civil Rights.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Office of the Assistant Secretary for Civil Rights' (OASCR) intention to request approval from the Office of Management and Budget (OMB) for an extension of the currently approved information collection for the U.S. Department of Agriculture (USDA)/1994 Tribal Scholars Program.

As required by Departmental Regulation 1350–001, Tribal Consultations, (Consultation on Regulations) has been met in a meaningful and timely manner. The partnership between USDA and Tribal Colleges and Universities (TCU) is defined by a Memorandum of Agreement (MOA) signed on February 6, 2008, between USDA and the American Indian Higher Education Consortium (AIHEC). This MOA convenes USDA Mission Area leadership, TCU Presidents and AIHEC to jointly develop the USDA/1994 Program Office and its programs, to include the Tribal Scholars Program. USDA has presented its proposals for the Tribal Scholars Program to Indian tribal leaders through the invitation of the National Congress of American Indians in 2008 and to TCU president members of the USDA/AIHEC Leadership Group, most recently in 2009 and beginning in 2005.

**DATES:** Comments on this notice must be received by June 23, 2009 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Lawrence Shorty, Director, USDA/1994 Program, OASCR, USDA, 1400 Independence Ave., SW., Washington, DC 20250; phone (202) 720–1772: fax: (202) 205–3831.

**SUPPLEMENTARY INFORMATION:**

*Title:* USDA/1994 Tribal Scholars Program.

*OMB Number:* 0503–0016.

*Expiration Date of Approval:* August 31, 2009.

*Type of Request:* Extension to the currently approved information collection.

*Abstract:* The purpose of the USDA/1994 Tribal Scholars Program is to strengthen the long-term partnership between USDA and the 1994 Land-Grant TCUs to increase the number of students studying and graduating in the food, agriculture, and natural resources and other related fields of study, and offer career opportunities to increase the pool of scientists and professionals to annually fill 50,000 jobs in the food, agricultural, and natural resources system.

This partnership effort is a joint human capital initiative between USDA and the Nation's thirty-two 1994 Land-Grant TCUs. This employment program offers a combination of work experience and academic study leading to career positions within USDA through a Student Career Experience Program (SCEP) designed to integrate classroom study with paid work experience. The program is conducted in accordance with a planned schedule and a working agreement between USDA agencies, the student, and the Land-Grant Institution.

*Summary of Collection:* The USDA/1994 Tribal Scholars Program Application will request from applicants information such as the following: biographical information; educational background; an official high school or college transcript; declaration of major, résumé, schools attended in the last 4 years; advanced or special programs; courses or summer courses taken; name of the 1994 TCU in which the student wishes to enroll; course of study the applicant wishes to pursue; type of scholarship support the applicant is applying for (1-year, 2-year; 3-year or 4-year scholarship support); whether the applicant is currently enrolled in or is planning to enroll in an Associate Degree (2-year) program with no plans to continue to a Bachelor's Degree; whether the applicant intends to transfer to a 4-year Bachelor's Degree program and in what course of study; whether there is a desire to obtain a Master's or higher degree; activities participated in outside of school; volunteer services or jobs held during last 3 years, including summer employment; a 500–800 word essay describing how the applicant became interested in studying food, agricultural, and related natural resources sciences or another related discipline in college; how USDA will benefit if the applicant is selected for the USDA/1994 Tribal Scholars Program; what motivated the applicant to consider a public service career working for USDA; information about the applicant's educational and career goals, and how the scholarship may assist the applicant to achieve educational and career goals.

The application requests two letters of recommendation that comment on the applicant's personal strengths, leadership qualities, academic and extracurricular achievements, and future academic and career goals from previous school counselors, teachers, principals, or current or previous employers for applicants who are entering freshmen 0–2 years out of high school or entering freshmen who are General Educational Development earners.

If selected, student must sign up for the SCEP; furnish course registration at the start of each school term; provide verification of academic status at the end of each academic term (grade report or transcript); must meet academic standards as set forth by the school they are attending; maintain satisfactory progress in completing academic requirements, and demonstrate satisfactory performance and conduct. Students will be required to complete all academic requirements for the target position as stipulated by the Office of Personnel Management Qualification Standards.

*Need and Use of the Information:* The information is needed for identifying applicants that match the human capital needs of USDA agencies from 1994 Land-Grant Institutions through SCEP and an award of an annually reviewed and renewed scholarship at a Land-Grant Institution with the objective of preparing the student for successful placement into the USDA's permanent workforce.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1.2 hours per response.

*Type of Respondents:* Individuals attending or interested in attending 1994 Land Grant Institutions, teachers, principals, and guidance counselors.

*Estimated Number of Respondents:* 480.

*Estimated Number of Responses:* 1440.

*Estimated Number of Responses per Respondent:* 3.

*Estimated Total Annual Burden on Respondents:* 4320.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lawrence Shorty, Director, USDA/1994 Program, OASCR, USDA, 1400 Independence Ave., SW., Mail Stop 9577, Washington, DC 20250. All comments received will be available for public inspection during regular business hours at the same address.

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

**Lawrence Shorty,**

*Director, USDA/1994 Program, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture.*

[FR Doc. E9–9288 Filed 4–23–09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

April 21, 2009.

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.

**Natural Resources and Conservation Service**

*Title:* Volunteer Program—Earth Team.

*QMB Control Number:* 0578–0024.

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

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

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

*Number of Respondents:* 16,100.

*Frequency of Responses:* Reporting: Biennially.

*Total Burden Hours:* 528.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E9–9437 Filed 4–23–09; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

April 21, 2009.

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, D.C. 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.

**Agricultural Research Service**

*Title:* Electronic Mailing List Subscription Form—Water Quality Information Center.

*OMB Control Number:* 0518–0045.

*Summary of Collection:* The National Agricultural Library's Water Quality Information Center (WQIC) currently maintains an on-line announcement list. The current voluntary "Electronic Mailing List Subscription Form" gives individuals interested in the subject area of water quality and agriculture an opportunity to receive and post messages to this list. The Electronic Mailing List Subscription is available for completion on-line at the web site of the Water Quality Information Center. The authority for the National Agricultural Library to collect the information can be found at CFR, Title 7, Volume 1, Part 2 Subpart K, Section 2.65.(92).

*Need and Use of the Information:* The information requested on the form includes: name, e-mail address, job title, work affiliation, and topics of interest. Data collected using the form will help WQIC determine a person's eligibility to join the announcement list. In order to make sure people have a significant interest in the topic area, it is necessary to collect the information. WQIC will use the collected information to approve subscription to the Enviro-News on-line announcement list.

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

*Number of Respondents:* 60.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 1.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E9–9438 Filed 4–23–09; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lower Trinity Ranger District, Six Rivers National Forest, California, Trinity Summit High Country Grazing Analysis

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Six Rivers National Forest will prepare an Environmental Impact Statement to disclose the impacts associated with the following proposed action: The Lower Trinity Ranger District, Six Rivers National Forest, proposes to continue livestock grazing in the Trinity Summit High Country following an adaptive management process outlined under updated Allotment Management Plans.

The planning area is located on National Forest System lands administered by the Lower Trinity Ranger District in Humboldt County, California within the Upper Mill Creek and Tish Tang a Tang Creek watersheds to the east of Hoopa Reservation. The majority of the grazing lands fall within the Trinity Wilderness and are considered to be culturally significant. The grazing lands are located in all or portions of T.7N., R.6E., R.7E.; T.8N., R.5E.; R.6E., R.7E.; and T.9N., R.5E., R.6E., R.7E.

**DATES:** Comments concerning the scope of the analysis must be received by May 26, 2009.

**ADDRESSES:** Send written comments to Bill Rice, at Lower Trinity Ranger District, Highway 90, P.O. Box 68, Willow Creek, CA 95573 or phone (530) 629–2118. Comments may be submitted by e-mail in Word (.doc), rich text format (.rtf), text (.txt), and hypertext markup language (.html) to *comments-pacificsouthwest-six-rivers-lower-trinity@fs.fed.us.* Comments may also be hand delivered weekdays 8 a.m.- 4:30 p.m. at the Lower Trinity Range: District Office.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

**FOR FURTHER INFORMATION CONTACT:** Bill Rice at Lower Trinity Ranger District (see address above) by phone at (530) 629–2118. Information regarding the Trinity Summit High Country Grazing analysis will also be posted on the Six Rivers National Forest Web page (*http://www.fs.fed.us/r5/sixrivers/*).

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:**

Where consistent with the goals and objectives of the Six Rivers National Forest Land and Resource Management Plan, it is Forest Service policy to make forage from lands suitable iou grazing available to qualified livestock operators (FSM 2202.1, FSM 2203.1,36 CFR 222.2(c), Multiple Use and Sustained Yield Act of 1960, Wilderness Act of 1964, Forest and Rangeland Renewable Resources Planning Act of 1974, Federal Land Management and Policy Act of 1976, National Forest Management Act of 1976). The allotments in this analysis include lands identified as suitable for grazing in the LRMP and are being managed for grazing. Federal actions such as authorization of grazing and approva' of allotment management plans must be analyzed to determine potential environmental consequences (National Environmental Policy Act of 1969, NEPA; Rescission Act of 1995 Pub. L. 104).

**Estimated Dates**

The draft environmental impact statement is expected July 2009 and the final environmental impact statement is expected October 2009.

**Purpose and Need for Action**

The purpose and need for action centers on maintaining a grazing program under updated Allotment Management Plans for the purposes of contributing to the economic stability of local livestock owners who rely on public land grazing for their livelihood; sustainably managing for healthy rangeland ecosystems that maintain biologic diversity, water quality, soil productivity, quality fish and wildlife habitat; and preserving and enhancing

the character of culturally significant landscapes.

As directed by the Six Rivers National Forest Land and Resource Management Plan (LRMP), the opportunity to graze must also be consistent with the values and uses of other resources. Range, as well as all other resources within the grazing allotments, should be maintained in satisfactory condition. Because unsatisfactory resource conditions have been identified at key areas within the allotments, action is required that will help restore disturbed areas by using the natural resiliency of the landscape in conjunction with conservative, adaptive management.

Range management uses key areas and benchmark sites which are designed to serve as examples average use and conditions throughout each allotment; therefore, their status is thought to reflect wider ecosystem processes and the effects of grazing management across the landscape. Current unsatisfactory resource conditions at key areas and benchmark sites represent a need to change or refine grazing management strategies to achieve resource objectives. Sustaining desired conditions at key areas will help to ensure that desired conditions are sustained elsewhere within the allotments.

**Proposed Action**

The Lower Trinity Ranger District, Six Rivers National Forest, proposes to continue livestock grazing in the Trinity Summit High Country area under the conditions described below and to implement boundary and administrative changes to facilitate improved management. The Mill Creek and Trinity Summit grazing allotments would be combined into a single allotment. A non-significant Forest Plan amendment is proposed to modify the allotment boundary to include a 225-acre area on the western boundary of the current allotment (T.8 N., R 6 E. Section 3).

The Forest also proposes to authorize cattle grazing following an adaptive management process that will meet LRMP goals, objectives, standards and guidelines, and other legal requirements while moving toward desired conditions. This proposed action establishes a maximum stocking rate and season of use based on what the landscape can sustain under satisfactory range and riparian conditions.

**Responsible Official**

Tyrone Kelley, Forest Supervisor, Six Rivers National Forest, 1330 Bayshore Way, Eurela, CA 95501.

**Nature of Decision To Be Made**

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or the no action (no grazing) alternative.

**Scoping Process**

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Public meetings are being scheduled to share information regarding this project. Meeting dates and locations will be posted in the newspaper of record or contact Bill Rice at (503) 629–2118.

**Comment Requested**

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because at these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 17, 2009.

**Tyrone Kelley,**

*Forest Supervisor.*

[FR Doc. E9–9328 Filed 4–23–09; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Meeting; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

**AGENCY:** Pacific Southwest Region, Forest Service, U.S. Department of Agriculture.

**ACTION:** Notice of meeting.

**SUMMARY:** The Pacific Southwest Recreation Resource Advisory Committee (Recreation RAC) will hold a meeting in Vallejo, California. The purpose of this meeting is to make recommendations for fee proposals on lands managed by the Forest Service and Bureau of Land Management in California. The Recreation RRAC will consider fee proposals for expanded amenity fees from the Plumas National Forest and Special Recreation Permit fees from the Bureau of Land Management, El Centro Field Office. The Forest Service will also give updates on the recreational fee program, accomplishment reporting and financial reporting for the Sequoia National Forest.

**DATES:** The meeting will be held May 13, 2009 from 10 a.m.–3:15 p.m.

**ADDRESSES:** The meeting will be held at the Forest Service Pacific Southwest Regional Office. The address for the Regional office is 1323 Club Drive, Vallejo, CA. Send written comments to Marlene Finley, Designated Federal Official for the Pacific Southwest Region Recreation RAC, 1323 Club Drive, Vallejo, CA 94592, 707–562–8856 or *mfinley01@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Marlene Finley, Designated Federal Official, Pacific Southwest Region Recreation RAC, 1323 Club Drive, Vallejo, CA 94592.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service and Bureau of Land Management staff and Committee

members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided during the meeting and individuals who wish to address the Recreation RAC will have an opportunity at 10:30 a.m. on May 13. Comments will be limited to three minutes per person. The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: April 17, 2009.

**Marlene Finley,**

*Designated Federal Official, Recreation RAC, Pacific Southwest Region.*

[FR Doc. E9–9323 Filed 4–23–09; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Hood/Willamette Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA Forest Service Action: Action of Meeting.

**SUMMARY:** The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday, May 28, 2009. The meeting is scheduled to begin at 9:30 a.m. and will conclude at approximately 12:30 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management Office; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Recommendations on 2009 and 2010 Projects; and (2) Public Forum.

The Public Forum is tentatively scheduled to begin at 10 a.m. Time allotted for individual presentations will be limited to 4–5 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the May meeting by sending them to Designated Federal Official Donna Short at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 4431 Highway 20; Sweet Home, Oregon 97386; (541) 367–3540.

Dated: April 15, 2009.

**Dallas J. Emch,**

*Forest Supervisor.*

[FR Doc. E9–9326 Filed 4–23–09; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a meeting of the Wyoming Advisory Committee will convene at 10 a.m. and adjourn at 1 p.m. (MST) on Saturday, May 9, 2009 at Holland Hart LLP, 2515 Warren Avenue, Suite 450, Cheyenne, WY 82003.

The purpose of the meeting is to brief the committee on civil rights issues that include voting rights and responsibilities of the U.S. Attorneys office of Wyoming. The committee will discuss recent Commission and regional activities, discuss current civil rights issues in the state, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Malee V. Craft, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 2009.

**Christopher Byrnes,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. E9–9460 Filed 4–23–09; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Northwest Region Federal Fisheries Permits

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before June 23, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Kevin A. Ford, (206) 526–6115 or e-mail at *kevin.ford@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

NOAA, National Marine Fisheries Service (NMFS) seeks comment on the renewal of permit information collections required to: (1) Renew and transfer of Pacific Coast Groundfish limited entry permits; (2) implement certain provisions of the sablefish permit stacking program as provided for at 50 CFR 660.372 and 660.334: and (3) issue and fulfill the terms and conditions of certain exempted fishing permits (EFP).

NMFS, Northwest Region manages the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone (EEZ) off Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan. The regulations implementing the Pacific Groundfish Fishery require that those individuals participating in the limited entry fishery have a valid limited entry permit. Participation in the fishery and access to a limited entry permit has been restricted to control the overall harvest capacity.

Each year permit owners are required to renew their permits by reviewing their current permit information, providing updated contact information and certifying that the permit information is correct. Similarly, a permit owner is required to request in writing a permit transfer which may involve either registering another vessel to the permit and/or conveying the permit to another person or business entity. Additional information may be requested from the permit owner to determine compliance with groundfish regulations. The regulations implementing the limited entry program are found at 50 CFR Part 660, Subpart G.

Also, NMFS requires information collections to implement a sablefish permit stacking program which will allow NMFS to prevent excessive fleet consolidation. This information collection requires a corporation or

partnership that owns or holds a sablefish endorsed permit to provide an ownership interest form listing all individuals with ownership interest in the entity as part of the annual renewal process and as part of any sablefish endorsed permit transfer involving a business entity either given as the permit owner or as the vessel owner. Also, for transfer requests after April 1st and October 30th, the permit owner is required to report the remaining pounds (not yet harvested) on a sablefish endorsed permit at the time of transfer.

Applicants for exempted fishing permit must submit written information that allows NMFS to evaluate the exempted fishing activity and weigh the benefits and costs of the proposed activities. The information included in an application is specified at 50 CFR 600.745(b)(2). Permit holders are required to file preseason plans, summary reports on the results of the experiments or data collection and in some cases individual vessels and other permit holders are required to provide data reports. There is also a requirement of a call-in notification prior to the fishing trip. This information allows NMFS to evaluate the techniques used and decide if management regulations should be approved as is, modified, or disapproved.

**II. Method of Collection**

Renewal forms are mailed to all permit owners and are submitted by mail to NOAA, NMFS, Northwest Region. Transfer forms are available from the region's Web site but must be submitted by mail or in person. Applications for an exempted fishing permit must be submitted in a written format. The exempted fishing permit data reports may be submitted in person, faxed, submitted by telephone or e-mailed by the monitor, plant manager, vessel owner or operator to NMFS or the states of Washington, Oregon, or California.

*Data*

*OMB Control Number:* 0648–0203.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Not-for-profit institutions, state government, individuals or households, and business or other for-profits organizations.

*Estimated Number of Respondents:* 336.

*Estimated Time per Response:* 30 minutes per exempted fishing permit (EFP) application; 24 hours for an EFP summary report; 43 minutes for an EFP data report; 2 minutes for EFP trip notification; 20 minutes for a limited entry permit transfer form; 20 minutes for a renewal form; 10 minutes to provide mid season transfer information for a sablefish endorsed limited entry permit; and 30 minutes for a sablefish permit ownership interest form.

*Estimated Total Annual Burden Hours:* 2,015.

*Estimated Total Annual Cost to Public:* $757,728.

**III. Request for Comments**

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

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

Dated: April 21, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9–9415 Filed 4–23–09; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**[Docket No. 090420688–9689–01]**

### Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of Inquiry.

**SUMMARY:** The U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) seeks comment regarding the upcoming expiration of the Joint Project Agreement (JPA) with the Internet Corporation for Assigned Names and Numbers (ICANN). This agreement has been in existence since November 25, 1998, and is scheduled to expire on September 30, 2009.

**DATES:** Comments are due on or before June 8, 2009.

**ADDRESSES:** Written comments may be submitted by mail to Fiona M. Alexander, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4701, Washington, DC 20230. Paper submissions should include a three and one–half inch computer diskette or compact disc (CD) in HTML, ASCII, Word, WordPerfect, rtf, or pdf format (please specify version). Diskettes or CDs should be labeled with the name and organizational affiliation of the filer and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to DNSTransition@ntia.doc.gov. Comments provided via electronic mail also should be submitted in one or more of the formats specified above. Comments will be posted to NTIA's website at http://www.ntia.doc.gov/comments/2009/dnstransition.

**FOR FURTHER INFORMATION CONTACT:** For questions about this Notice contact: Suzanne R. Sene, Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4701, Washington, DC 20230, telephone (202) 482–3180; email ssene@ntia.doc.gov. Please direct media inquiries to the Office of Public Affairs, NTIA, at (202) 482–7002.

**SUPPLEMENTARY INFORMATION:**

**Background**

A July 1, 1997, Executive Memorandum directed the Secretary of Commerce to privatize the Internet's domain name and addressing system (DNS) in a manner that increases competition and facilitates international participation in its management.[1] In order to fulfill this Presidential directive, the Department of Commerce in June 1998, issued a statement of policy on the privatization of the Internet DNS, known as the *DNS White Paper*.[2] In the *DNS White Paper*, the Department of Commerce articulated, based upon public input, four principles that would guide the development of an entity called "NewCo" to be established by the private sector. These principles were: stability; competition; private, bottom–up coordination; and

[1] Memorandum on Electronic Commerce, 2 Pub. Papers 898 (July 1, 1997).

[2] Management of Internet Names and Addresses, 63 Fed. Reg. 31,741 (June 10, 1998).

representation. In particular, the Department of Commerce committed that it would not conclude its role in DNS management if doing so would cause instability in the DNS. This process of transitioning to private sector leadership these coordination and management functions was termed the DNS Project. The *DNS White Paper* went on to state that, in making a decision to enter into an agreement to establish a process to transfer current U.S. Government management of DNS to such a new entity, the United States would be guided by, and consider, the proposed entity's commitment to the principles enumerated above.

To this end, the Department of Commerce stated in the *DNS White Paper* that it was prepared to enter into an agreement with a new not–for–profit corporation formed by private sector Internet stakeholders. Private sector interests, in turn, formed the Internet Corporation for Assigned Names and Numbers (ICANN) for this purpose.[3] In the fall of 1998, the Department of Commerce entered into a Memorandum of Understanding (MOU) with ICANN, a California not–for–profit corporation, to transition technical DNS coordination and management functions to the private sector.[4] The MOU does not give the Department of Commerce the ability to exercise oversight in the traditional context of regulation and the Department of Commerce plays no role in the internal governance or day–to–day operations of ICANN.

Since 1998, the MOU evolved through several iterations and revisions as ICANN tested these principles with the community, learned valuable lessons, and matured as an organization. Amendments occurred in 1999, 2000, 2001, and 2002. In 2003, the Department of Commerce noted the progress that ICANN had made since its inception. Accordingly, the Department of Commerce and ICANN collaboratively established more specific milestones to further assist ICANN in meeting the objectives of the DNS Project. Both the Department of Commerce and ICANN recognized at this stage that "much work remained for ICANN to evolve into an independent, stable, and sustainable DNS management organization," and the agreement was further amended (through September 30, 2006) to allow sufficient time for ICANN to meet these milestones' objectives.[5]

On May 23, 2006, NTIA issued a Notice of Inquiry (NOI) and announced a public consultation on the Continued Transition of the Technical Coordination and Management of the Internet DNS.[6] The public consultation resulted in over 700 contributions from individuals, private corporations, trade associations, non–governmental entities, and governments. The consultation evidenced broad support for both continuing the transition and the ongoing involvement of the Department of Commerce. On September 29, 2006, the Department of Commerce and ICANN signed a JPA extending the MOU.[7] The JPA expires September 30, 2009.[8]

The JPA called for a midpoint review of ICANN's progress towards becoming an organization with greater transparency and accountability in its procedures and decision making. NTIA conducted this review by releasing an NOI on November 2, 2007, and conducting a public meeting on February 28, 2008.[9] This review process revealed that, while some progress had been made, there remained key areas where further work was required to increase institutional confidence in ICANN.[10] Specifically, these included long–term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition. ICANN has stated publicly on several occasions since this midpoint review, most recently on March 2, 2009, that the JPA will conclude September 30, 2009.[11]

**REQUEST FOR COMMENT:**

Given the upcoming expiration of the current JPA between the Department of Commerce and ICANN, NTIA seeks comments regarding the progress of the transition of the technical coordination and management of the Internet DNS to the private sector, as well as the model of private sector leadership and bottom–up policy development which ICANN represents.

The questions below are intended to assist in identifying the issues and should not be construed as a limitation on comments that may be submitted. Comments that contain references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials with the submitted comments.

1. The *DNS White Paper* articulated four principles (i.e., stability; competition; private, bottom–up coordination; and representation) necessary for guiding the transition to private sector management of the DNS. Are these still the appropriate principles? If so, have these core principles been effectively integrated into ICANN's existing processes and structures?

2. The goal of the JPA process has been to transition the coordination of DNS responsibilities, previously performed by the U.S. Government or on behalf of the U.S. Government, to the private sector so as to enable industry leadership and bottom–up policy making. Is this still the most appropriate model to increase competition and facilitate international participation in the coordination and management of the DNS, bearing in mind the need to maintain the security and stability of the DNS? If yes, are the processes and structures currently in place at ICANN sufficient to enable industry leadership and bottom–up policy making? If not, what is the most appropriate model, keeping in mind the need to ensure the stability and security of the Internet DNS?

3. The original agreement and the first six amendments to the JPA contained a series of core tasks, and in some cases, date–specific milestones. Have these tasks been accomplished and have these milestones been met? If not, what remains and what steps should be taken to successfully address them?

4. In 2006, the focus on specific milestones was adjusted to a series of

[3] For more information on the private sector proposals received *see* http://www.ntia.doc.gov/ntiahome/domainname/background.htm.

[4] Memorandum of Understanding Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers (Nov. 25, 1998), http://www.ntia.doc.gov/ntiahome/domainname/icann-memorandum.htm.

[5] Department of Commerce Statement Regarding Extension of Memorandum of Understanding with the Internet Corporation for Assigned Names and Numbers (Sept. 16, 2003), http://www.ntia.doc.gov/ntiahome/domainname/agreements/sepstatement_09162003.htm.

[6] Notice of Inquiry and Public Meeting on the Continued Transition of the Technical Coordination and Management of the Internet DNS (Nov. 1, 2007), http://www.ntia.doc.gov/ntiahome/domainname/jpamidtermreview.html.

[7] All MOU Amendments are available online at http://www.ntia.doc.gov/ntiahome/domainname/icann.htm.

[8] Joint Project Agreement Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers, Amendment 7, http://www.ntia.doc.gov/ntiahome/domainname/agreements/jpa/ICANNJPA_09292006.htm.

[9] Notice of Inquiry and comments received are available online at http://www.ntia.doc.gov/ntiahome/domainname/jpamidtermreview.html.

[10] NTIA Statement on the Mid-Term Review of the Joint Project Agreement (JPA) Between NTIA and ICANN, http://www.ntia.doc.gov/ntiahome/domainname/ICANN_JPA_080402.html.

[11] *See e.g.*, Paul Twomey, CEO and President, ICANN, Statement Given at the Welcome Ceremony, 34th ICANN Conference, Mexico City, (Mar. 2, 2009), http://mex.icann.org/files/meetings/mexico2009/transcript-opening-ceremony-02mar09-en.txt; Internet Corporation for Assigned Names and Numbers, 2008 Annual Report (Dec. 31, 2008), at 21, http://www.icann.org/en/annualreport/annual-report-2008-en.pdf.

broad commitments endorsed by the ICANN Board as an annex to the JPA. Specifically, ICANN committed to take action on the responsibilities set out in the Affirmation of Responsibilities established in ICANN Board Resolution 06.71, dated September 25, 2006.[12] Those responsibilities included activities in the following categories: security and stability, transparency, accountability, root server security and relationships, TLD management, multi–stakeholder model, role of governments, IP addressing, corporate responsibility, and corporate administrative structure. What steps has ICANN taken to meet each of these responsibilities? Have these steps been successful? If not, what more could be done to meet the needs of the community served in these areas?

5. The current JPA called for NTIA to conduct a mid–term review. That review revealed that ICANN needed to take further steps to increase institutional confidence related to long–term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition. What steps has ICANN taken to address the concerns expressed in the mid–term review process? Have these steps been successful? If not, what more could be done to meet the needs of the community served in these areas?

6. The JPA between the Department of Commerce and ICANN is an agreement by mutual consent to effectuate the transition of the technical coordination and management of the Internet DNS in a manner that ensures the continued stability and security of the Internet DNS. Has sufficient progress been achieved for the transition to take place by September 30, 2009? If not, what should be done? What criteria should be used to make that determination?

7. Given the upcoming expiration of the JPA, are there sufficient safeguards in place to ensure the continued security and stability of the Internet DNS, private sector leadership, and that all stakeholder interests are adequately taken into account? If yes, what are they? Are these safeguards mature and robust enough to ensure protection of stakeholder interests and the model itself in the future? If no, what additional safeguards should be put in place?

8. The JPA provides that before its termination, NTIA and ICANN are to collaborate on a DNS Project Report that will document ICANN's policies and procedures designed and developed pursuant to the agreement. What should be included in this report?

**EX PARTE COMMUNICATIONS:**

Any oral presentation to NTIA regarding the substance of this proceeding will be considered an *ex parte* presentation, and the substance of the meeting will be placed on the public record and become a part of this docket. No later than two (2) business days after an oral presentation or meeting, an interested party must submit a memorandum to NTIA, which summarizes the substance of the communication. Any written presentations provided in support of the oral communication or meeting will also be placed on the public record and become a part of this docket. Such *ex parte* communications must be submitted to DNSTransition@ntia.doc.gov in one of the above listed formats and clearly labeled as an *ex parte* presentation. All *ex parte* documents will be posted at http://www.ntia.doc.gov/comments/2009/dnstransition.

Dated: April 20, 2009.

**Anna M. Gomez,**

*Acting Assistant Secretary for Communications and Information Administration.*

[FR Doc. E9–9409 Filed 4–23–09; 8:45 am]

**BILLING CODE 3510–60–S**

[12] Joint Project Agreement Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers, Amendment 7, http://www.ntia.doc.gov/ntiahome/domainname/agreements/jpa/ICANNJPA_09292006.htm.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[05–BIS–26]**

### In the Matter of Tariq Ahmed; Final Decision and Order

### In the Matter of: Tariq Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, Respondent

### Final Decision and Order

This matter is before me upon a Recommended Decision and Order ("RDO") of an Administrative Law Judge ("ALJ"), as further described below.

On December 15, 2005, the Bureau of Industry and Security ("BIS") issued a charging letter alleging that Respondent, Tariq Ahmed,[1] committed two violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2008) ("Regulations")),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) ("Act").[3] The charging letter included a charge that was based on actions taken by Tariq Ahmed to evade licensing requirements governing the export of items subject to the Regulations from the United States to a Pakistani organization listed on BIS's Entity List. Specifically, Charge One alleged as follows:

Charge 1 (15 CFR 764.2(h)—Actions Taken with Intent to Evade the Provisions of the Regulations)

On or about April 27, 2002, T[ariq] Ahmed took actions with the intent to evade the U.S. Government's licensing requirements for exports to Pakistan. Specifically, T[ariq] Ahmed took actions, including but not limited to, the submission of false information to a freight forwarder in connection with an export of components for an online chemical monitoring system, items subject to the Regulations (EAR99 and 4A994[4]), from the United States to the Karachi Nuclear Power Plant ("KANUPP") in Karachi, Pakistan via the UAE. T[ariq] Ahmed provided shipping information representing that the consignee was in the UAE but omitting the final destination for the items. The purpose of T[ariq] Ahmed's actions was to conceal the end-user, KANUPP, a Pakistani organization on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations and for which a Department of Commerce export license was required by Section 744.1 of the Regulations. In so doing, T[ariq] Ahmed committed one violation of Section 764.2(h) of the Regulations.[5]

In accordance with § 766.3(b)(1) of the Regulations, on December 15, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to

[1] Tariq Ahmed is also known as Tariq Amin, Tariq Ahmad, and Tariq Ahmad Amin.

[2] The charged violations occurred during 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 CFR parts 730–774 (2002)). The 2008 Regulations establish the procedures that apply to this matter.

[3] Since August 21, 2001 the Act has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1707).

[4] "ECCN" refers to "Export Control Classification Number." Supp. 1 to 15 CFR § 774.

[5] The Charging Letter included a second evasion charge, Charge Two, relating to BIS's export control documentation filing requirements. By Notice of Withdrawal filed with the Administrative Law Judge simultaneously with its Motion for Default Order, BIS provided notice that it was withdrawing Charge Two. Thus, Charge Two was not part of BIS's Motion for Default Order.

Tariq Ahmed at his last known address, which is in Pakistan. Although BIS did not receive a signed return mail receipt for the letter, the charging letter was apparently delivered no later than January 17, 2006, as the BIS attorney (Ms. Huda) named in the charging letter reported receiving a telephone message that day from Mr. Ahmed seeking to discuss that letter, as well as the charging letter served in a related administrative proceeding also initiated by BIS on December 15, 2005, In the Matter of Advanced Technical System (Docket No. 05–BIS–25).[6] According to the filed pleadings, on the following day, January 18, 2006, Ms. Huda returned the call. She and Mr. Ahmed discussed the possibility of settlement, and Mr. Ahmed concurred in Ms. Huda's suggestion of a 60-day stay in both proceedings to pursue settlement discussions. BIS subsequently filed an unopposed request to stay both proceedings. An order granting a stay until May 14, 2006 was issued on April 4, 2006.

To date, Mr. Ahmed has not filed an answer to BIS's charging letter. Neither has Mr. Ahmed responded to the motion for default or to the recommended decision and order, both of which were served upon him at his last known address.

Under Section 766.6(a) of the Regulations, the "respondent must answer the charging letter within 30 days after being served with notice of issuance" of the charging letter. Section 766.7(a) of the Regulations provides, in turn, that the "[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter," and that "on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter[.]"

In accordance with Section 766.7 of the Regulations, and because more than thirty days had passed since Tariq Ahmed had been served with the charging letter, BIS filed a Motion for Default Order on January 12, 2009. This Motion for Default Order recommended that Tariq Ahmed be denied export privileges under the Regulations for a period of seven years.

On March 20, 2009, based on the record before him, the ALJ issued a RDO in which he found Tariq Ahmed in default, found the facts to be as alleged in Charge One of the charging letter, and determined that those facts established that Mr. Ahmed had committed the violation alleged in Charge One of the charging letter, specifically, one violation of Section 764.2(h). The ALJ also recommended the penalty of denial of Mr. Ahmed's export privileges for seven years, citing BIS's arguments in favor of such a penalty, including the sensitivity of the ultimate end user, a Pakistani entity on BIS's Entity List, a compilation of end-users that pose a risk of diversion to weapons of mass destruction programs. Additionally, the ALJ referred to BIS's argument that the penalty was warranted as Mr. Ahmed's actions were part of a larger criminal conspiracy to violate U.S. export control laws and regulations. Mr. Ahmed pled guilty to one count of violating the federal conspiracy statute in connection with making shipments to Pakistan.

The AJL's RDO, together with the entire record in this case, has been referred to me for final action under section 766.22 of the Regulations. I find that, consistent with section 766.7(a), the findings of fact and conclusions of law in the recommended decision and order are fully supported. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violation and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's RDO.

*Accordingly, It Is Therefore Ordered*

*First*, that, for a period of seven (7) years from the date this Order is published in the **Federal Register**, Tariq Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, and when acting for or on behalf of Tariq Ahmed, his representatives, agents, assigns and employees (hereinafter collectively referred to as the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Second*, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third*, that, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

*Fourth*, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

[6] Mr. Ahmed is the principal of the respondent in the relating proceeding, Advanced Technical System ("ATS"), a company located in Dubai, United Arab Emirates ("UAE").

*Fifth*, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: April 17, 2009.

**Daniel O. Hill,**

*Acting Under Secretary of Commerce for Industry and Security.*

**Certificate of Service**

I hereby certify that on April __, 2009, I caused the foregoing Response of BIS to the ALJ's Recommended Decision and Order and Final Decision and Order to be sent by Federal Express to: Tariq Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan.

Sandra Lambright,
*Senior Paralegal Specialist.*

[FR Doc. E9–9400 Filed 4–23–09; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Notice of Availability of a Final Finding of No Significant Impact (FONSI) for the Public Safety Interoperable Communications (PSIC) Grant Program

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) publishes this notice of availability of a Final Finding of No Significant Impact (FONSI). The Final FONSI was written to evaluate the environmental impact of the Public Safety Interoperable Communications (PSIC) Grant Program.

**DATES:** The effective date of the Final FONSI is April 24, 2009.

**ADDRESSES:** The Final FONSI is available online at http://www.regulations.gov and also will be available on NTIA's website at http://www.ntia.doc.gov/psic.

**FOR FURTHER INFORMATION CONTACT:** Written requests for a hard copy of the Final FONSI should be submitted to: Ms. Laura Pettus, National Telecommunications and Information Administration, 1401 Constitution Avenue, N.W., Room 4812, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** The Digital Television Transition and Public Safety Act of 2005 (the Act) directed NTIA, in consultation with the Department of Homeland Security (DHS), to establish and administer a grant program to assist public safety agencies in the advancement of interoperable communications.[1] The Act authorized NTIA to make payments not to exceed $1 billion, in the aggregate, through fiscal year 2010 to carry out the PSIC program. The grant program assisted public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that can utilize reallocated public safety spectrum in the 700 MHz band for radio communication.[2]

On September 30, 2007, the PSIC Grant Program awarded $968,385,000 to fund interoperable communications projects for 56 States and Territories.[3] These awards represent the largest single infusion of Federal funding ever provided for State, Territory, and local agencies to implement interoperable communications solutions for public safety.

On February 19, 2009, NTIA published a Notice of Availability of a Final Programmatic Environmental Assessment (PEA) and Draft FONSI for the PSIC Grant Program.[4] The comment period closed on March 23, 2009. NTIA received three (3) comments. These comments were from the Association of Public-Safety Communications Officials (APCO), the National Public Safety Telecommunications Council (NPSTC), and the Federal Communications Commissions (FCC). The APCO and NPSTC commenters suggested that NTIA's chosen environmental procedures would be overly burdensome and that NTIA should use the FCC's environmental evaluation process. NTIA notes that the National Environmental Policy Act of 1969 (NEPA) would not permit this approach under these circumstances, and thus, did not amend the draft FONSI in response. NTIA did clarify in the final FONSI that the Tower Construction Notification System should only be used for projects involving communication of towers and is not suitable for use for other types of PSIC-funded projects.

NTIA prepared the Final FONSI in accordance with the requirements of NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA.[5] The Final FONSI may be reviewed at http://www.regulations.gov or on NTIA's website as noted above. In addition, copies may be obtained by writing to Ms. Laura Pettus as provided above.

Dated: April 20, 2009.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. E9–9410 Filed 4–23–09; 8:45 am]

BILLING CODE 3510–60–S

[1] The Digital Television Transition and Public Safety Act of 2005 § 3006, 47 U.S.C. § 309 note (2008), Pub. L. No. 109-171, 120 Stat. 25. The PSIC grant program requirements were subsequently amended by the Implementing Recommendations of the 9/11 Commission Act of 2007 § 2201, 47 U.S.C. § 309 note (2008), Pub. L. No. 110-53, 121 Stat. 276.

[2] For additional information regarding the PSIC Grant Program, *see*, Public Safety Interoperable Communications Grant Program, Improving Interoperable Communications Nationwide: Overview of Initial State and Territory Investments, http://www.ntia.doc.gov/psic/PSIC%20Investment%20Data%20Analysis%20(report%20only).pdf.

[3] Section 4 of the Call Home Act of 2006, 47 U.S.C. § 309 note (2008), Pub. L. No. 109-459, 120 Stat. 3399, mandated that all PSIC funds be awarded by September 30, 2007.

[4] 74 Fed. Reg. 7663 (2009).

[5] National Environmental Policy Act of 1969, 42 U.S.C. § 4321 (2008); Council on Environmental Quality for Implementing the Procedural Provisions of NEPA, 40 C.F.R. parts 1500-1508 (2008).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO31**

### Marine Mammals; File No. 13614

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that Sea World, Inc., 9205 South Park Center Loop, Suite 400, Orlando, FL 32819 [Brad Andrews, Responsible Party] has been issued a permit to import one pilot whale (Globicephala melas) for public display.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; andSouthwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Kristy Beard, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On October 16, 2008, notice was published in the **Federal Register** (73 FR 61397) that a request for a public display permit to import one male pilot whale from the Lisbon Zoo, Portugal to Sea World of California, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: April 21, 2009.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–9445 Filed 4–23–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on May 6, 2009, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

**Public Session**

1. Welcome and Introductions.
2. Review Status of Working Groups.
3. Proposals from the Public.

**Closed Session**

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first-come, first-served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than April 29, 2009. A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: April 21, 2009.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. E9–9451 Filed 4–23–09; 8:45 am]

**BILLING CODE 3510–JT–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletions from Procurement List.

**SUMMARY:** This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

**DATES:** *Effective Date:* 5/25/2009.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

**SUPPLEMENTARY INFORMATION:**

**Additions**

On 1/30/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR No. 19 pages 5636–5637) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. The action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following products are added to the Procurement List:

**Products**

*NSN:* 8105–00–NIB–1301—Bag, Sand, Digital Camouflage.
*NPA:* South Texas Lighthouse for the Blind, Corpus Christi, TX.
*Contracting Activity:* Federal Acquisition Service, GSA/FSS OFC Sup Ctr—Paper Products.
*Coverage:* B-list for the broad Government requirement as specified by the General Services Administration.

**Liner, Parka, U.S. Navy**

*NSN:* 8415–01–539–3971—XSMALL–XShort
*NSN:* 8415–01–539–3988—SMALL–XShort
*NSN:* 8415–01–539–3990—MEDUIM–XShort
*NSN:* 8415–01–539–3997—LARGE–XShort
*NSN:* 8415–01–539–4001—XSMALL–Short
*NSN:* 8415–01–539–4011—SMALL–Short
*NSN:* 8415–01–539–4028—MEDUIM–Short
*NSN:* 8415–01–539–4031—LARGE–Short

*NSN:* 8415–01–539–4041—XLARGE–Short
*NSN:* 8415–01–539–4045—XSMALL–Reg
*NSN:* 8415–01–539–4049—SMALL–Reg
*NSN:* 8415–01–539–4056—MEDIUM–Reg
*NSN:* 8415–01–539–4058—LARGE–Reg
*NSN:* 8415–01–539–4109—XLARGE–Reg
*NSN:* 8415–01–539–4114—2XLARGE–Reg
*NSN:* 8415–01–539–4119—XSMALL–LONG
*NSN:* 8415–01–539–4609—SMALL–LONG
*NSN:* 8415–01–539–4619—MEDIUM–LONG
*NSN:* 8415–01–539–4625—LARGE–LONG
*NSN:* 8415–01–539–4631—XLARGE–LONG
*NSN:* 8415–01–539–4635—2XLARGE–LONG
*NSN:* 8415–01–539–4658—SMALL–Xlong
*NSN:* 8415–01–539–4664—MEDIUM–Xlong
*NSN:* 8415–01–539–4667—LARGE–Xlong
*NSN:* 8415–01–539–4671—XLARGE–Xlong
*NSN:* 8415–01–539–4677—2XLarge-Xlong
*NPA:* Bestwork Industries for the Blind, Inc., Runnemede, NJ
*Contracting Activity:* Defense Logistics Agency, Defense Supply Center Philadelphia.
*Coverage:* C-list for the remaining portion (beyond three years and above 735,000 units) of the government requirement for the Defense Supply Center Philadelphia, Philadelphia, PA.

**Deletions**

On 2/27/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR 8902–8903) of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

**End of Certification**

Accordingly, the following products are deleted from the Procurement List:

**Products**

*NSN:* 7520–01–484–5269—Pen, Retractable, Biodegradable
*NSN:* 7520–01–484–5265—Pen, Retractable, Biodegradable
*NSN:* 7520–01–484–5264—Pen, Retractable, Biodegradable
*NSN:* 7520–01–484–5260—Pen, Retractable, Biodegradable
*NPA:* Industries of the Blind, Inc., Greensboro, NC
*Contracting Activity:* GSA/FSS Ofc Sup Ctr—Paper Products, New York, NY.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. E9–9454 Filed 4–23–09; 8:45 am]
BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to the Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

*Comments Must be Received on or Before:* 5/25/2009.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259. *For Further Information or to Submit Comments Contact:* Barry S. Lineback, telephone: (703) 603–7740, fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

*Additions:*

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Products*

NSN: 6850–01–167–0678—Cleaner, Brake Parts
NPA: Lighthouse for the Blind, St. Louis, MO
Contracting Activity: Defense Logistics Agency, Defense Supply Center Columbus
COVERAGE: C-list for the total requirement of the Defense Supply Center Columbus, Columbus, OH.

NSN: 7510–00–NIB–0869—Tape, Package Sealing Pack w/Pistol Grip Dispenser
NSN: 7510–00–NIB–0870—Tape, Package Sealing Pack w/Handheld Dispenser
NSN: 7510–00–NIB–0871—Tape, Package Sealing Prepack Commercial Grade
NSN: 7510–00–NIB–0872—Tape, Packaging Sealing Prepack Economy Grade
NPA: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products
COVERAGE: A-List for the total Government requirement as aggregated by the General Services Administration.

NSN: 7530–00–NIB–0880—Self-Stick Table Top Easel Pad
NPA: Assoc f/t Blind & Visually Impaired & Goodwill Ind of Greater Rochester, Rochester, NY
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products
COVERAGE: A-List for the total Government requirement as aggregated by the General Services Administration.

NSN: 8105–00–NIB–1281—Bag, Trash, Insect Repellent
NSN: 8105–00–NIB–1282—Bag, Trash, Insect Repellent
NSN: 8105–00–NIB–1283—Bag, Trash, Insect Repellent
NSN: 8105–00–NIB–1284—Bag, Trash, Insect Repellent
NSN: 8105–00–NIB–1285—Bag, Trash, Insect Repellent

NSN: 8105–00–NIB–1286—Bag, Trash, Insect Repellent
NSN: 8105–00–NIB–1287—Bag, Trash, Insect Repellent
NSN: 8105–00–NIB–1288—Bag, Trash, Insect Repellent
NPA: Envision, Inc., Wichita, KS
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products

COVERAGE: B-List for the broad Government requirement as aggregated by the General Services Administration.

*Service*

Service Type/Location: Custodial Services, Camp Bullis Gymnasium—Building 5031, 6929 Camp Bullis Rd, Camp Bullis, TX
NPA: Professional Contract Services, Inc., Austin, TX
Contracting Activity: DEPT OF THE ARMY, XR W6BB ACA SAM HOUSTON.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. E9–9455 Filed 4–23–09; 8:45 am]

BILLING CODE 6353–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0018]**

## Mega Brands America, Inc. f/k/a Rose Art Industries, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Mega Brands America, Inc. f/k/a Rose Art Industries, Inc., containing a civil penalty of $1,100,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 11, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0018, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Michelle Faust Gillice, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7667.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 20, 2009.

**Todd A. Stevenson,**

*Secretary.*

**In the Matter of: Mega Brands America, Inc. f/k/a Rose Art Industries, Inc.; Settlement Agreement**

1. This Settlement Agreement ("Agreement") is made by and between the staff (the "staff") of the U.S. Consumer Product Safety Commission (the "Commission") and Mega Brands America, Inc., f/k/a Rose Art Industries, Inc., in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections and Inquiries under the Consumer Product Safety Act ("CPSA"). This Agreement and the incorporated attached Order resolve the staff's allegations set forth below.

**The Parties**

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. 2051–2089.

3. Mega Brands America, Inc. ("Mega Brands America") f/k/a Rose Art Industries, Inc. ("Rose Art") is a New Jersey corporation, with its principal office located in Livingston, NJ. Rose Art was wholly owned by Jeffrey Rosen, Lawrence Rosen, and Sydney Rosen until purchased by Mega Bloks, Inc. (a Canadian corporation) on July 26, 2005. Pursuant to the terms of the purchase agreement, Mega Bloks, Inc. could not assume operational control of Rose Art until December 31, 2005. Thereafter, Jeffrey Rosen and Lawrence Rosen remained in senior management positions at Rose Art until their respective departures on April 3, 2006 and May 9, 2006. On June 15, 2006, Rose Art was renamed "Mega Brands America".

4. Mega Brands, Inc. f/k/a Mega Bloks, Inc. ("Mega Brands") is a Canadian corporation located in Montreal, Québec, Canada. Mega Brands is the parent company of Mega Brands America.

5. At all times relevant herein, Rose Art designed and manufactured the Magnetix magnet toys subject to this Settlement Agreement and Order.

**Staff Allegations**

6. Between January 2003 and December 2005, Rose Art manufactured and/or imported Magnetix magnetic building sets (hereinafter "Magnetix set(s)" or "the set(s)." [1]

7. Magnetix sets are "children's product[s]" and "consumer product[s]" and, at the times relevant herein, Rose Art was a "manufacturer" of "children's product[s]" and "consumer product[s]" which were "distributed in commerce" as those terms are defined in sections 3(a)(2), (5), (8), and (11) of the CPSA, 15 U.S.C. 2052(a)(2), (5), (8) and (11).

8. The Magnetix sets are defective because magnets embedded in small plastic pieces contained in the sets could come loose and fall out of the plastic casing.

9. This defect creates a substantial risk of injury to children under section 15(c) of the Federal Hazardous Substances Act, 15 U.S.C. 1274(c) because, if two or more magnets (or one magnet and one metallic ball) from a set are ingested by a child, they can attract each other through intestinal walls, causing perforations, twisting and/or blockage of the intestines, infection, blood poisoning and death.

10. On December 14, 2005, Rose Art filed an "initial report" pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b), concerning the death of a 22 month old child who died on November 24, 2005. The child had ingested multiple magnets from a Magnetix set on separate occasions which subsequently joined together in his small intestine, causing a blockage and sepsis, which led to his death. Rose Art's report identified the product as a Magnetix "X-treme Combo Flashing Lights Castle." The firm attributed the release of magnets from the plastic pieces to unusually abusive play by the decedent's older siblings. The initial report essentially contained no other information.

11. At the time of its initial report, Rose Art was in possession of at least one report of a child suffering an unspecified injury from ingesting a magnet from a Magnetix set and over 1100 consumer complaints that magnets had come loose or fallen out of plastic pieces from dozens of different Magnetix models, but failed to include that information in its report as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

12. On January 13, 2006, CPSC staff sent Rose Art a letter requesting a Full Report pursuant to 16 CFR 1115.13(d). Requested information included copies of the following: Product liability suits and/or claims of personal injury;

[1] Magnetix sets continued to be manufactured after 2005, however due to manufacturing and design improvements instituted by Mega Brands America, these sets are not the subject of the allegations set forth in this Agreement.

consumer complaints, dealer complaints, warranty claims, an identification of the products, and the total number of products involved. In addition, the letter advised the firm that it had a continuing obligation to supplement or correct its full report if the firm learned of other incidents or injuries or information that affected the scope, prevalence or seriousness of the defect of hazard.

13. On February 1, 2006, Rose Art submitted an incomplete and inadequate Full Report. The firm provided limited information about the "X-treme Combo Flashing Lights Castle" despite relevant knowledge that the population of affected products included over 255 different Magnetix set models. In addition, the firm failed to provide any information regarding complaints involving magnets falling out of Magnetix pieces.

14. On March 28, 2006, Rose Art provided staff with a chart entitled "Consumer Calls/Warranty" claims in response to the staff's repeated requests for complaint and incident data. The chart lacked detail and critical information rendering it effectively useless. The CPSC staff requested all source documents used in the creation of the chart. The staff was told that the firm did not retain any source documents regarding complaint and incident data.

15. On March 31, 2006, CPSC and Rose Art announced a voluntary recall whereby the firm agreed to provide replacement products for consumers with children under the age of 6. The press release announced that CPSC was aware of one child who died and four children who were seriously injured as a result of ingesting or aspirating magnets that fell out of Magnetix pieces.

16. Following the recall, CPSC staff sought additional product information from the firm including complaint data. In September 2006, the staff came across information which indicated the firm did in fact retain records of consumer complaints with some level of detail.

17. On October 16, 2006, the Commission issued a Special Order and Subpoena to Mega Brands America compelling the firm to produce all injury and incident records pertaining to Magnetix.

18. On December 1, 2006, Mega Brands submitted a response for Mega Brands America. According to documents provided, between January 2004 and December 14, 2005 (the date on which Rose Art reported the death of the child), Rose Art had received over 1,100 complaints of magnets falling out or otherwise liberating from the plastic pieces in over 67 different models of Magnetix. In addition, Rose Art had received notice of a child being injured from ingesting a magnet a few weeks prior to the child's death. According to the documents, by the time the recall was announced in March 2006, Rose Art had received over 1,500 complaints about magnets falling out of Magnetix pieces.

19. The information eventually obtained by the Subpoena was required by statute to be included in Rose Art's Full Report and supplemented on an ongoing basis thereafter. The firm's failure to provide full complaint and incident data directly and detrimentally affected the staff's ability to assess the hazard and implement an effective corrective action program commensurate with the risk created.

20. Pursuant to section 19(a)(3) of the CPSA, 15 U.S.C. 2068(a)(3), it is unlawful to "* * * fail or refuse to * * * provide information * * * as required under this Act or rule there under." Under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), it is unlawful to fail to furnish information required by section 15(b) of the Act.

21. In failing to provide or furnish information as required under the CPSA and as set forth above, Mega Brands America "knowingly" violated sections 19(a)(3) and (4) of the CPSA, 15 U.S.C. 2068(a)(3) and (4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

22. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Mega Brands America is subject to civil penalties for failure to provide or furnish information in violation of section 19 of the CPSA, 15 U.S.C. 2068.

**Response of Mega Brands America**

23. Mega Brands America and its parent, Mega Brands, contend that Mega Brands did not know of the Magnetix defects at the time Mega Brands acquired Rose Art in June 2005. Documentary evidence establishes that Rose Art's prior owners knew, since at least late 2003 or early 2004, that there were design and manufacturing defects in Magnetix which caused magnets to detach. Rose Art's prior owners have admitted under oath, at no point in time did they ever advise anyone at Mega Brands of the Magnetix problems.

24. On May 24, 2005, when CPSC staff sent a letter requesting Rose Art to provide information concerning choking and near choking incidents involving Magnetix sets as well as "copies of all consumers or dealer complaints, including electronic records warranty claims and reports of injury related to the products being investigated [Magnetix]", Rose Art had the opportunity to disclose hundreds of incidents involving magnets coming loose, but it failed to do so. Notably, at that point in time, Rose Art was negotiating a civil penalty with CPSC for a reporting violation concerning another of its products, and was fully cognizant of its reporting obligations under the law. Mega Brands believes that had Rose Art disclosed all Magnetix consumer complaints in its response to the May 24, 2005 letter, the defect of magnets coming loose would have come to light much earlier.

25. Mega Brands claims that once it learned these facts, it promptly agreed to a more comprehensive recall of the product, which occurred in April 2007.

26. Nevertheless, Mega Brands America understands that, regardless of the reason, Rose Art and Mega Brands America failed to provide and/or furnish information to the CPSC as required under the CPSA.

**Agreement of the Parties**

27. The Commission has jurisdiction over this matter and over Mega Brands America under the CPSA.

28. The parties enter this Agreement for settlement purposes only. The Agreement does not constitute an admission by Mega Brands America nor a determination by the Commission that Mega Brands America violated the CPSA's reporting requirements.

29. In settlement of the staff's allegations, Mega Brands America agrees to pay a civil penalty of $1.1 million ($1,100,000.00) in three installments. The first installment of $400,000 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting this Agreement. The second installment of $350,000 shall be paid within three (3) months of service of the Commission's final Order accepting this Agreement. The third and final installment of $350,000 shall be paid within six (6) months of service of the Commission's final Order accepting this Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

30. The Commission agrees to take no further action involving Mega Brands America with respect to CPSC File Nos. CA080229 (Magtastik and Magnetix Jr. Pre-School Magnetic Toys) and CA070073 (MagnaMan-Magnetic Action Figures.)

31. Upon provisional acceptance of this Agreement by the Commission, the Commission shall place this Agreement on the public record and shall publish it in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR

1118.20(f), if the Commission does not receive any written requests not to accept the Agreement within 15 calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**.

32. Upon final acceptance of this Agreement by the Commission and issuance of the final Order, Mega Brands America knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (iii) a determination by the Commission as to whether Mega Brands America failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

33. The Commission may publicize the terms of the Agreement and Order.

34. The Agreement and Order shall apply to, and be binding upon Mega Brands America and each of its successors and assigns.

35. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject those referenced in paragraph 34 above to appropriate legal action.

36. This Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

37. If any provision of this Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Mega Brands America determine that severing the provision materially affects the purpose of the Agreement and Order.

MEGA BRANDS AMERICA, INC.

Dated: *3/19/09*

By: _____

Vic Bertrand
President
Mega Brands America, Inc., 6 Regent Street, Livingston, NJ 07039

By: _____

Michael J. Gidding
Counsel for Mega Brands America, Inc.
Brown & Gidding, P.C., 3201 New Mexico Avenue, NW., Washington, DC 20016

*U.S. Consumer Product Safety Commission*

Cheryl Falvey
General Counsel
Ronald G. Yelenik
Assistant General Counsel
Dated: *3/24/09*

By: _____

Michelle Faust Gillice
Trial Attorney
Division of Compliance, Office of the General Counsel

**In the Matter of: Mega Brands America, Inc. f/k/a Rose Art Industries, Inc.; Order**

Upon consideration of the Settlement Agreement entered into between Mega Brands America, Inc. ("Mega Brands America") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Mega Brands America, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Mega Brands America shall pay a civil penalty in the amount of $1.1 million ($1,100,000.00) in three installments. The first installment of $400,000 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting this Agreement. The second installment of $350,000 shall be paid within three (3) months of service of the Commission's final Order accepting this Agreement. The third and final installment of $350,000 shall be paid within six (6) months of service of the Commission's final Order accepting this Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Mega Brands America to make any of the aforementioned payments when due, the total amount of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall accrue and be paid by Mega Brands America at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the __ day of ____, 2009.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

Finally accepted and final Order issued on the __ day of ____, 2009.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. E9–9452 Filed 4–23–09; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Health Board (DHB) Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to 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 102–3.150, and in accordance with section 10(a)(2) of Public Law, the following meeting of the Defense Health Board (DHB) is announced:

**DATES:** May 7–8, 2009.

May 7, 2009.

7 a.m.–12 p.m. (Open Session).

12 p.m.–2:15 p.m. (Administrative Working Meeting).

2:15 p.m.–5:15 p.m. (Open Session).

May 8, 2009.

.8 a.m.–2 p.m. (Closed Session).

**ADDRESSES:** May 7, 2009, Ballroom, Sheraton Chrystal City Hotel, 1800 Jefferson Davis Highway Arlington, VA 22202.

May 8, 2009 Industrial College of the Armed Forces, Fort McNair, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, EXT. 1228, Fax: (703)–681–3317, *edmond.feeks@tma.osd.mil*. Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb*. The public is encouraged to register for the meeting. If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by April 30, 2009. Written statements may be mailed to the above address, emailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

*Agenda:* On May 7, 2009, the Board will receive a briefing on Iraqi Health

Sector Reconstruction. The following Defense Health Board Subcommittees will present updates to the Board: the Millennium Cohort Study, the Psychological Health External Advisory Subcommittee, the Trauma and Injury Subcommittee, the Vaccine Safety and Effectiveness Report, the National Capital Region Base Realignment and Closure Subcommittee, and the Traumatic Brain Injury External Advisory Subcommittee. The Board will also receive an informational briefing on the use of the Warren Cohort Serum Repository.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR102–3.155, in the interest of national security, the Department of Defense has determined that the meeting on May 8, 2009 will be closed to the public. The Under Secretary of Defense (Personnel and Readiness), in consultation with the Office of the DoD General Counsel, has determined in writing that the public interest requires that the session on May 8, 2009 be closed to public because they will concern matters listed in section 552b(c)(1) of title 5, United States Code. Specifically the information presented meets criteria established by an executive order to be kept secret in the interest of national defense and foreign policy.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Defense Health Board meeting from 7 a.m. to 12 p.m. and from 2:15 p.m. to 5:15 p.m. on May 7, 2009 is open to the public. Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer at the address detailed above at any point. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: April 20, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register. Liaison Officer, Department of Defense.*

[FR Doc. E9–9390 Filed 4–23–09; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2009–OS–0055]**

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to Amend Two Systems of Records.

**SUMMARY:** The Defense Logistics Agency is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on May 26, 2009 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Chief Privacy and FOIA Officer, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lewis Oleinick at (703) 767–6194.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 21, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S500.41 CAAS**

**SYSTEM NAME:**

Vehicle/Traffic Incident Files (July 30, 1999, 64 FR 41399).

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete "CAAS" from entry.

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with "Public Safety and Security Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220 and the Public Safety and Security Offices of the DLA field activities. Addresses may be obtained from the System manager."

* * * * *

**SAFEGUARDS:**

Delete entry and replace with "Records are maintained in areas accessible only to DLA Headquarters and field activities security supervisory and staff personnel who use the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols. Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned quarterly or monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours, with access restricted during duty hours to authorized users with a need for the information."

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Program Manager, Law Enforcement Operations, Headquarters, Defense Logistics Agency, Office of Public Safety, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220, and the Security Managers within

the DLA field activity responsible for the operation of security forces and staff at the DLA field activity."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, date and the location of the incident."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, date and the location of the incident."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

**S500.41**

**SYSTEM NAME:**

Vehicle/Traffic Incident Files.

**SYSTEM LOCATION:**

Public Safety and Security Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220 and the Public Safety and Security Offices of the DLA field activities. Addresses may be obtained from the System manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any person involved in a vehicle traffic accident or traffic incident on property controlled by the Defense Logistics Agency (DLA), and individuals involved in traffic incidents while operating or occupying a DLA-controlled vehicle.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The file includes name, addresses, Social Security Number (SSN), telephone numbers, vehicle description and data, vehicle license data, operator license data, insurance data, emergency contact and similar data. The file also includes reports, sketches, photographs, medical reports and related papers concerning traffic accident investigation and case disposition, traffic tickets, documents relating to withdrawal of driving privileges, substance influence reports, and reports of corrective or disciplinary action taken.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; National Highway Safety Act of 1966 (23 U.S.C. 401, Highway Safety, *et seq.*); and E.O. 9397 (SSN).

**PURPOSE(S):**

Information is maintained for purposes of accident cause identification and to formulate accident prevention programs for improvement in traffic patterns and for preparation of statistical reports required by higher authority.

Information is used by Security Officers and DLA police to determine actions required to correct the cause of the accident. In cases involving personal injury, to provide verification in processing workmen's compensation cases.

Claims Officers to determine validity of claims against the U.S. Government, when such are filed by a person involved in an accident.

DoD Medical personnel to make medical determinations about individuals involved in accidents.

**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 of 1974, these records 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 medical and emergency personnel to make medical and safety determinations about individuals involved in accidents.

To the Department of Labor, Office of Workers' Compensation for the purpose of processing workers' compensation claims.

The DoD "Blanket Routine Uses" also apply to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored on paper and/or on electronic storage media.

**RETRIEVABILITY:**

Records are retrieved by name of person involved, Social Security Number (SSN), ticket or police report number.

**SAFEGUARDS:**

Records are maintained in areas accessible only to DLA Headquarters and field activities security supervisory and staff personnel who use the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols. Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned quarterly or monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours, with access restricted during duty hours to authorized users with a need for the information.

**RETENTION AND DISPOSAL:**

Destroy after 2 years; however, where the possibility for a claim exists, the record will be destroyed after 6 years, 3 months.

**SYSTEM MANAGER(S) AND ADDRESS:**

Program Manager, Law Enforcement Operations, Headquarters, Defense Logistics Agency, Office of Public Safety, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220, and the Security Managers within the DLA field activity responsible for the operation of security forces and staff at the DLA field activity.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, date and the location of the incident.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, date and the location of the incident.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

Individuals involved in accidents, traffic offenders, witnesses, security and police force personnel, law enforcement agencies, and medical and emergency personnel.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**S500.42**

**SYSTEM NAME:**

Seizure and Disposition of Property Records (June 8, 1999, 64 FR 30494).

**CHANGES:**

* * * * *

**SYSTEM IDENTIFIER:**

Delete "CAAS" from entry.

**SYSTEM LOCATION:**

Delete entry and replace with "Public Safety and Security Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220 and the Public Safety and Security Offices of the DLA field activities. Addresses may be obtained from the System manager."

* * * * *

**SAFEGUARDS:**

Delete entry and replace with "Records are maintained in areas accessible only to DLA Headquarters and field activities security supervisory and staff personnel who use the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols. Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned quarterly or monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours, with access restricted during duty hours to authorized users with a need for the information."

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Program Manager, Law Enforcement Operations, Headquarters, Defense Logistics Agency, Office of Public Safety, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220, and the Security Managers within the DLA field Activity responsible for the operation of security forces and staff at the DLA field activity."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, Social Security Number (SSN), current address, and telephone numbers."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221. Inquiry should contain the subject individual's full name, Social Security Number (SSN), current address, and telephone numbers."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

**S500.42**

**SYSTEM NAME:**

Seizure and Disposition of Property Records.

**SYSTEM LOCATION:**

Public Safety and Security Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220 and the Public Safety and Security Offices of the DLA field activities. Addresses may be obtained from the System manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any person on property controlled by DLA identified as being in possession of contraband or physical evidence connected with a criminal offense.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The file includes name, Social Security Number (SSN), addresses, telephone numbers and data pertaining to the asset. The file also includes documents pertaining to acquisition, storage and disposition of contraband and physical evidence to include receipts, chain of custody documents, release, and disposition or destruction certificates.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, *et seq.*); DOD Instruction 5200.8, Security of DOD Installations and Resources; DOD Directive 5105.22, Defense Logistics Agency; and E.O. 9397 (SSN).

**PURPOSE(S):**

Information is maintained and used by security and police force personnel to provide accountability for confiscated contraband and acquired physical evidence.

Information is also used to maintain chain of custody on evidence for presentation in court in cases requiring criminal prosecution.

**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 of 1974, these records contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" apply to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored on paper and/or on electronic storage media.

**RETRIEVABILITY:**

Retrieved by property log number and last name if person has been identified in the particular case; by incident number if property was found on the premises or recovered from a crime scene.

**SAFEGUARDS:**

Records are maintained in areas accessible only to DLA Headquarters and field activities security supervisory and staff personnel who use the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols. Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned quarterly or monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours, with access restricted during duty hours to authorized users with a need for the information.

**RETENTION AND DISPOSAL:**

Destroy 3 years after final action on or disposition of the property and responsibility therefore has been appropriately terminated.

**SYSTEM MANAGER(S) AND ADDRESS:**

Program Manager, Law Enforcement Operations, Headquarters, Defense Logistics Agency, Office of Public Safety, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220, and the Security Managers within the DLA field activity responsible for the operation of security forces and staff at the DLA field activity.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, Social Security Number (SSN), current address, and telephone numbers.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, Social Security Number (SSN), current address, and telephone numbers.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

Record subject; security personnel; and Federal, state, and local law enforcement agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9–9391 Filed 4–23–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2009–OS–0054]**

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**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 May 26, 2009 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, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (720) 242–6631.

**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 April 20, 2009, 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: April 21, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**T7335d**

**SYSTEM NAME:**

Civilian Pay Accounting Interface Records.

**SYSTEM LOCATION:**

Defense Finance and Accounting Service, DFAS–Denver, 6760 E. Irvington Place, Denver, CO 80279–8000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

United States Air Force (USAF), Army, Navy, Marine Corps, active, reserve, and guard members, Defense Security Service and National Geospatial-Intelligence Agency civilian employees, Department of Defense (DoD) civilian employees and other Federal civilian employees paid by appropriated funds and whose pay is processed by the Defense Finance and Accounting Service.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number, manpower and payroll cost data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental regulations, Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R Vol. 4, 31 U.S.C. Sections 3511 and 3513, and E.O. 9397 (SSN).

**PURPOSE(S):**

To maintain and process civilian payroll accounting and finance data that

originates in the Defense Civilian Payroll System (DCPS). The Civilian Pay Accounting Interface System (CPAIS) will receive bi-weekly files that will be used to generate civilian payroll costs, manpower data and reports; and detailed management reports for the U.S. Air Force. The system will contain information on other than U.S. Air Force civilian employees. However, the CPAIS system will not use the non-Air Force data other than to transmit it directly to the General Accounting and Finance System (GAFS).

**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 of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS 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:**

Electronic storage media and hard copy output products.

**RETRIEVABILITY:**

Name or 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 authorized individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

**RETENTION AND DISPOSAL:**

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Pay affecting records are cut off at the end of the payroll year and destroyed after being maintained for 6 years and 3 months. Records are destroyed by degaussing the electronic media and recycling hardcopy records. The recycled hardcopies are destroyed by shredding, burning, or pulping.

**SYSTEM MANAGER(S) AND ADDRESS:**

Defense Finance and Accounting Service, Denver, System Management Directorate, Accounting and Cash Systems, 6760 E. Irvington Place, Denver, CO 80279–8000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about them is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address, and telephone number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address, and telephone number.

**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, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

**RECORD SOURCE CATEGORIES:**

From the Defense Civilian Payroll System, the individual concerned, and DoD Components or Federal agencies whose civilian employees are paid by the Defense Civilian Payroll System.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9–9392 Filed 4–23–09; 8:45 am]
BILLING CODE 5001–06–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Collection Clearance Division, 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:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 1, 2009.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or e-mailed to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: April 20, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Office of Elementary and Secondary Education**

*Type of Review:* New.

*Title:* State Fiscal Stabilization Fund MOE Guidance.

*Abstract:* This guidance supplements the April 2009 Guidance on the State Fiscal Stabilization Fund program and provides additional information on the statutory maintenance-of-effort (MOE) requirements and the process through which a State applies for an MOE waiver.

*Additional Information:* ED is requesting that the Office of Management and Budget (OMB) approves this information request on an emergency basis, by May 1, 2009. Since the passage of ARRA, OESE staff has worked with ED's Budget Service and the Office of General Counsel to develop a guidance that meets the intent and purposes of the Stabilization program. Using the regular clearance process would put ED well past the 120-day mark for awarding the Stabilization funds that are specified in the Act, which would clearly go against Congress' intent. Not approving this emergency request would cause harm to many States and the students they serve and would delay ED's ability to award the funds to some States in a timely manner.

*Frequency:* One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 10.
Burden Hours: 10.

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 4011. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. 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. E9–9421 Filed 4–23–09; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 26, 2009.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–6974 or send e-mail to *oira_submission@omb.eop.gov*.

**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 Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 21, 2009.

**Angela C. Arrington,**

*Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* Extension.

*Title:* An Impact Evaluation of a School-Based Violence Prevention Program.

*Frequency:* Semi-Annually and Annually.

*Affected Public:* Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 10,627.
Burden Hours: 13,168.

*Abstract:* This is a request to extend by one year the expiration date for the data collection instruments for the Impact Evaluation of a School-Based Violence Prevention Program so that data collection can be completed. Both a curriculum-based program and a whole-school program are being implemented together so that the impact of a hybrid model of school-based violence prevention can be tested, as was recommended by experts in the field of school-based violence prevention. The beginning of data collection was delayed due to difficulty in site recruitment. The extension will allow the contractor to complete the third and final year of extent data collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3941. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. 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. E9–9461 Filed 4–23–09; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### National Coal Council

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the National Coal Council (NCC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the Federal Register.

**DATES:** May 15, 2009, 9 a.m.–12 noon.

**ADDRESSES:** The Fairmont Hotel, 2401 M Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert Kane, Phone (202) 586–4753, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters related to coal and coal industry issues. The agenda for this meeting is summarized below:

- Welcome and call to order by NCC Chair Michael Mueller
- Remarks by Secretary of Energy, Steven Chu
- Council Business:
  - Finance report by committee Chairman Joe Hopf
  - Secretary's report by NCC Secretary Larry Grimes
- Presentation by Yusuo Wang, Chairman and Director of XinAo Group Company Limited, on the coal industry in China.
- Presentation by Brent Constants/John Brewster of Calera Corporation, on CO2 use in the making of cement.
- Presentation by Robert Beck of The National Coal Council, providing an update on NCC activities.
- Other Business
- Adjourn

*Public Participation:* The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Robert Kane at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

*Transcripts:* The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 20, 2009.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E9–9428 Filed 4–23–09; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### State Energy Advisory Board (STEAB)

**AGENCY:** Department of Energy.

**ACTION:** Notice of open teleconference.

**SUMMARY:** This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the Federal Register.

**DATES:** May 20, 2009 at 1–2 p.m. EDT.

**FOR FURTHER INFORMATION CONTACT:** Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

*Tentative Agenda:* Discuss ways STEAB can support DOE's implementation of the Economic Recovery Act, support commercialization efforts for both energy efficiency and renewable energy, consider potential collaborative activities involving the State Energy Offices, and update members on other routine business matters.

*Public Participation:* The teleconference is open to the public. Members of the public who wish to make oral statements pertaining to agenda items, or who simply want to listen to the teleconference, should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the teleconference; reasonable provision will be made to include requested topic(s) on the agenda. Written statements may be filed with the Board either before or after the teleconference. The Chair of the Board is empowered to conduct the teleconference in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of the teleconference will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org*.

Issued at Washington, DC, on April 20, 2009.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E9–9426 Filed 4–23–09; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL8592–7]**

### 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 202–564–7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 17, 2009 (74 FR 17860).

**Draft EISs**

*EIS No. 20080435, ERP No. D–FHW–E40823–MS,* MS–601 Transportation Project, Extension of MS–601 from I–10 Canal Interchange to Connect with US 49, Funding, Harrison and Stone Counties, MS.

*Summary:* EPA continues to have environmental concerns about aquatic resource impacts. Rating EC2.

*EIS No. 20090007, ERP No. D–BLM–K65030–CA,* Carrizo Plain National Monument, Draft Resource Management Plan, Implementation, San Luis Obispo County and Portion of western Kern County, CA.

*Summary:* While EPA has no objection to the proposed action, it did recommend that the action include additional restrictions on grazing to reduce impacts on native plant species. Rating LO.

*EIS No. 20090025, ERP No. D–IBR–K65356–CA,* Grassland Bypass Project 2010–2019 Project, Proposed new Use Agreement, San Joaquin River, CA.

*Summary:* EPA expressed environmental concerns about the uncertainty of developing feasible methods of drain water treatment and disposal that can meet selenium objectives and arrest buildup of selenium in groundwater; the need for a comprehensive monitoring program, including biological effects follow-up; and the need for a clear commitment to detailed analysis of sediment treatment, management, and disposal options and their effects. EPA requested information on how this project interacts with, and can be coordinated with, other regional efforts to address drainage issues. Rating EC2.

*EIS No. 20090040, ERP No. D–COE–K39041–CA,* Natomas Levee Improvement Program Phase 3 Landsides Improvements Project, Issuing of 408 Permission and 404 Permit, Central Valley Flood Control Board, Sutter and Sacramento Counties, CA.

*Summary:* EPA continues to have environmental concerns about the indirect and cumulative environmental effects. We recommended Natomas Basin flood safety plan implementation prior to additional development, evaluation of the cumulative impacts of the COE "200-year" levee improvement project, and coordination with resource agencies to ensure adverse environmental effects are avoided and minimized. Rating EC2.

*EIS No. 20080538, ERP No. DA–NRC–D03004–VA,* North Anna Power Station Unit 3, Combined License (COL) application for Construction and Operation a Based-Load Nuclear Power Plant, (NUREG–1917), in the Town of Mineral, Louisa County, VA.

*Summary:* EPA expressed environmental concerns about thermal discharge impacts. Rating EC1.

*EIS No. 20080353, ERP No. DS–AFS–A65162–00,* Gypsy Moth Management in the United States: A Cooperative Approach, Proposing New Treatments that were not Available when the 1995 EIS was written, US.

*Summary:* EPA expressed environmental concerns about impacts to water quality. Rating EC2.

**Final EISs**

*EIS No. 20090059, ERP No. F–NOA–A91075–00,* PROGRAMMATIC—Marine Mammal Health and Stranding Response Program (MMHSRP), Day-to-Day Operation on Stranding, Response, Rehabilitation, Release, and Disentanglement Activities.

*Summary:* EPA has no objection to the proposed action.

*EIS No. 20090060, ERP No. F–COE–K80051–CA,* University of California (UC) Merced Campus and University Community Project, Development of a Major Research University, To Allow for the Discharge of Fill Material into 76.7 Acres of Wetlands, US Army COE Section 404 Permit, Merced County, CA.

*Summary:* EPA continues to have environmental concerns about the impacts to wetlands.

*EIS No. 20090075, ERP No. F–NPS–K61166–CA,* Golden Gate National Recreation Area, Proposed Marin Headlands and Fort Baker Transportation Infrastructure and Management Plan, Implementation, Marin County, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

*EIS No. 20090080, ERP No. F–AFS–J39039–CO,* Long Draw Reservoir Project, Re-Issue a Special-Use-Authorization to Water Supply and Storage to Allow the Continued Use of Long Draw Reservoir and Dam, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Grand and Larimer Counties, CO.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: April 21, 2009.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9–9444 Filed 4–23–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL8592–6]**

## Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 04/13/2009 through 04/17/2009.

Pursuant to 40 CFR 1506.9.

*EIS No. 20090117, Draft EIS, COE, FL,* C–111 Spreader Canal Western Project, To Restore Ecosystem Function in Taylor Slough and Florida Bay Areas, Central and Southern Florida Project, Comprehensive Everglades Restoration Plan (CERP), Everglades National Park, Miami-Dade County, FL, *Comment Period Ends:* 06/08/2009, *Contact:* Brad Tarr 904–232–3582.

*EIS No. 20090118, Final EIS, AFS, AK,* Navy Timber Sale Project, To Address the Potential Effects of Timber Harvesting on Etolin Island, Wrangell Ranger District, Tongass National Forest, AK, *Wait Period Ends:* 05/26/2009, *Contact:* Mark Hummel 907–874–7595.

*EIS No. 20090119, Final EIS, NPS, NY,* Governors Island National Monument, General Management Plan, Implementation, New York Harbor, NY, *Wait Period Ends:* 05/26/2009, *Contact:* Christine Gabriel 215–597–1572.

*EIS No. 20090120, Draft Supplement, COE, WA,* Commencement Bay "Reauthorization" of Dredged Material Management Program Disposal Site, Implementation, Central Puget Sound, Tacoma, WA, *Comment Period Ends:* 06/08/2009, *Contact:* Dr. Stephen Martin 206–764–3631.

*EIS No. 20090121, Final EIS, USN, NC,* Navy Cherry Point Range Complex, Proposed Action is to Support and Conduct Current and Emerging Training and Research, Development, Testing and Evaluation (RDT&E) Activities, South Atlantic Bight, Cape Hatteras, NC, *Wait Period Ends:* 05/26/2009, *Contact:* Arron Slater 757–322–8498.

*EIS No. 20090122, Draft EIS, FRC, 00,* Phase VIII Expansion Project, Proposed to Construct, Own, Operate, and Maintain New Interstate National Gas Pipeline, Compressor, and Ancillary Facilities in Alabama and Florida, *Comment Period Ends:* 06/

08/2009, *Contact:* Patricia Schaub 1–866–208–3372.

*EIS No. 20090123, Draft EIS, FHW, MS,* Greenville Connector Project, from Relocated US 82 to Proposed I–69 Corridor south of Benoit, City of Greenville. Washington and Bolivar Counties, MS, *Comment Period Ends:* 06/08/2009, *Contact:* Andrew Hughes, P.E. 601–965–4217.

*EIS No. 20090124, Draft EIS, NOA, 00,* Amendment 16 to the Northwest Multispecies Fishery Management Plan, Propose to Adopt, Approval and Implementation Measures to Continue Formal Rebuilding Program for Overfishing and to End Overfishing on those Stock where it Occurring, Gulf of Maine, *Comment Period Ends:* 06/08/2009, *Contact:* Paul Howard 978–465–0492.

*EIS No. 20090125, Draft EIS, SFW, AZ,* Town of Marana Habitat Conservation Plan, Issuance of an Incidental Take Permit (ITP) to Authorize the Incidental Take of Species Protected by the Endangered Species Act (ESA), Pima County, AZ, *Comment Period Ends:* 06/08/2009, *Contact:* Scott Richardson 520–670–6150 Ext. 242.

**Amended Notices**

*EIS No. 20090056, Third Draft Supplement, TPT, CA,* Presidio Trust Management Plan (PTMP), Updated Information on the Preferred Alternative for the Main Post District of the Presidio of San Francisco, Implementation, City and County of San Francisco, CA, *Comment Period Ends:* 06/01/2009, *Contact:* John Pelka 415–561–4183.

Dated: April 21, 2009.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9–9442 Filed 4–23–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–New England Region I—EPA–R01–OW–2009–00103; FRL–8896–8]**

## Maine Marine Sanitation Device Standard—Receipt of Petition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice—Receipt of Petition.

**SUMMARY:** Notice is hereby given that a petition has been received from the state of Maine requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Southern Mount Desert Island.

**DATES:** Comments must be submitted by May 26, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OW–2009–0103, by one of the following methods: *http://www.regulations.gov,* Follow the on-line instructions for submitting comments.

- *Email: rodney.ann@epa.gov.*
- *Fax:* (617) 918–0538.

*Mail and hand delivery:* U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m.–5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OW–2009–0103. 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.

*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 *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office is open from 8 a.m.–5 p.m., Monday through Friday, excluding legal holidays. The telephone number is (617) 918–1538.

**FOR FURTHER INFORMATION CONTACT:** Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Telephone: (617) 918–1538, Fax number: (617) 918–0538; e-mail address: *rodney.ann@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that a petition has been received from the State of Maine requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Southern Mount Desert Island area.

The proposed No Discharge Area for Southern Mount Desert Island:

| Waterbody/general area | From longitude | From latitude | To longitude | To latitude |
|---|---|---|---|---|
| From "Bass Harbor Head" in Tremont north following the shore to the bridge over the outlet stream of "Somes Pond" in Mount Desert. | 68°20′14.35″ W | 44°13′16.42″ N | 68°20′0.79″ W | 44°21′46.16″ N |

| Waterbody/general area | From longitude | From latitude | To longitude | To latitude |
|---|---|---|---|---|
| Northeast following the shore to the bridge over "Kitteridge Brook" in the northern most portion of "Somes Harbor" in Mount Desert. | 68°20'0.79" W | 44°21'46.16" N | 68°19'45.68" W | 44°22'5.07" N |
| East following the shore to the head of "Somes Sound" in Mount Desert. | 68°19'45.68"W | 44°22'5.07" N | 68°18'36.0" W | 44°21'49.83" N |
| South following the shore to the northern most portion of "Northeast Harbor" in Mount Desert. | 68°18'36.0" W | 44°21'49.83" N | 68°17'1.48" W | 44°18'8.08" N |
| East following the shore to the northern most head of "Otter Cove" in Mount Desert. | 68°17'1.48" W | 44°18'8.08" N | 68°12'6.47" W | 44°19'22.25" N |
| South following the shore to "Otter Point" in Mount Desert | 68°12'6.47" W | 44°19'22.25" N | 69°11'27.45" W | 44°18'20.76" N |
| South in a straight line across the water to navigational marker C "1" off "Baker Island" in Cranberry Isles. | 69°11'27.45" W | 44°18'20.76" N | 68°11'16.54" W | 44°14'16.84" N |
| West in a straight line across the water to "Bass Harbor Head" in Tremont. | 68°11'16.54" W | 44°14'16.84" N | 68°20'14.35" W | 44°13'16.42" N |

The boundaries were chosen based on easy line-of-sight locations and generally represent all navigational waters. The area includes the municipal waters of Mount Desert, Southwest Harbor, and portions of Cranberry Isles, and Tremont.

There are marinas, yacht clubs and public landings/piers in the proposed area with a combination of mooring fields and dock space for the recreational and commercial vessels. Maine has certified that there are six pumpout facilities within the proposed area available to the boating public and the facilities are connected to the municipal sewage system. A list of the facilities, locations, contact information, hours of operation, and water depth is provided at the end of this petition.

Maine has provided documentation indicating that the total vessel population is estimated to be 992 in the proposed area. It is estimated that 374 of the total vessel population may have a Marine Sanitation Device (MSD) of some type.

The proposed area is identified as a High Value Wildlife Habitat by the U.S. Fish and Wildlife Service. The area constitutes almost 25 square miles of marine habitat, 4,000 acres of wetlands, and essential habit for bald eagles. The area is adjacent to and bordered by Acadia National Park, the most popular tourist location in the state. There are two large marinas and two service docks in Southwest Harbor, and a large boating complex managed by the Town of Mount Desert and a small marina in Northeast Harbor, together serving roughly 992 boats. This area is a popular destination for boaters due to its natural environmental diversity and would benefit from a No Discharge Area.

**Pumpout Facilities Within Proposed No Discharge Area**

SOUTHERN MOUNT DESERT ISLAND

| Name | Location | Contact info. | Hours | Mean low water depth |
|---|---|---|---|---|
| Harbormaster | 18 Harbor Drive Mount Desert | 207–276–5737<br>VHF 16 | 8 a.m.–5 p.m., 7 days | 10 ft. |
| Clifton Dock | Clifton Dock Road Mount Desert | 207–967–2511<br>VHF 9 | 8 a.m.–5 p.m., 7 days | 10 ft. |
| Hinckley Company | 130 Shore Rd. Southwest Harbor | 207–244–5572<br>VHF 9 | 8 a.m.–5 p.m., 7 days | 20 ft. |
| Great Harbor Marina | 11 Apple Lane Southwest Harbor | 207–244–0117<br>VHF 9 | 9 a.m.–5 p.m., 7 days | 10 ft. |
| Southwest Boat Marine Service | 168 Clarke Point Rd. Southwest Harbor. | 207–244–5525<br>VHF 9 | 9 a.m.–5 p.m., M–F | 8 ft. |
| Downeast Diesel and Marine | 174 Clarke Point Rd. Southwest Harbor. | 207–244–5145<br>VHF 9 | 9 a.m.–5 p.m., M–F | 8 ft. |

Dated: April 17, 2009.

**Ira W. Leighton,**

*Acting Regional Administrator, New England Region.*

[FR Doc. E9–9439 Filed 4–23–09; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 17, 2009.

**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 the following information collection(s), as required by the Paperwork Reduction Act 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 June 23, 2009. 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:** Interested parties 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* and/or to *Cathy.Williams@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* and/or *Cathy.Williams@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0113.

*Type of Review:* Revision of a currently approved collection.

*Title:* Broadcast EEO Program Report, FCC Form 396.

*Form Number:* FCC Form 396.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 2,000 respondents and 2,000 responses.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* Recordkeeping requirement; At time of renewal reporting requirement.

*Obligation to Respond:* Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

*Confidentiality:* No need for confidentiality required.

*Total Annual Burden:* 3,000 hours.

*Total Annual Cost:* $200,000.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* The Broadcast Equal Employment Opportunity (EEO) Program Report, FCC Form 396, is a device that is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with FCC's EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Low Power TV and International stations.

The Commission is revising this collection to remove the information collection requirements associated with OMB control number 3060–0120 (FCC Form 396–A) from the collection. Collection 3060–0120 was previously consolidated into information collection 3060–0113. The collections (3060–0113 and 3060–0120) are really different in nature and should not be consolidated. Therefore, we are requesting that they remain as two separate collections.

*OMB Control Number:* 3060–0120.

*Type of Review:* Reinstatement of a previously approved collection.

*Title:* Broadcast EEO Program Report, FCC Form 396–A.

*Form Number:* FCC Form 396–A.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 5,000.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Recordkeeping requirement; On occasion reporting requirement.

*Obligation to Respond:* Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

*Confidentiality:* No need for confidentiality required.

*Total Annual Burden:* 5,000 hours.

*Total Annual Cost:* None.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* The Broadcast Equal Employment Opportunity (EEO) Model Program Report, FCC Form 396–A, is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

The Commission is requesting reinstatement of OMB control number 3060–0120 by OMB. The collection was previously consolidated into information collection 3060–0113. The collections (3060–0113 and 3060–0120) are really different in nature and should not be consolidated. Therefore, we are requesting that they remain as two separate collections.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–9464 Filed 4–23–09; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:01 p.m. on Monday, April 20, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Acting Director John E. Bowman (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Martin J. Gruenberg, concurred in by Director Thomas J. Curry (Appointive), Director John C. Dugan (Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: April 20, 2009.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E9–9365 Filed 4–23–09; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**Note:** There will be a continuation of the open meeting of Thursday, April 16, 2009, on Tuesday, April 21, 2009, at 10 a.m.

**ITEM TO BE DISCUSSED:** Draft Advisory Opinion 2009–03: IntercontinentalExchange, Inc., by Andrew J. Surdykowski, Esquire.

**DATE AND TIME:** Thursday, April 23, 2009, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:** Correction and Approval of Minutes.

Draft Advisory Opinion 2009–06: Jim Risch for Lieutenant Governor Committee, by David D. Goss, Treasurer.

**MANAGEMENT AND ADMINISTRATIVE MATTERS.** Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. E9–9259 Filed 4–23–09; 8:45 am]

**BILLING CODE 6715–01–M**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission ("FTC" or "Commission").

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through September 30, 2012, the current PRA clearance requirements contained in the FTC Red Flags/Card Issuer/Address Discrepancies Rules ("Red Flags Rule" or "Rule"). The current clearance expires on September 30, 2009.

**DATES:** Comments must be submitted on or before June 23, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Red Flags Rule, PRA Comment, P095406" to facilitate the organization of comments. Please note that comments—including your name and your state—will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments/shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential . . . ," as provided in section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*http://secure.commentworks.com/ftc-RedFlagsPRA*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*http://secure.commentworks.com/ftc-RedFlagsPRA*).

If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the "Red Flags Rule, PRA Comment, P095406" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

**FOR FURTHER INFORMATION CONTACT:** Steven Toporoff, Attorney, Bureau of Consumer Protection, (202) 326-2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party." 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the Rule, 16 CFR Part 681 (OMB Control Number 3084-0137).

#### I. Overview of the Rule

The Rule implements sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"). These sections amend the Fair Credit Reporting Act of 1970 ("FCRA"), 15 U.S.C. 1681 *et seq.*, to require businesses to undertake measures to prevent identity theft and to increase the accuracy of consumer reports.

Specifically, section 114 amends section 615 of the FCRA to require creditors and financial institutions to develop and implement written Identity Theft Prevention Programs. Section 114 also mandates specific regulations that require credit and debit card issuers to assess the validity of notifications of changes of address under certain circumstances. Section 315 of FACT Act adds section 605(h) to the FCRA and requires regulations that provide

guidance on what users of consumer reports must do when they receive a notice of address discrepancy from a nationwide consumer reporting agency.

**II. Description of Collections of Information**

*A. Section 114*

The Rule requires financial institutions and creditors to develop and implement a written Identity Theft Prevention Program ("Program") to detect, prevent, and mitigate identity theft in connection with existing accounts or the opening of new accounts. Under the Rule, creditors and financial institutions must conduct a periodic risk assessment to determine if they maintain "covered accounts." The Rule defines that term as either (1) a consumer account that is designed to permit multiple payments or transactions, or (2) any other account for which there is a reasonably foreseeable risk of identity theft. Each financial institution and creditor that has covered accounts must create a written Program that contains reasonable policies and procedures to identify relevant indicators of the possible existence of identity theft ("Red Flags"); detect Red Flags that have been incorporated into the Program; respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft; and update the Program periodically to ensure it reflects changes in risks to customers.

The Rule also requires financial institutions and creditors to: (1) obtain approval of the initial written Program by the board of directors, a committee thereof or, if there is no board, an appropriate senior employee; (2) ensure oversight of the development, implementation, and administration of the Program; (3) train staff, as needed, to implement the Program; and (4) exercise appropriate and effective oversight of service provider arrangements.

In addition, the Rule implements the section 114 requirement that financial institutions or creditors that issue debit or credit cards ("card issuers") generally must assess the validity of change of address notifications. Specifically, if the card issuer receives a notice of change of address for an existing account and, within a short period of time (during at least the first 30 days), receives a request for an additional or replacement card for the same account, the issuer must follow reasonable policies and procedures to assess the validity of the change of address through one of three methods.

*B. Section 315*

The Rule also implements section 315 of the FACT Act and requires each user of consumer reports to have reasonable policies and procedures in place to employ when the user receives a notice of address discrepancy from a consumer reporting agency ("CRA"). Specifically, each user of consumer reports must develop and implement reasonable policies and procedures to: (1) enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy; and (2) furnish an address for the consumer that the user has reasonably confirmed is accurate to the CRA from which it received a notice of address discrepancy if certain conditions are met.

**III. Burden Estimates**

Rounded to the nearest thousand, overall estimated burden hours for sections 114 and 315, combined, total 6,154,000 and the associated estimated labor cost is $200,628,000. Staff assumes that affected entities will already have in place, independent of the Rule, equipment and supplies necessary to carry out the tasks necessary to comply with it.

*A. Section 114*

1. Estimated Hours Burden - Red Flags Rule

As noted above, the Rule requires financial institutions and creditors with covered accounts to develop and implement a written Program. Under the Rule, a "financial institution" is "a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer."[2] Under the Rule, "creditor" has the same meaning as in section 702 of the Equal Credit Opportunity Act (ECOA).[3] Section 702 defines "creditor" as any person who "regularly extends, renews or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of any original creditor who participates in the decision to extend, renew, of continue credit." "Credit" means an arrangement by which you defer payment of debts or accept deferred payment for the purchase of property or services.[4]

Given the broad scope of entities covered, it is difficult to determine precisely the number of financial institutions and creditors that are subject to the FTC's jurisdiction. There are numerous small businesses under the FTC's jurisdiction, and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence.

Nonetheless, FTC staff estimates that the Rule's requirement to have a written Program affects over 57,000 financial institutions[5] and almost 2 million creditors.[6] This is a revised estimate of the number of covered financial institutions within the FTC's jurisdiction. In the PRA burden estimates set forth in the preamble to the Final Rule, the Commission stated that there were 3,664 financial institutions within the FTC's jurisdiction, namely 3,664 state-chartered credit unions. *See* 72 FR 63718, 63741 n.61 and accompanying text (Nov. 9, 2007). This estimate misstated the scope of the FTC's jurisdiction. Under the FCRA, the financial institutions over which the FTC has jurisdiction include not only state-chartered credit unions, but other entities that hold consumer transaction accounts, excluding banks, savings and loan associations, and federal credit unions, which are subject to oversight by the federal bank regulatory agencies and the National Credit Union Administration. In fact, the financial

[2] The Rule refers to the definition of "financial institution" that is found in the FCRA, 15 U.S.C. § 1681a(t).

[3] U.S.C. 1681a(r)(5)

[4] The Rule defines "credit" and "creditor" by referring to the definition found in the FCRA, 15 U.S.C. § 1681a(r)(5) which, in turn, refers to section 702 of the ECOA.

[5] As of December 31, 2005, there were 3,302 state-chartered federally-insured credit unions and 362 state-chartered nonfederally insured credit unions. *See (www.ncua.gov/news/quick_facts/quick_facts.html)* and "Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act (FDICIA)," 70 FR 12823 (Ma. 16, 2005). As of 2007, there were 3,913 property, casualty and life, and health insurance companies. *See* Insurance Department Resources Report 2007, published by the National Association of Insurance Commissioners (NAIC). As of September 2007, there were 4,733 registered investment companies. *See* Securities and Exchange Commission, Proposed Regulation S-P, at 13709 (March 13, 2008). As of December 31, 2007, there were 5,561 broker-dealers. *See* Securities and Exchange Commission, Amendments to Regulation SHO, Release No. 34-58773, at 45 (Oct. 14, 2008) (available at *(www.sec.gov/rules/final/2008/34-58773.pdf)*). As of November 2008, there were 39,408 money service businesses. *See* Department of the Treasury Financial Crimes Enforcement Network MSB Registration List (available at *(www.msb.gov/pdf/msb_registration_list.pdf)*.)

[6] *See infra* notes 7 and 8 accounting for this sum total.

institutions within the FTC's jurisdiction include, but are not limited to, certain insurance companies, investment companies, broker-dealers, and money service businesses.

To arrive at a burden hour estimate for the Red Flags Rule under section 114, FTC staff divided affected entities into three categories, based on the nature of their businesses: (1) entities that are subject to a high risk of identity theft; (2) entities that are subject to a low risk of identity theft, but have covered accounts that will require them to have a written Program; and (3) entities that are subject to a low risk of identity theft, but do not have covered accounts.[7]

a. High-Risk Entities

FTC staff estimates that high-risk entities will each require 25 hours to create and implement a written Program, with an annual recurring burden of one hour. FTC staff anticipates that these entities will incorporate into their Programs policies and procedures that they likely already have in place. Further, FTC staff estimates that preparation of an annual report will require each high-risk entity four hours initially, with an annual recurring burden of one hour. Finally, FTC staff believes that many of the high-risk entities, as part of their usual and customary business practices, already take steps to minimize losses due to fraud, including conducting employee training. Accordingly, only relevant staff need be trained to implement the Program: for example, staff already trained as part of a covered entity's anti-fraud prevention efforts do not need to be re-trained except as incrementally needed. FTC staff estimates that training in connection with the implementation of a Program of a high-risk entity will require four hours, and recurring annual training thereafter will require one hour.

Thus, estimated hours burden for high-risk entities is as follows:

•320,217 high-risk entities[8] subject to the FTC's jurisdiction at an average annual burden of 13 hours per entity [average annual burden over 3-year clearance period for creation and implementation of Program ((25+1+1)/3), plus average annual burden over 3-year clearance period for staff training ((4+1+1)/3), plus average annual burden over 3-year clearance period for preparing annual report ((4+1+1)/3)], for a total of 4,165,421 hours.

b. Low-Risk Entities

Entities that have a minimal risk of identity theft, but that have covered accounts, must develop a Program; however, they likely will only need a streamlined Program. FTC staff estimates that such entities will require one hour to create such a Program, with an annual recurring burden of five minutes. Training staff of low-risk entities to be attentive to future risks of identity theft should require no more than 10 minutes in an initial year, with an annual recurring burden of five minutes. FTC staff further estimates that these entities will require, initially, 10 minutes to prepare an annual report, with an annual recurring burden of five minutes.

The Rule does not require entities that determine that they do not have any covered accounts to create a written Program. Thus, such entities will not incur PRA burden.

Thus, the estimated hours burden for low-risk entities is as follows:

•1,622,029 low-risk entities[9] that have covered accounts subject to the FTC's jurisdiction at an average annual burden of approximately 37 minutes per entity [average annual burden over 3-year clearance period for creation and implementation of streamlined Program ((60+5+5)/3), plus average annual burden over 3-year clearance period for staff training ((10+5+5)/3), plus average annual burden over 3-year clearance period for preparing annual report ((10+5+5)/3)], for a total of 1,000,251 hours.

2. Estimated Hours Burden - Card Issuer Rule

As noted above, section 114 also requires financial institutions and creditors that issue credit or debit cards to establish policies and procedures to assess the validity of a change of address request, including notifying the cardholder or using another means of assessing the validity of the change of address. FTC staff estimates that the Rule affects as many as 52,914 card issuers. This is a revised estimate of the number of card issuers within the FTC's jurisdiction. In the PRA burden estimates set forth in the preamble to the Final Rule, the Commission stated that there were as many as 3,764 card issuers (consisting of state-chartered credit unions and retailers) within the FTC's jurisdiction. *See* 72 FR at 63742. This estimate understated the scope of the FTC's jurisdiction. The FTC has jurisdiction over additional categories of card issuers, including certain universities, money service businesses, and telecommunication companies.[10] FTC staff believes that most of these card issuers already have automated the process of notifying the cardholder or are using another means to assess the validity of the change of address, such that implementation will pose no further burden. Nevertheless, taking a conservative approach, FTC staff estimates that it will take each card issuer 4 hours to develop and implement policy and procedures to assess the validity of a change of address request for a total burden of 211,656 hours.

Thus, the total average annual estimated burden for Section 114 is 5,377,328 hours.

3. Estimated Cost Burden - Red Flags and Card Issuer Rules

FTC staff estimates labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with compliance with the Rule, as they entail varying compensation levels of management (*e.g.*, administrative services, computer and information systems, training and development) and/or technical staff (*e.g.*, computer support specialists, systems analysts, network and computer systems administrators) among companies of different sizes. FTC staff

[7] In general, high-risk entities may provide consumer financial services or other goods or services of value to identity thieves such as telecommunication services or goods that are easily convertible to cash, whereas low-risk entities may do business primarily with other businesses or provide non-financial services or goods that are not easily convertible in cash, such as healthcare providers.

[8] This is the number of high-risk entities implementing section 114 as previously reported (266,602) in the preamble to the Rule, 72 FR at 63742, increased by the additional institutions (including insurance and investment companies, broker-dealers, and money service businesses) accounted for herein at note 4 and the accompanying text.

[9] This figure is derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses that market goods or services to consumers or other businesses, reduced to the number of creditors subject to the FTC's jurisdiction (10,813,525), and reduced further by an estimated subset of which comprise anticipated low-risk entities not having covered accounts under the final rule (9,191,496).

[10] In addition to the 3,664 state-chartered credit unions and 100 retailers under the FTC's jurisdiction, as of 2007, there were 4,314 colleges and universities. *See* Digest of Education Statistics published by the National Center for Education Statistics (available at (*http://nces.ed.gov/programs/digest/d07/tables/dt07_255.asp*). As of November 2008, there were 39,408 money service businesses. *See* Department of the Treasury Financial Crimes Enforcement Network MSB Registration List (available at (*http://www.msb.gov/pdf/msb_registration_list.pdf*). Finally, as of November 2006, there were 5,428 telecommunication companies. *See* Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, Trends in Telephone Service, August 2008, Table 5.3 (available at (*http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf*).

assumes that for all entities, professional technical personnel and/or management personnel will create and implement the Program, prepare the annual report, and train employees, at an hourly rate of $35.00.[11]

Based on the above estimates and assumptions, the total annual labor cost for all categories of covered entities under the Red Flags and Card Issuer Rules for Section 114 is $188,206,480 [4,165,421 hours + 1,000,251 hours + 211,656 hours) x $35.00)].

*B. Section 315 - The Address Discrepancy Rule*

As discussed above, the Rule's implementation of section 315 provides guidance on reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a CRA. Given the broad scope of users of consumer reports, it is difficult to determine with precision the number of users of consumer reports that are subject to the FTC's jurisdiction. As noted above, there are numerous small businesses under the FTC's jurisdiction, and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the Rule's implementation of section 315 affects approximately 1.66 million users of consumer reports subject to the FTC's jurisdiction.[12] Approximately 10,000 of these users will, in the course of their usual and customary business practices, have to furnish to CRAs an address confirmation upon notice of a discrepancy.[13]

FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 776,334 hours. The estimated burden is $12,421,344.

1. Estimated Hours Burden

Although section 315 created a new obligation for CRAs to provide a notice of address discrepancy to users of consumer reports, prior to the FACT Act enactment, users of consumer reports could compare the address on the consumer report to the address provided by the consumer and discern for themselves any discrepancy. As a result, FTC staff believes that many users of consumer reports have developed methods of reconciling address discrepancies, and the following estimates represent the incremental amount of time users of consumer reports may require to develop and comply with the policies and procedures for when they receive a notice of address discrepancy.

Due to the varied nature of the entities under the FTC's jurisdiction, it is difficult to determine precisely the appropriate burden estimates. Nonetheless, FTC staff estimates that it would require an infrequent user of consumer reports no more than 16 minutes to develop and comply with the policies and procedures that it will employ when it receives a notice of address discrepancy, while a frequent user might require one hour. Similarly, FTC staff estimates that, during the remaining two years of clearance, it may take an infrequent user no more than one minute to comply with the policies and procedures it will employ when it receives a notice of address discrepancy, while a frequent user might require 45 minutes. Taking into account these extremes, FTC staff estimates that, during the first year, it will take users of consumer reports under the jurisdiction of the FTC an average of 38 minutes [the midrange between 16 minutes and 60 minutes] to develop and comply with the policies and procedures that they will employ when they receive a notice of address discrepancy. FTC staff also estimates that the average recurring burden for users of consumer reports to comply with the Rule will be 23 minutes [the midrange between one minute and 45 minutes].

Thus, for these 1.66 million entities, the average annual burden for each of them to perform these collective tasks will be 28 minutes [(38 + 23 + 23) ÷ 3]; cumulatively, 774,667 hours.

For the estimated 10,000 users of consumer reports that will additionally have to furnish to CRAs an address confirmation upon notice of a discrepancy, staff estimates that these entities will require 30 minutes to develop related policies and procedures. But, these 10,000 affected entities[14] likely will have automated the process of furnishing the correct address in the first year of a three-year PRA clearance cycle. Thus, allowing for 30 minutes in the first year, with no annual recurring burden in the second and third years of clearance, yields an average annual burden of 10 minutes per entity to furnish a correct address to a CRA, for a total of 1,667 hours.

2. Estimated Cost Burden

FTC staff assumes that the policies and procedures for compliance with the address discrepancy part of the Rule will be set up by administrative support personnel at an hourly rate of $16.[15] Based on the above estimates and assumptions, the total annual labor cost for the two categories of burden under section 315 is $12,421,344 [(774,667 hours + 1,667 hours) x $16.00].

*C. Burden Totals for Sections 114 and 315*

Cumulatively, then, rounded to the nearest thousand, estimated burden is 6,154,000 hours (5,377,328 hours for section 114 and 776,334 hours for section 315) and $200,628,000 ($188,206,480 and $12,421,344, respectively) in associated labor cost.

**David C. Shonka,**

*Acting General Counsel.*

[FR Doc. E9–9425 Filed 4–23–09: 8:45 am]

BILLING CODE 6750–01–S

[11] This estimate is based on (*http://www.bls.gov/ncs/ncswage2007.htm*) (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor released August 2008, Bulletin 2704, Table 3 ("Full-time civilian workers," mean and median hourly wages) for the various managerial and technical staff support exemplified above.

[12] This estimate is derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses in industries that typically use consumer reports from CRAs described in the Rule, which total 1,658,758 users of consumer reports subject to the FTC's jurisdiction.

[13] Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions of 2003, Federal Trade Commission, 80 (Dec. 2004) available at (*http://www.ftc.gov/reports/facta/041209factarpt.pdf*).

[14] Staff further assumes that this estimate is representative of new entrants in any given three-year PRA clearance cycle.

[15] Based generally on the National Compensation Survey: Occupational Earnings in the United States, 2007, U.S. Department of Labor, Bureau of Labor Statistics released August 2008, Bulletin 2704, Table 3 ("Full-time civilian workers," mean and median hourly wages), available at (*http://www.bls.gov/ncs/ocs/sp/nctb0300.pdf*). Clerical estimates are derived from the above source data, applying roughly a mid-range of mean hourly rates for potentially applicable clerical types, *e.g.*, computer operators, data entry and information processing workers.

## FEDERAL TRADE COMMISSION

### Public Workshop: Business Opportunity Rule An FTC Workshop Analyzing Business Opportunity Disclosure Form and Other Proposed Changes to the Business Opportunity Rule

**AGENCY:** Federal Trade Commission

**ACTION:** Notice announcing public workshop, revised disclosure document, and request for public comment.

**SUMMARY:** The Federal Trade Commission ("FTC" or "Commission") is planning to hold a public workshop

relating to the March 26, 2008 Revised Notice of Proposed Rulemaking ("RNPR") that announced proposed changes to the trade regulation rule entitled "Business Opportunity Rule," 16 CFR Part 437 (the "Rule"). The workshop will explore issues relating to the effectiveness of the proposed revised Business Opportunities Disclosure Form attached to this Notice as a means of conveying material information to prospective purchasers of business opportunities. The workshop is also anticipated to develop the record related to certain issues raised in the comments received in response to the RNPR.

**DATES:** The public workshop will be held on June 1, 2009, from 9:00 a.m. until 5:00 p.m. at the FTC's Satellite Building Conference Center, located at 601 New Jersey Avenue, NW, Washington, DC. Requests to participate as a panelist must be received by May 4, 2009. Any written comments related to the agenda topics and the issues discussed by the panelists at the workshop must be received by June 15, 2009. The workshop is open to the public, and there is no fee for attendance. For admittance to the Conference Center, all attendees will be required to show valid photo identification such as a driver's license.

**ADDRESSES:** Registration information can be found in Section III of this Notice. In order to facilitate the organization of comments and requests to participate, comments and requests to be panelists should respectively refer to "Business Opportunity Rule Workshop—Comment, Project No. P084405" or to "Business Opportunity Rule Workshop—Request to Participate, Project No. P084405." A comment or request to participate as a panelist may be filed electronically or in paper form. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .," as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments and requests to participate in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-businessopportunityworkshop*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-businessopportunityworkshop*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. Requests to participate filed in an electronic form should be submitted by e-mail to: *businessopportunityworkshop@ftc.gov*. You may also visit the FTC Website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment or request to participate as a panelist filed in paper form should include the "Business Opportunity Rule Workshop—Comment, Project No. P084405" or "Business Opportunity Rule Workshop—Request to Participate, Project No. P084405" reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex S), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget ("OMB"), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Benway (202) 326-2024, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-286, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Background

As part of the Commission's overall policy of periodic review of its trade regulation rules, the Commission, in 1995, commenced a regulatory review of its Trade Regulation Rule ("TRR") entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule"). This Rule, as originally promulgated, covered, in a single Code of Federal Regulations part, two distinct types of offerings: franchises and business opportunity ventures. Many of the very familiar national fast-food restaurants and hotels, for example, are franchises; business opportunity ventures include vending machine routes, rack display operations, and medical billing

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

ventures. Business opportunity ventures, unlike franchises, typically do not involve the right to use a trademark or other commercial symbol, and generally do not involve a long-term reciprocal relationship between the seller and the purchaser of the venture. Nevertheless, these ventures typically do call for the business opportunity seller to provide purchasers with locations for machines or equipment or with clients.

Much of the information revealed by the regulatory review focused on the differences between franchises and business opportunity ventures, and the distinct regulatory challenges presented by these two types of offerings. One result of the periodic review was that, based on the record amassed during the review proceeding, the Commission determined a need to create two separate rules—one covering the sale of franchises and one to govern the sale of non-franchise business opportunities. Accordingly, in February 1997, the Commission published an Advance Notice of Proposed Rulemaking soliciting comment on several proposed Rule modifications, including the creation of a separate TRR governing the sale of business opportunities.[2]

In 2006, the Commission published an Initial Notice of Proposed Rulemaking ("Initial NPR") announcing its intention to proceed with its proposal for a separate Business Opportunity Rule ("Initial Proposed Business Opportunity Rule" or "IPBOR").[3] In response to the Initial NPR, the Commission received more than 17,000 comments, the overwhelming majority of which came from the multi-level marketing ("MLM") industry.[4] MLM companies, their representatives and trade associations, as well as individual participants in various MLM plans, expressed grave concern about the burdens the IPBOR would impose on them, and urged the Commission to narrow the scope of the IPBOR, to implement various safe harbor provisions, and/or to reduce the required disclosures.[5]

On March 30, 2007, while the Business Opportunity proceeding was underway, the Commission published the Amended Franchise Rule that separated the Franchise Rule into two distinct CFR parts—part 436, governing the sales of business format franchises, and a new part 437, the Business Opportunity Rule, governing the sales of non-franchise business opportunities. Part 437 is identical to the original Franchise Rule, with all of the definitional elements and references regarding business format franchising deleted. Part 437 continues to govern sales of non-franchise business opportunities, pending completion of the ongoing proceedings to amend it.

After an extensive analysis of the public comments received in response to the Initial NPR and a reassessment of its law enforcement experience, the FTC, on March 26, 2008, issued a Revised Notice of Proposed Rulemaking ("RNPR") that proposed a Revised Proposed Business Opportunity Rule ("RPBOR")[6] more narrowly tailored than the IPBOR. In addition to minor wording and punctuation changes to improve clarity, the RPBOR modified the IPBOR in six significant ways:

- It narrowed the scope of the proposed Rule to avoid broadly sweeping in sellers of multi-level marketing opportunities,[7] while retaining coverage of those business opportunities sellers historically covered by the FTC's original Franchise Rule (and by the FTC's current Business Opportunity Rule), as well as coverage of sellers of work-at-home schemes;
- It cured a potential overbreadth problem that may have inadvertently swept in companies using traditional product distribution arrangements;
- It eliminated the previously proposed requirement that a covered business opportunity seller disclose the number of cancellation and refund requests it received;
- It eliminated the proposed requirement to disclose litigation history of certain sales personnel (while retaining the requirement to disclose litigation history of the business opportunity seller, its principals, officers, directors, and sales managers, as well as any individual who occupies a position or performs a function similar to an officer, director, or sales manager);
- It added a proposed requirement to include a citation to the Rule in the title of the required disclosure document; and
- It added a proposed prohibition against misrepresenting that the government or any law forbids providing business opportunity prospects with a list of prior purchasers.

The RNPR sought public comment on these proposed changes and on alternatives the Commission could consider.

The RNPR also included a proposed one-page Business Opportunity Disclosure Form ("proposed Disclosure Form") that sellers of business opportunities would be required to provide to prospective purchasers. Section 437.2 of the RPBOR would require "sellers" of covered business opportunities to provide potential purchasers with the proposed Disclosure Form at least seven calendar days before they sign a contract or pay any money toward a purchase. The proposed Disclosure Form is intended to provide prospective purchasers with material information with which to make an informed decision about the potential business opportunity, including information about earnings claims, legal actions, existence of cancellation or refund policies, and references. The RNPR announced that the Commission had engaged a consultant with expertise in document design and comprehension to evaluate the proposed Disclosure Form to ensure that it adequately conveyed to consumers information material to the prospective business opportunity, and to determine whether the overall presentation of the information in the proposed Disclosure Form could be improved to make it more useful and understandable. The RNPR also invited public comment on the proposed Disclosure Form.[8] Following publication of the RNPR, the consultant conducted extensive consumer testing of the proposed Disclosure Form that

[2] 62 FR at 9115 (Feb. 28, 1997).

[3] Business Opportunity Rule NPR, 71 FR 19054 (Apr. 12, 2006).

[4] Multi-level marketing is one form of direct selling, and refers to a business model in which a company distributes products through a network of distributors who earn income from their own retail sales of the product and from retail sales made by the distributors' direct and indirect recruits. Because they earn a commission from the sales their recruits make, each member in the MLM network has an incentive to continue recruiting additional sales representatives into their "down lines." *See* Peter J. Vander Nat & William W. Keep, *Marketing Fraud: An Approach to Differentiating Multilevel Marketing from Pyramid Schemes*, 21 J. Pub. Pol'y & Marketing (Spring 2002) at 140.

[5] The Commission also received approximately 187 comments, primarily from individual consumers or consumer groups, in favor of the IPBOR. Only a handful of comments from non-MLM companies and industry groups expressed concerns about obligations that the IPBOR would impose upon them.

[6] Business Opportunity Rule Revised NPR, 73 FR 16110 (Mar. 26, 2008)

[7] The RNPR did not exempt MLMs from coverage of the RPBOR. Instead, it narrowed the scope of the IPBOR by significantly revising Section 437.1 by redefining the term "business opportunity." The RNPR noted that while some MLMs do engage in unfair or deceptive acts or practices, including the operation of pyramid schemes or unsubstantiated earnings claims that cause consumer harm, commenters generally agreed that the IPBOR's required disclosures would not help consumers identify a fraudulent pyramid scheme. In the RNPR, the Commission stated its belief that consumer harm flowing from deceptive practices in the MLM industry could be more effectively addressed through the use of Section 5 of the FTC Act.

[8] In response to the RNPR, the Commission received no public comments about the language or the layout of the proposed form.

resulted in substantial improvement to both the layout and the wording of the form, *e.g.*, the consultant suggested revising the preamble to clarify that the information on the proposed Disclosure Form relates specifically to the business opportunity that the reader is being offered, and suggested adding a note below the signature line stating that the FTC requires that the business opportunity seller give the reader at least seven calendar days before asking him or her to sign a purchase contract. The format and language of the revised proposed Business Opportunity Disclosure Form ("revised proposed Disclosure Form") is set forth in Appendix A to this Notice.[9] More information about the testing of the proposed Disclosure Form may be found at: (*http://www.ftc.gov/bcp/workshops/bizopps/disclosure-form-report.pdf*).

## II. Issues for Discussion at the Workshop

The primary focus of the workshop will be on the efficacy of the revised proposed Disclosure Form to convey critical material information to prospective purchasers of business opportunities. The workshop will explore the form as a whole, as well as specific aspects or sections of the form—for example, whether the required disclosures regarding legal actions and cancellation or refund policies are adequate. The workshop also will provide participants with an opportunity to discuss some general issues raised in the comments received in response to the RNPR, including: the implications of the RPBOR for businesses and consumers; whether certain definitions proposed in the RNPR accomplish the Commission's purposes stated in the RNPR; and the RPBOR's compatibility with existing federal and state policies. A more detailed agenda will be published at a later date, in advance of the scheduled workshop.

## III. Public Participation Information

### *A. Registration Information*

The public workshop will consist of a roundtable discussion on the issues described above by those individuals selected to be panelists. A court reporter will be present to record the proceedings so that a transcription can be made for the public record. The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged so that staff may better plan this event. To pre-register, please email your name and affiliation to *businessopportunityworkshop@ftc.gov*. When you pre-register, the FTC collects your name, affiliation, and e-mail address. We will use this information to estimate how many people will attend and better understand the likely audience for the workshop, and will dispose of it following the workshop. We may use your e-mail address to contact you with information about the workshop. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes. Under the Freedom of Information Act or other laws, we may be required to disclose the information you provide to outside organizations. For additional information, including routine uses permitted by the Privacy Act, *see* the Commission's privacy policy at (*http://www.ftc.gov/ftc/privacy.shtm*).

### *B. Requests to Participate as a Panelist*

The workshop will consist of a roundtable format with participation by panelists selected by the FTC staff. Other attendees also will have an opportunity to comment and ask questions. Requests to participate as a panelist must be received on or before May 4, 2009. Persons selected as panelists will be notified on or before May 15, 2009.

Requests to participate as a panelist at the workshop should be submitted electronically to *businessopportunityworkshop@ftc.gov*, or, if mailed, should be submitted in the manner detailed in the **ADDRESSES** section of this Notice, and should be captioned "Business Opportunity Workshop—Request to Participate, Project No. P084405." Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the workshop will focus as well as their contact information, including a phone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected. For requests filed in paper form, an original and two copies of each document should be submitted to Federal Trade Commission/Office of the Secretary, Room 135-H (Annex S), 600 Pennsylvania Ave, NW, Washington, DC, 20580, and must be received on or before May 4, 2009. The Commission will also accept requests to participate received at the following e-mail address: *businessopportunityworkshop@ftc.gov*.

### *C. Written and Electronic Comments*

The submission of comments is not required for participation in the workshop. If a person wishes to submit written or electronic comments about the topics to be discussed at the workshop, such comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before June 15, 2009. To read the FTC's policy on how it handles the information you submit, please visit (*http://www.ftc.gov/ftc/privacy.shtm*).

By direction of the Commission.

**Donald S. Clark**

*Secretary*

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**BILLING CODE 6750–01–S**

[9] The version of the revised proposed Disclosure Form that was tested by the expert inadvertently omitted the phrase "or pay any money" from the conclusion of the penultimate sentence of the revised proposed Disclosure Form. The expert engaged by the FTC determined that this omission had no effect on the results of its testing.

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0014]**

### Information Collection; Standard Form (SF) 123, Transfer Order-Surplus Personal Property and Continuation Sheet

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice of request for comments regarding a renewal to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding transfer order-surplus personal property and continuation sheet.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: June 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** William F. Kemp, Federal Supply Services, GSA at telephone (703) 605–2879 or via e-mail to *william.kemp@gsa.gov*.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat

(VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0014, Transfer Order-Surplus Personal Property and Continuation Sheet, in all correspondence.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Standard form (SF) 123, Transfer Order-Surplus Personal Property and Continuation Sheet is used by public agencies, nonprofit educational or public health activities, programs for the elderly, service educational activities, and public airports to apply for donation of Federal surplus personal property. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

**B. Annual Reporting Burden**

*Respondents:* 45,413.
*Responses per Respondent:* 1.
*Hours per Response:* 0.02.
*Total Burden Hours:* 810.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0014, Transfer Order-Surplus Personal Property and Continuation Sheet, in all correspondence.

Dated: April 17, 2009.

**Casey Coleman,**

*Chief Information Officer.*

[FR Doc. E9–9404 Filed 4–23–09; 8:45 am]

**BILLING CODE 6820–YT–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0076]**

### Federal Acquisition Regulation; Information Collection; Novation/ Change of Name Requirements

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0076).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning novation/ change of name requirements. This OMB clearance expires on June 30, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 23, 2009.

**ADDRESSES:** Submit comments including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Beverly Cromer, Contract Policy Division, GSA (202) 501–1448.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts, or (2) a name change, it must submit certain documentation to the Government.

**B. Annual Reporting Burden**

Respondents: *1,000.*
Responses per Respondent: *1.*
Annual Responses: *1,000.*
Hours per Response: *.458.*
Total Burden Hours: *458.*
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0076, Novation/ Change of Name Requirements, in all correspondence.

Dated: April 17, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–9403 Filed 4–23–09; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0094]**

### Federal Acquisition Regulation; Information Collection; Debarment and Suspension

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning debarment and suspension. The OMB clearance expires June 30, 2009.

*Public comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 23, 2009.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0094, Debarment and Suspension, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Millisa Gary, Contract Policy Division, GSA (202) 501–0699.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm or its principals have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by the contracting officer in making a responsibility determination. 52.209–5, Certification Responsibility Matters, requires the disclosure of this information.

**B. Annual Reporting Burden**

*Respondents:* 89,995.
*Responses per respondent:* 12.223.
*Total Responses:* 1,100,000.
*Hours per Response:* 0.0833 hrs.
*Total Burden Hours:* 91,667.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0094, Debarment and Suspension, in all correspondence.

Dated: April 17, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–9453 Filed 4–23–09; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0159]**

### Federal Acquisition Regulation; Information Collection; Central Contractor Registration

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Central Contractor Registration database. The clearance currently expires on July 31, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 23, 2009.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Woodson, Contract Policy Division, GSA, (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The Central Contractor Registration (CCR) is the primary vendor database for the U.S. Federal Government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions.

Both current and potential Federal Government vendors are required to register in CCR in order to be awarded contracts by the Federal Government. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration at least once per year to maintain an active status.

CCR validates the vendor information and electronically shares the secure and encrypted data with Federal agency finance offices to facilitate paperless payments through electronic funds transfer (EFT). Additionally, CCR shares the data with Federal Government procurement and electronic business systems.

**B. Annual Reporting Burden**

*Respondents:* 87,677.
*Responses per Respondent:* 1.
*Annual Responses:* 87,677.
*Hours per Response:* 1.
*Total Burden Hours:* 87,677.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0159, Central Contractor Registration, in all correspondence.

Dated: April 17, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–9456 Filed 4–23–09; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0149]**

### Federal Acquisition Regulation; Information Collection; Subcontract Consent

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0149).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontract Consent. This OMB Clearance expires on July 31, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can

minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 23, 2009.

**ADDRESSES:** Submit comments including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW., Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–0044.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The objective to consent to subcontract, as discussed in FAR Part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The consent package provides the administrative contracting officer a basis for granting, or withholding consent to subcontract.

**B. Annual Reporting Burden**

*Number of Respondents:* 4,252.

*Responses per Respondent:* 3.61.

*Total Responses:* 15,349.

*Average Burden Hours Per Response:* .87.

*Total Burden Hours:* 13,353.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Dated: April 17, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–9458 Filed 4–23–09; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0026]**

### Federal Acquisition Regulation; Information Collection; Change Order Accounting

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0026).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning change order accounting. This OMB clearance expires on May 31, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 23, 2009.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Cromer, Contract Policy Division, GSA, (202) 501–1448.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

**B. Annual Reporting Burden**

*Respondents:* 8,750.

*Responses per Respondent:* 18.

*Annual Responses:* 157,500.

*Hours per Response:* .084.

*Total Burden Hours:* 13,230.

**C. Annual Recordkeeping Burden**

*Recordkeepers:* 8,750.

*Hours per Recordkeeper:* 1.5.

*Total Recordkeeping Burden Hours:* 13,125.

*Total Burden Hours:* 26,355.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: April 17, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–9347 Filed 4–23–09; 8:45 am]

**BILLING CODE 6820–23–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0152]**

### Federal Acquisition Regulation; Information Collection; Service Contracting

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0152).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning service contracting. This OMB clearance expires on July 31, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 23, 2009.

**ADDRESSES:** Submit comments, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Mr. Warren Blankenship, Contract Policy Division, GSA, (202) 501–1900.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

This FAR requirement implements the statutory requirements of Sec. 834, Public Law 101–510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act-exempt personnel. These overtime hours and rates are included in the offeror's proposals and their subcontractors' proposals for procurements valued at or above the simplified acquisition threshold. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

**B. Annual Reporting Burden**

*Number of Respondents:* 19,906.
*Responses per Respondent:* 1.
*Annual Responses:* 19,906.
*Average Burden per Response:* 30 minutes.
*Total Burden Hours:* 9,953.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0152, Service Contracting, in all correspondence.

Dated: April 17, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–9459 Filed 4–23–09; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0145]**

### Federal Acquisition Regulation; Information Collection; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0145).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning use of data universal numbering system (DUNS) as primary contractor identification. This OMB clearance expires on August 31, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 23, 2009.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Woodson, Contract Policy Division, GSA, (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of the micro-purchase threshold to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulation (FAR) provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations they expect will result in contracts in excess of the micro-purchase threshold and do not contain FAR 52.204–7, Central Contractor Registration. This provision requires offerors to submit their DUNS number with their offer. If the offeror does not have a DUNS number, the provision provides instructions on obtaining one.

**B. Annual Reporting Burden**

*Respondents:* 35,694.
*Responses per Respondent:* 4.00.
*Annual Responses:* 142,776.
*Hours per Response:* .0200. (Averaged.)
*Total Burden Hours:* 2,852.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0145, Use of Data

Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: April 17, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–9457 Filed 4–23–09; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: OS–0990–0302]**

### Agency Information Collection Request. 60-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

*Proposed Project:* Medical Reserve Corps Unit Profile and Reports (Extension)—OMB No. 0990–0302—Office of the Secretary/Office of Public Health and Science/Office of the Surgeon General/Office of the Civilian Volunteer Medical Reserve Corps (OS/OPHS/OSG/OCVMRC).

*Abstract:* Medical Reserve Corps units are currently located in over 800 communities across the United States, and represent a resource of more than 170,000 volunteers. In order to continue supporting the MRC units in communities across the United States, and to continue planning for future emergencies that are national in scope, detailed information about the MRC units, including unit demographics, contact information (regular and emergency), volunteer numbers, and information about activities is needed by the Office of the Civilian Volunteer Medical Reserve Corps (OCVMRC). MRC Unit Leaders are asked to update this information on the MRC Web site at least quarterly, and to participate in a Technical Assistance Assessment at least annually. The MRC unit data collected has not changed. This OMB extension request is for 3 years.

ESTIMATED ANNUALIZED BURDEN TABLE

| Type of respondent | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| MRC Unit Leader | 803 | 6 | 1.0 | 4,818 |

**Seleda Perryman,**

*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. E9–9420 Filed 4–23–09; 8:45 am]

BILLING CODE 4150–47–P

## 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 under the project: "Evaluation of AHRQ's Effective Health Care Program." 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 June 23, 2009.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrg.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@ahrg.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*"Evaluation of AHRQ's Effective Health Care Program"*

AHRQ proposes to perform an evaluation of the Effective Health Care (EHC) program's governance structure, methods for engaging stakeholders and approaches to setting national research priorities. Pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, the EHC program was established by AHRQ to conduct research, demonstrations, and evaluations designed to improve the quality, effectiveness, and efficiency of Medicare, Medicaid, and the State Children's Health Insurance Program. The EHC program was designed to provide effectiveness and comparative effectiveness evidence of medical treatments, therapeutics, devices and drugs to assist policymakers, health care providers, clinicians, consumers, and other stakeholders in making informed decisions. The EHC program has offered a platform for combining explicit reviews of scientific evidence on the clinical effectiveness of pharmaceuticals and other health care interventions, as well as the translation and dissemination of scientific findings into meaningful messages for a wide variety of audiences. It serves as an interface between the clinical research entities and health policy making entities. This

program also provides a critical step in AHRQ's mission to support informed decision making. In addition to its program staff, the EHC program relies on four centers to generate and disseminate evidences: the Evidence-based Practice Centers (EPCs), the Developing Evidence to Inform Decisions about Effectiveness (DEcIDE) Network Centers, the John M. Eisenberg Clinical Decisions and Communications Science Center, and the Centers for Education & Research on Therapeutics (CERTs). Since the process of developing and disseminating this evidence is a complex undertaking, AHRQ has contracted with IMPAQ International, LLC and Abt Associates, Inc. (henceforth referred to as the "IMPAQ team") to perform this evaluation.

Information will be collected to identify strengths and weaknesses in the current EHC program's governance structure, methods for engaging stakeholders, and approaches to setting priorities for the research conducted by the EHC program. The second phase of the evaluation will be to contrast the EHC program with international programs of similar purpose. To implement this evaluation, the IMPAQ team will conduct the following information collections:

(1) Key informant interviews about the governance structure of the EHC program;

(2) An online survey of EHC center staff and EHC program users and stakeholders;

(3) An Appreciative Inquiry workshop with EHC program staff and stakeholders;

(4) A document review (will not impose a burden on research participants) and

(5) Interviews with staff at international organizations of similar purpose (will not impose a burden on U.S. citizens).

The latter two activities do not require OMB approval and are not discussed further in this notice. The information collected will ultimately be used to develop a roadmap, including at least three alternative models of governance and operation, to be submitted to AHRQ that could be used to help guide future programmatic development.

**Method of Data Collection**

*Key Informant Interviews*

Semi-structured key informant interviews will be used to understand the EHC program's governance components and structure, from the vantage point of individuals governing the program, governed by the program, contributing to the program in various capacities, or impacted by the program's activities. Thirteen EHC Research Centers Staff, two EHC Stakeholder Group Members, and nineteen EHC Program Users and Stakeholders will be interviewed about the governance structure of the EHC program.

Additional key informant interviews with twenty five EHC Program Users and Stakeholders will be used to collect more detailed information on the success or impact of the EHC program product that results from its governance element or approach, or about a specific, important governance element.

All key informant interviews will be tape recorded to improve data capture, with prior permission from the participants.

*Online Survey*

A structured, web-based online survey of EHC program Research Centers Staff and EHC program Users and Stakeholders will be used to gather information about the EHC program. The survey will provide a robust view of the EHC governance system by providing feedback from a broad group of individuals whose work is related to the program. Specifically, the survey will collect data about these individuals' engagement and involvement with the EHC program; perceptions of the program's governance; experiences with the development, production, dissemination, and use of EHC products; and their beliefs regarding the quality and nature of the collaborative work, including public-private partnerships, being done within centers, across centers, and between centers and stakeholders.

*Appreciative Inquiry Workshop*

Small- and large-group discussions as part of an Appreciative Inquiry workshop will be designed to encourage EHC decision-makers (AHRQ staff, EHC program staff, AHRQ project officers for each of the Research Center networks, principal investigators or other representatives from each of the Research Center networks) and key program stakeholders or users to consider and decide which are the preferred alternative governance models or elements for which roadmaps should be developed. Appreciative Inquiry (AI) approach is an organizational development process that engages individuals within an organization in renewal, change, and focused performance. The AI approach focuses on successes and opportunities to improve things by looking forward, rather than looking back on the problems or issues. The AI workshop is expected to facilitate consensus among decision-makers to contribute to the endorsement of the roadmap(s), and to encourage utilization of the evaluation findings. The workshop will involve a creative thinking process that will build on existing successes, identify and rank preferred alternatives, and ultimately develop a plan to strengthen the EHC program's governance system.

*Estimated Annual Respondent Burden*

Exhibit 1 shows the estimated annualized burden hours for the respondents to participate in this evaluation. Key informant interviews will be conducted about the governance structure of the EHC program and will last about one hour. The on-line survey will be completed by 95 EHC program Research Centers Staff and 170 EHC Program Users and Stakeholders and will require about 15 minutes to complete. The Appreciative Inquiry workshop will be conducted with 20 participants and will last about 6 hours. The total burden hours are estimated to be 246 hours. Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in the evaluation. The total cost burden is estimated to be $6,137.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Activity name | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Key Informant Interviews with EHC Research Centers Staff | 13 | 1 | 1 | 13 |
| Online Survey with EHC Research Centers Staff | 95 | 1 | 15/60 | 24 |
| Key Informant Interviews with EHC Stakeholder Group Members | 2 | 1 | 1 | 2 |
| Key Informant Interviews with EHC Program Users and Stakeholders | 19 | 1 | 1 | 19 |
| Online Survey with EHC Program Users and Stakeholders | 170 | 1 | 15/60 | 43 |

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Activity name | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Key Informant Interviews with EHC Program Users and Stakeholders to Develop Cases | 25 | 1 | 1 | 25 |
| Appreciative Inquiry Workshop | 20 | 1 | 6 | 120 |
| Total | 344 | (1) | (1) | 246 |

[1] Not applicable.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Activity name | Number of respondents | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Key Informant Interviews with EHC Research Centers Staff | 13 | 13 | $54.27 | $706 |
| Online Survey with EHC Research Centers Staff | 95 | 24 | 54.27 | 1,302 |
| Key Informant Interviews with EHC Stakeholder Group Members | 2 | 2 | 43.52 | 87 |
| Key Informant Interviews with EHC Program Users and Stakeholders | 19 | 19 | 46.73 | 888 |
| Online Survey with EHC Program Users and Stakeholders | 170 | 43 | 46.73 | 2009 |
| Key Informant Interviews with EHC Program Users and Stakeholders to Develop Cases | 25 | 25 | 46.73 | 1,168 |
| Appreciative Inquiry Workshop | 20 | 120 | 51.14 | 6,137 |
| Total | 344 | 246 | (1) | 12,297 |

* Wage rates were calculated using the following data: (1) For the Governance Interviews and the Online Survey with EHC Research Centers Staff the hourly rate is a weighted average for physicians ($58.76 per hour) and medical and health services managers ($37.82); (2) for the Governance Interviews with EHC Stakeholder Group Members the hourly rate is the rate for average for medical and health services managers ($37.82); (3) for the Governance Interviews and the Online Survey with EHC Program Users and Stakeholders the hourly rate is a weighted average for physicians ($58.76 per hour), general and operations managers ($43.52 per hour), medical and health services managers ($37.82 per hour), and social and community service managers ($24.73 per hour); (4) for the Workshop the hourly rate is a weighted average for physicians ($58.76 per hour) and general and operations managers ($43.52 per hour) from the mean of the average wages, National Compensation Survey: Occupational Wages in the United States 2006, U.S. Department of Labor, Bureau of Labor Statistics.

[1] Not applicable.

*Estimated Annual Costs to the Federal Government*

Exhibit 3 shows the estimated cost of this one year data collection for the evaluation of the EHC program, including the cost of developing the methodology and data collection instruments, collecting and analyzing the data, publishing the results, etc. The work will be carried out by IMPAQ International and Abt Associates under contract to the Agency for Healthcare Research and Quality.

EXHIBIT 3—ESTIMATED ANNUAL COST * TO THE FEDERAL GOVERNMENT

| Cost component | Total cost |
|---|---|
| Project Development | $137,901 |
| Data Collection Activities | 179,172 |
| Data Processing and Analysis | 170,577 |
| Publication of Results | 63,686 |
| Project Management | 97,236 |
| Total | 648,572 |

* Please note the costs include fully loaded costs (overhead, G&A).

**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: April 15, 2009.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. E9–9245 Filed 4–23–09; 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: "Building an Implementation Toolset for E-Prescribing." 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 June 23, 2009.

**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**

*"Building an Implementation Toolset for E-Prescribing"*

AHRQ proposes to develop and test an electronic prescribing (e-prescribing) toolset to provide information and tools of sufficient detail to act as a "how-to guide" for implementing e-prescribing across various organizational settings.

The current system of prescribing and dispensing medications in the United States poses widespread safety and efficiency problems. E-prescribing systems have the potential to avert some of the more than 2 million adverse drug events (ADEs) annually, of which 130,000 are life threatening. E-prescribing also has enormous potential to create savings in health care costs, both through reducing ADEs and through more efficient work processes of prescribers and pharmacists. One recent study estimated the potential savings at $27 billion per year in the United States. [Johnston D, Pan E, Middleton B, Walker J, Bates DW. The value of computerized provider order entry in ambulatory settings. 2003 [cited 2003/12/10]. Available from: *http://www.citl.org/research/ACPOE_Executive_Preview.pdf*.]

The Medicare Prescription Drug Improvement and Modernization Act (MMA) of 2003, Public Law 108–173, provided that Medicare Part D sponsors are required to establish electronic prescription drug programs to provide for electronic transmittal of certain information to the prescribing provider and dispensing pharmacy and the dispenser. There is no requirement that prescribers or dispensers implement e-prescribing, but those who do electronically transmit prescription and certain other prescription-related information for Medicare Part D covered drugs prescribed for Medicare Part D eligible individuals, either directly or through an intermediary, are required to comply with any applicable final standards that are in effect.

However, adoption of e-prescribing technology remains limited. On the surface, e-prescribing involves getting a prescription from point A to point B. In reality, the complexity of e-prescribing reflects all aspects of the process from appropriate prescribing, through dispensing, to correct patient use.

Much current work has been on the adoption of technical standards that establish a common language, contain technical specifications, and provide other specific criteria designed to be used consistently as rules or definitions. While standards are a necessary foundation for e-prescribing systems, they are insufficient in themselves to insure a successful implementation. Of equal importance to successful e-prescribing implementations are appropriate workflows and sustainable commitment from the various organizations that must participate in such a system.

This Accelerating Change and Transformation in Organizations and Networks (ACTION) project will produce a toolset to help a diverse range of provider organizations, from small independent offices to large medical groups to "safety net" clinics, to adopt e-prescribing systems and use them effectively in ways that advance the organization's goals. By enabling the greater adoption of e-prescribing systems that are effective in improving safety, quality and reducing prescription drug costs, the project will advance each of the priorities embodied in AHRQ's mission, which is to improve the quality, safety, efficiency, and effectiveness of health care for all Americans.

This work is being conducted by the RAND Corporation under AHRQ ACTION contract HHSA290200600017, Task Order #4, period of performance—8/1/08–1/31/10. It is being conducted pursuant to AHRQ's statutory authority to conduct research and evaluations (1) on health care and systems for the delivery of such care, including activities with respect to health care technologies, facilities and equipment, 42 U.S.C. 299a(a)(5), and (2) to advance training for health care practitioners and researchers in the use of information systems. 42 U.S.C. 299b–3(a)(2).

**Method of Collection**

In order to evaluate the draft toolset's usability and usefulness, we will pilot test the toolset by studying its effects among 6 practices that are attempting to implement e-prescribing for the first time. Field researchers will visit each practice before and after the e-prescribing implementation effort to conduct semi-structured interviews and observations of work processes. Finally, selected members of the practices will be surveyed via a web-based instrument regarding the effort's success and the degree to which elements of the toolset were helpful.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this project. Pre-test and post-test interviews will be conducted with 3 physicians, 3 nurses or clinical support staff and 3 other staff from each of the 6 test sites. Eight physicians from each of the 6 test sites will complete the physician survey and 12 other staff from each site will complete the other staff survey. The total burden hours are estimated to be 168 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in this project. The total cost burden is estimated to be $7,423.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of sites | Number of responses per site | Hours per response | Total burden hours |
|---|---|---|---|---|
| Pre-test Interviews: | | | | |
| Physician interviews | 6 | 3 | 1 | 18 |
| Nurse or clinical support interviews | 6 | 3 | 1 | 18 |
| Other staff interviews | 6 | 3 | 1 | 18 |
| Post-test interviews: | | | | |
| Physician interviews | 6 | 3 | 1 | 18 |
| Nurse or clinical support interviews | 6 | 3 | 1 | 18 |

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Form name | Number of sites | Number of responses per site | Hours per response | Total burden hours |
|---|---|---|---|---|
| Other staff interviews | 6 | 3 | 1 | 18 |
| Web-based survey: | | | | |
| Physician survey | 6 | 8 | 30/60 | 24 |
| Other staff survey | 6 | 12 | 30/60 | 36 |
| Total | 48 | (1) | (1) | 168 |

[1] Not applicable.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of sites | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Pre-test Interviews: | | | | |
| Physician interviews | 6 | 18 | $78.24 | $1,408 |
| Nurse or clinical support interviews | 6 | 18 | 30.42 | 548 |
| Other staff interviews | 6 | 18 | 14.97 | 269 |
| Post-test interviews: | | | | |
| Physician interviews | 6 | 18 | 78.24 | 1,408 |
| Nurse or clinical support interviews | 6 | 18 | 30.42 | 548 |
| Other staff interviews | 6 | 18 | 14.97 | 269 |
| Web-based survey: | | | | |
| Physician survey | 6 | 24 | 78.24 | 1,878 |
| Other staff survey | 6 | 36 | 30.42 | 1,095 |
| Total | 48 | 168 | (1) | 7,423 |

* Based upon the mean of the national average hourly wages for physicians and surgeons, registered nurses, and medical secretaries, National Compensation Survey: Occupational wages in the United States July 2007, U.S. Department of Labor, Bureau of Labor Statistics.
[1] Not applicable.

**Estimated Annual Costs to the Federal Government**

Exhibit 3 shows the estimated total and annual costs of this project. Since data collection will not exceed one year, the total and annual costs are the same. The total cost is estimated to be $119,976.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST

| Cost component | Total cost | Annualized cost |
|---|---|---|
| Instrument Development | $12,533 | $12,533 |
| Data Collection Activities | 33,422 | 33,422 |
| Data Processing and Analysis | 16,711 | 16,711 |
| Report Preparation/Publication | 16,711 | 16,711 |
| Project Management | 4,178 | 4,178 |
| Overhead | 36,421 | 36,421 |
| Total | 119,976 | 119,976 |

**Request for Comments**

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQs 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: April 15, 2009.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. E9–9247 Filed 4–23–09; 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 (0MB) approve the proposed information collection project: "Evaluation of Phase I Demonstrations of the Pharmacy Quality Alliance." 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.

This proposed information collection was previously published in the **Federal Register** on February 10th, 2009 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by May 26, 2009.

**ADDRESSES:** Written comments should be submitted to: AHRQ's 0MB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submissionomb.eop.gov* (attention: AHRQ's desk officer).

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@ahrg.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### "Evaluation of Phase I Demonstrations of the Pharmacy Quality Alliance"

AHRQ proposes to conduct an independent evaluation of five Phase I demonstrations undertaken by the Pharmacy Quality Alliance (PQA). The PQA launched the five demonstration projects to test the feasibility of implementing a pharmacy provider report card system, which will be used to provide feedback to pharmacies on their performance. The goals of the demonstrations are to obtain feedback from pharmacists on the credibility of the performance reports and their utility in performance improvement, and to identify the most efficient and useful ways to implement a performance-based quality reporting system. The evaluation will be conducted for AHRQ by its contractor, the CNA Corporation and Thomas Jefferson Medical College.

The purpose of this evaluation is to identify problems associated with the implementation of a performance-based quality reporting system. The evaluation of the Phase I demonstrations will:

- Test the feasibility and utility of (1) using 15 PQA claims-based measures on pharmacy performance and (2) a survey of consumers about their experience with pharmacy services, which was developed by the PQA;
- Determine the resource (time and cost) requirements for collecting the data and generating the pharmacy performance reports; and
- Provide a base of knowledge that enables the PQA to improve the implementation process, increase operational efficiency, reduce operational costs, and enhance the utility and validity of the performance measures.

This project is being conducted pursuant to AHRQ's statutory authority to conduct and support research and evaluations on health care and on systems for the delivery of such care, including activities with respect to (1) the quality, effectiveness, efficiency, appropriateness and value of health care services and (2) quality measurement and improvement. 42 U.S.C. 299a(a)(l) and (2).

#### Method of Collection

The evaluation will include the following two data collections: (1) On-site interviews with key staff from each demonstration project and (2) a survey of pharmacy staff. The data will be collected to obtain the following types of information necessary for the evaluation:

- Organizational background related to quality measurement, organizational resources for quality measurement;
- Measurement methodology;
- Opinions on the performance measures;
- The process for disseminating the performance measures;
- Incentives and penalties for participation in pharmacy quality improvement;
- Usability of the performance reports;
- Future directions for quality measurement in the organization; and
- Respondent characteristics.

On-site interviews with key demonstration participants.

On-site interviews will be conducted with up to six persons at each of the five demonstration sites. The study will try to interview representatives from the following job functions: (1) Pharmacy operations management; (2) clinical pharmacy staff; (3) quality improvement; (4) utilization management; (5) analytics management responsible for oversight of performance report analyses; (6) analytics staff assigned to complete the performance reports; (7) information technology (IT) staff responsible for developing and/or coordinating Internet components of the project; and (8) senior management (executive leadership, i.e., Vice President level and above).

#### Survey of Pharmacy Staff

A pharmacy staff survey will be developed to yield additional quantitative data about the demonstration projects. The sample will consist of practicing pharmacists who are participating in the demonstration sites and who received one or more of the performance reports. It will also include field managers and supervisors. At each of the five sites, up to 100 pharmacy staff members will be sampled, with an expected response rate of 75 percent, yielding 75 respondents per site.

#### Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for this one year data collection. On-site interviews will be conducted with 6 staff members from each of the 5 demonstration projects and will last about 1 hour and 15 minutes. The survey of pharmacists will be completed by about 75 staff members from each demonstration project and is estimated to take 30 minutes to complete. The total estimated annualized burden is 226 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this evaluation. The cost burden is estimated to be $10,753.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of projects | Number of responses per project | Hours per response | Total burden hours |
|---|---|---|---|---|
| Demonstration Staff Interviews | 5 | 6 | 1.25 | 38 |
| Survey of Pharmacists | 5 | *75 | 30/60 | 188 |
| Total | 10 | na | na | 226 |

*We expect that some demonstration projects will have fewer than 75 responses, but we are indicating 75 responses here to avoid underestimating the response burden.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of projects | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Demonstration Staff Interviews | 5 | 38 | $47.58 | $1,808 |
| Survey of Pharmacists | 5 | 188 | 47.58 | 8,945 |
| Total | 10 | 226 | na | 10,753 |

*Based on the national average wage for pharmacists (29–1051), National Compensation Survey: Occupational Wages in the United States May 2007, U.S. Department of Labor, Bureau of Labor Statistics.

**Estimated Annual Costs to the Federal Government**

The estimated total cost to the Federal government for this one year evaluation is $208,874. Exhibit 3 shows a breakdown of the costs.

EXHIBIT 3—ESTIMATED ANNUAL COSTS TO THE FEDERAL GOVERNMENT

| Component | Total |
|---|---|
| Developing the interview guide and survey instrument | $33,905 |
| Preparing 0MB clearance submission | 6,704 |
| Site visits to each demonstration | 73,368 |
| Analyzing the data from each demonstration site. | 54,835 |
| Preparing a final report | 40,062 |
| Total | 208,874 |

**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: April 15, 2009.

**Carol M. Clancy,**

*Director.*

[FR Doc. E9–9248 Filed 4–23–09; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Voluntary Partner Surveys in the Health Resources and Services Administration—(OMB No. 0915–0212): Extension**

In response to Executive Order 12862, the Health Resources and Services Administration (HRSA) conducts voluntary customer surveys of its partners to assess strengths and weaknesses in program services. To continue the periodic customer or partner satisfaction survey activities, HRSA is requesting an extension of approval from OMB. HRSA partners are, typically, State or local governments, health care facilities, health care consortia, and health care providers. Partner surveys to be conducted by HRSA might include, for example, brief surveys of grantees to determine satisfaction with a technical assistance contractor, or, in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and direct program efforts as needed to improve service. Focus groups may also be used as a potential method to obtain input on services and training. Focus groups, in-class evaluation surveys, and satisfaction surveys provide valuable input from HRSA partners and customers on agency services and materials.

The estimated annual burden is as follows:

| Instrument | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Surveys | 50,000 | 1 | 50,000 | .1 | 5,000 |
| Focus groups | 50 | 1 | 50 | 1.5 | 75 |
| Total | 50,050 | | 50,050 | | 5,075 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: April 17, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–9383 Filed 4–23–09; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Refugee Resettlement

### Notice of Grants Awards

**AGENCY:** Office of Refugee Resettlement, Administration for Children and Families.

**ACTION:** Notice is hereby given that awards will be made to nine unaccompanied alien children (UAC) care providers in the amount of $9,714,681: Catholic Charities Archdiocese of Miami, FL: $1,460,667; Heartland Alliance, Chicago, IL: $935,645; Southwest Key Phoenix, AZ: $762,970; Southwest Key El Paso, TX: 229,590; Florence Crittenton, Fullerton, CA: $2,215,000; LSS of the South, Corpus Christi, TX: $439,955; Baptist Children and Families, San Antonio, TX: $2,970,854; Lutheran Immigrant and Refugee Services, Baltimore, MD: $350,000; and US Conference of Catholic Bishops, Baltimore, MD: $350,000.

*CFDA#:* 93.676.

*Legislative Authority:* Section 462 of the Homeland Security Act of 2002, 6 U.S.C. 279, and Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. 1232.

*Project Period:* 5/1/2009–9/30/2009.

**SUMMARY:** This funding will support the expansion of shelter/foster care program bed capacity to meet the additional number of unaccompanied alien children (UAC) referrals from the Department of Homeland Security (DHS) and other Federal agencies resulting from the recent passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008. Many provisions in the TVPRA will dramatically affect the Office of Refugee Resettlement (ORR) UAC program's capacity to provide placement, custodial and residential shelter care services. ORR expects an additional 6,800 referrals annually from DHS.

The program has very specific requirements for the provision of services. Existing grantees are the only entities with the infrastructure, licensing, experience and appropriate level of trained staff to meet the service requirements and the urgent need for expansion. The program's ability to avoid a backlog of children waiting in border patrol stations for placement can only be accommodated through the expansion of existing programs through this supplemental award process.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Tota, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 401–4858.

Dated: April 13, 2009.

**David H. Siegel,**

*Acting Director, Office of Refugee Resettlement.*

[FR Doc. E9–9429 Filed 4–23–09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### "Low Income Levels" Used for Various Health Professions and Nursing Programs Included In Titles III, VII and VIII of the Public Health Service Act

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of determining eligibility for programs that provide health professions and nursing training for individuals from disadvantaged backgrounds. These various programs are included in Titles III, VII and VIII of the Public Health Service Act.

The Department periodically publishes in the **Federal Register** low-income levels used to determine eligibility for grants and cooperative agreements to institutions providing training for (1) disadvantaged individuals, (2) individuals from disadvantaged backgrounds, or (3) individuals from "low-income" families.

**SUPPLEMENTARY INFORMATION:** The various health professions and nursing grant and cooperative agreement programs that use the low-income levels to determine whether an individual is from an economically disadvantaged background in making eligibility and funding determinations generally make awards to: Accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health podiatric medicine, nursing, chiropractic, public or private nonprofit schools which offer graduate programs in behavioral health and mental health practice, and other public or private nonprofit health or education entities to assist the disadvantaged to enter and graduate from health professions and nursing schools. Some programs provide for the repayment of health professions or nursing education loans for disadvantaged students.

#### Low-Income Levels

The Secretary defines a "low-income family" for programs included in Titles III, VII and VIII of the Public Health Service Act as having an annual income that does not exceed 200 percent of the Department's poverty guidelines. A family is a group of two or more individuals related by birth, marriage, or adoption who live together or an individual who is not living with any relatives. Most HRSA programs use the income of the student's parents to compute low income status, while a few

programs, depending upon the legislative intent of the program, programmatic purpose of the low income level, as well as the age and circumstances of the average participant, will use the student's family as long as he or she is not listed as a dependent upon the parents' tax form. Each program will announce the rationale and choice of methodology for determining low income levels in their program guidance. The Department's poverty guidelines are based on poverty thresholds published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index.

The Secretary annually adjusts the low-income levels based on the Department's poverty guidelines and makes them available to persons responsible for administering the applicable programs. The income figures below have been updated to reflect increases in the Consumer Price Index through December 31, 2008.

| Size of parents' family * | Income level ** |
|---|---|
| 1 | $21,660 |
| 2 | 29,140 |
| 3 | 36,620 |
| 4 | 44,100 |
| 5 | 51,580 |
| 6 | 59,060 |
| 7 | 66,540 |
| 8 | 74,020 |

* Includes only dependents listed on Federal income tax forms. Some programs will use the student's family rather than his or her parents' family.

** Adjusted gross income for calendar year 2008.

Dated: April 17, 2009.

**Marcia K. Brand,**

*Deputy Administrator.*

[FR Doc. E9–9381 Filed 4–23–09; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–2299–PN]**

### Medicare and Medicaid Programs; Application of the American Osteopathic Association for Continued Deeming Authority for Hospitals

**AGENCY:** Centers for Medicare and Medicaid Services (CMS), HHS.

**ACTION:** Proposed notice.

**SUMMARY:** This proposed notice with comment period acknowledges the receipt of a deeming application from the American Osteopathic Association for continued recognition as a national accrediting organization for hospitals that wish to participate in the Medicare or Medicaid programs.

Section 1865(a)(3)(A) of the Social Security Act requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. May 26, 2009.

**ADDRESSES:** In commenting, please refer to file code CMS–2299–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2299–PN, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2299–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Lillian Williams, (410) 786–8636. Patricia Chmielewski, (410) 786–6899.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

### I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospital provided certain requirements are met. Sections 1861(e) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a hospital. Regulations concerning provider agreements are located at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are located at 42 CFR part 488. The regulations at 42 CFR part 482, specify the conditions that a hospital must meet in order to participate in the Medicare program, the

scope of covered services and the conditions for Medicare payment for Hospitals.

Generally, in order to enter into a provider agreement with the Medicare program, a hospital must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 482 of CMS regulations. Thereafter, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act (as redesignated under section 125 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. (We note that section 125 of MIPPA redesignated paragraphs (b) through (e) of section 1865 of the Act as paragraphs (a) through (d) respectively). Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under part 488, subpart A must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every 6 years or sooner as determined by CMS.

The American Osteopathic Association's (AOA) term of approval as a recognized accreditation program for hospitals expires September 25, 2009.

## II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and reapproval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of AOA's request for continued deeming authority for hospitals. This notice also solicits public comment on whether AOA's requirements meet or exceed the Medicare conditions for participation for hospitals.

### *Evaluation of Deeming Authority Request*

AOA submitted all the necessary materials to enable us to determine its application to be complete on February 20, 2009. Under section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accreditation organizations), our review and evaluation of AOA will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AOA's standards for a hospital as compared with CMS' hospital conditions of participation.
- AOA's survey process to determine the following:

+ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

+ The comparability of AOA's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ AOA's processes and procedures for monitoring hospitals found out of compliance with AOA's program requirements. These monitoring procedures are used only when AOA identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

+ AOA's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ AOA's capacity to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

+ The adequacy of AOA's staff and other resources, and its financial viability.

+ AOA's capacity to adequately fund required surveys.

+ AOA's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

+ AOA's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

### *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.

## 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

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have significant effect on the rights of State, local, or tribal governments.

**Authority:** Section 1865 of the Social Security Act (42 U.S.C. 1395bb)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 8, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E9–8782 Filed 4–23–09; 8:45 am]

BILLING CODE 4120–01–P

## 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. App.), 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. Investigator-Initiated Clinical Trials.

*Date:* May 12, 2009.

*Time:* 12 p.m. to 4 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:* Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892. (301) 496–8683. *livingsc@mail.nih.gov.*

Reviewers confirmed late.

*Name of Committee:* National Institute on Deafness and Other Communication. Disorders Special Emphasis Panel. Chemical Senses Clinical Research.

*Date:* May 19, 2009.

*Time:* 12:30 p.m. to 4 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 Officer, 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: April 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–9251 Filed 4–23–09; 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 Center for Scientific Review Special Emphasis Panel, April 30, 2009, 9 a.m. to May 1, 2009, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on April 10, 2009, 74 FR 16407–16408.

The meeting will be held May 12, 2009 to May 13, 2009. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–9253 Filed 4–23–09; 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. App.), 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:* June 5, 2009.

*Closed:* 8:30 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Open:* 11 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, Conference Room 10, 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, 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.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: April 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–9254 Filed 4–23–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0138]**

### Joint Meeting of the Drug Safety and Risk Management Advisory Committee, Nonprescription Drugs Advisory Committee, and the Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committees*: Drug Safety and Risk Management Advisory Committee, Nonprescription Drugs Advisory Committee, and the Anesthetic and Life Support Drugs Advisory Committee.

*General Function of the Committees*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on June 29 and 30, 2009, from 8 a.m. to 5 p.m.

*Addresses*: Electronic comments should be submitted to *http://www.regulations.gov*. Enter "FDA–2009–N–0138 Liver Injury Related to the Use of Acetaminophen" and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments received will be posted without change, including any personal information provided. Comments received on or before June 8, 2009, will be provided to the committee before the meeting.

*Location*: Marriott Conference Centers, University of Maryland, University College Inn and Conference Center, 3501 University Blvd. East, Adelphi, MD. The Conference Center telephone number is 301–985–7300.

*Contact Person*: Elaine Ferguson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *elaine.ferguson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512535, 3014512541, and 3014512529. 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*: The primary topic area for discussion is how to address the public health problem of liver injury related to the use of acetaminophen in both over-the-counter (OTC) and prescription (Rx) products. FDA recognizes that acetaminophen is an important drug used to treat pain and fever in both settings and is not seeking to remove it from the market. The risk of developing liver injury to the individual patient who uses the drug according to directions is very low. However, acetaminophen containing products are used extensively making the absolute number of liver injury cases a public health concern.

More complete information about the topics on which FDA will seek public input will be available by or around May 22, 2009, at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

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 is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

*Background*: Acetaminophen is one of the most commonly used drugs in the United States,[1] yet it is also an important cause of serious liver injury. Acetaminophen is the generic name of a drug found in many common brand name over-the-counter (OTC) products, such as Tylenol, and Prescription (Rx) products, such as Vicodin and Percocet. Acetaminophen is an important drug, and its effectiveness in relieving pain and fever is widely known. Unlike other commonly used drugs to reduce pain and fever (e.g., nonsteroidal antinflammatory drugs (NSAIDs), such as aspirin, ibuprofen, and naproxen), at recommended doses acetaminophen does not cause adverse effects, such as stomach discomfort and bleeding, and acetaminophen is considered safe when used according to the directions on its OTC or Rx labeling. However, taking more than the recommended amount can cause liver damage, ranging from abnormalities in liver function blood tests, to acute liver failure, and even death. Many cases of overdose are caused by patients inadvertently taking more than the recommended dose (i.e., 4 grams a day) of a particular product, or by taking more than one product containing acetaminophen (e.g., an OTC product and an Rx drug containing acetaminophen).

The mechanism of liver injury is not related to acetaminophen itself, but to the production of a toxic metabolite. The toxic metabolite binds with liver proteins, which cause cellular injury. The ability of the liver to remove this metabolite before it binds to liver protein influences the extent of liver injury. In a study that combined data from 22 specialty medical centers in the United States, acetaminophen-related liver injury was the leading cause of acute liver failure for the years 1998 through 2003.[2] Patients in this study were found to have taken too much acetaminophen from OTC, Rx products, or both. Almost half of these cases involved overdose in which the patient had not intended to take too much acetaminophen (unintentional overdoses), although many cases of liver injury with acetaminophen result from self-harm, i.e., intentional self-poisoning. The high percentage of cases of liver failure related to unintentional acetaminophen overdose was also observed in a study published in 2007.[3] The extent of liver failure cases reported in the medical literature provides an important signal of concern. However, the types of databases available to identify cases make it difficult to determine the full extent of the problem or whether interventions have been successful.

[1] Kaufman, D.W., J.P. Kelly, L. Rosenberg, et al., "Recent Patterns of Medication Use in the Ambulatory Adult Population of the United States: The Slone Survey," *The Journal of the American Medical Association* 2002, Jan 16;287(3) 337–44.

[2] Larson, A.M., J. Polson, R.J. Fontana, et al., Acute Liver Failure Study Group (ALFSG), "Acetaminophen-Induced Acute Liver Failure: Results of a United States Multicenter, Prospective Study," *Hepatology* 2005, Dec;42(6):1364–72.

[3] Bower, W.A., M. Johns, H.S. Margolis, et al., "Population-Based Surveillance for Acute Liver Failure," *The American Journal of Gastroenterology* 2007;102:2459–63.

*A. Why Acetaminophen Overdoses Occur*

There are few data available describing consumer behavior with acetaminophen products or consumer understanding of acetaminophen toxicity. However, based on the prevalence of liver injury, it appears that there are distinct factors associated with acetaminophen and acetaminophen products that contribute to this public health problem. These factors are listed below.

- Taking just a small amount of acetaminophen over the recommended total daily dose (4 grams per day) may lead to liver injury.[4]

Currently recommended doses and tablet strengths of acetaminophen leave little room for error and the onset of liver injury can be hard to recognize. There is scientific agreement that taking a large amount of acetaminophen over a short period of time causes liver injury, but there is limited agreement as to the specific threshold dose for toxicity. In addition, the onset of symptoms associated with acetaminophen liver injury can take several days, even in severe cases. The symptoms of liver injury may not be readily identified by an individual because they may be non-specific and mimic flu symptoms. The antidote for acetaminophen poisoning, N-acetylcysteine, is less effective when liver injury has progressed too far.

- Some individuals may be especially sensitive to liver injury from acetaminophen. The maximum safe dose may not be the same for all persons. Individuals with increased sensitivity may experience toxic effects at lower acetaminophen doses.

Available information suggests that some individuals, such as those who use alcohol or have liver disease, may have a greater sensitivity to the effects of the toxic metabolite because they produce more or are unable to clear it from the body as easily. More research is needed to understand whether ethnicity, genetics, nutrition, or other factors might have a role in making some individuals more sensitive.

- There is a wide array of OTC and Rx acetaminophen products used in a range of doses for various indications.

For some people, it may be difficult to identify the appropriate product to use. Acetaminophen is in many widely used OTC single ingredient products, such as those to treat headaches, and multiple ingredient (combination) products, such as those to treat symptoms of the common cold, like aches and fever. Acetaminophen is also a component of a number of Rx drug products in combination with narcotic pain medicines. So, consumers may reasonably attempt to treat different conditions or symptoms with multiple choices among products containing acetaminophen, but may not realize that acetaminophen is an ingredient common to each.

- It can be difficult to identify acetaminophen as an ingredient.

Rx products that contain acetaminophen (usually with codeine or oxycodone) are often labeled as containing "APAP" on pharmacy dispensed containers.[5] Without clear labeling, patients may take more than one product containing acetaminophen (e.g., a Rx product and an OTC product) without realizing it, and in some cases take a harmful overdose.

- Multiple products exist for children containing different strengths.

Liquid acetaminophen formulations intended for use in infants are typically more concentrated (i.e., stronger) to enable proper dosing using less liquid. However, failure to distinguish between the two strengths of liquid can result in an accidental overdose where the parent gives a higher dose of the concentrated drops to a younger child.

- The association between acetaminophen and liver injury is not common knowledge.[6]

Consumers are not sufficiently aware that acetaminophen can cause serious liver injury, and their perceptions may be influenced by the marketing of the products. Finding ways to educate consumers about the risk of liver injury from acetaminophen has been difficult. Current labeling on OTC products may be overlooked, as can the patient information provided with dispensed prescriptions. Programs to educate the public about safe use of acetaminophen have been small and encountered a number of obstacles. Advertisements of OTC drugs often emphasize the effectiveness of products, but are not subject to the same requirements to offset such messages by providing warning information as prescription products. Also, acetaminophen is available in retail outlets in large quantities (e.g., 500 tablets per bottle) which may contribute to the perception that the ingredient is unlikely to be harmful.

*B. FDA's Previous Actions*

In the late 1990s, research began to show that acetaminophen was a major cause of acute liver failure in the United States, with up to half of the cases due to accidental overdose. Responding to these concerns, FDA took a number of steps to reduce the incidence of liver injury related to acetaminophen.

In 1998, FDA finalized a regulation that required all OTC acetaminophen products to include an alcohol warning in labeling. The warning stated: Acetaminophen. "Alcohol Warning" [heading in boldface type]: "If you consume 3 or more alcoholic drinks every day, ask your doctor whether you should take acetaminophen or other pain relievers/fever reducers. Acetaminophen may cause liver damage."

In 2002, FDA convened an Advisory Committee meeting to discuss unintentional liver toxicity related to the use of OTC acetaminophen.[7] The Advisory Committee recommended a specific liver toxicity warning and distinctive labeling on OTC packages so that products containing acetaminophen could be more easily identified. FDA and manufacturers were also advised to educate consumers and health professionals about the risk of liver injury from acetaminophen.

In early 2004, FDA launched a public education campaign to help consumers use acetaminophen more safely. By most standards, the campaign would be considered small, due to budgetary constraints. It was also limited by reluctance on the part of some commercial outlets to provide a venue for FDA's message about acetaminophen toxicity as the product was sold or promoted in those outlets. Nonetheless, FDA has continued to expand efforts to improve public education about acetaminophen overdosing and liver injury and has recently updated the acetaminophen information on FDA's Web site.

In 2004, FDA sent letters to every state board of pharmacy asking them to consider requiring labeling on the immediate container of Rx products containing acetaminophen that: (1) uses the term acetaminophen, not APAP, (2) instructs patients to avoid concurrent use of other acetaminophen containing drugs, (3) instructs patients not to exceed the maximum daily recommended acetaminophen dose, and (4) instructs patients to avoid drinking

[4] Data from both FDA's Adverse Event Reporting System (AERS) and the ALFSG show that the median daily dose of acetaminophen related to liver injury was 5 to 7.5 grams/day, very near the current maximum daily dose of 4 grams/day.

[5] "APAP" is an acronym based on the chemical name of acetaminophen, N-acetyl-para-aminophenol.

[6] Stumpf J.L., A.J. Skyles, C. Alaniz, et al., "Knowledge of Appropriate Acetaminophen Doses and Potential Toxicities in an Adult Clinic Population, *Journal of the American Pharmacists Association* (2003), 2007 Jan-Feb; 47(1): 35–41.

[7] See *http://www.fda.gov/OHRMS/DOCKETS/98fr/082002c.htm.*

alcohol during prescription use.[8] FDA was informed by the National Association of Boards of Pharmacy that, as of February 2008, no states had implemented regulations related to the request.

In December 2006, FDA issued proposed regulations for OTC labeling for acetaminophen containing products to require inclusion of new safety information and that the container and outer carton identify acetaminophen when it is an ingredient.[9] The final version of the regulation is currently under review.

In 2007, the Director of FDA's Center for Drug Evaluation and Research (CDER) convened a multidisciplinary working group in CDER to continue to evaluate the issues associated with acetaminophen-related liver injury and consider additional steps FDA could take to decrease the number of cases of acetaminophen-related liver injury. The working group considered detailed reviews of the issues from the Office of Nonprescription Products, the Office of Surveillance and Epidemiology and the Division of Anesthesia and Analgesic and Rheumatology Drug Products as part of its deliberations. The working group considered the full range of options proposed and made recommendations to the Center Director regarding which should be considered for implementation. Given the complex nature of the underlying problem of acetaminophen liver toxicity, the Center Director and the Working Group agreed that the options should be presented for public discussion prior to taking further action. The report of the Working Group will be available by or around May 22, 2009, at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

*Procedure:* Interested persons and Sponsors (representatives from industry) may present data, information, or views, orally or in writing, on issues pending before the committee.

All electronic and written submissions submitted to the Docket (see above section: *Addresses*) on or before June 8, 2009, will be provided to the committees.

Oral presentations from the public (excluding Sponsors) will be scheduled between approximately 1 p.m. to 2 p.m. on both days. Persons desiring to make formal oral presentations during this time 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 June 1, 2009. 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 persons regarding their request to speak at the open public hearing session by June 3, 2009.

FDA will work with sponsors of acetaminophen products who wish to make presentations to ensure that adequate time, separate from the 1 p.m. to 2 p.m. time slots for the general Open Public Hearing, is provided. Sponsors interested in making formal presentations to the committees should notify the contact person on or before June 1, 2009. Sponsors with common interest are urged to coordinate their oral presentations.

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 Elaine Ferguson 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.).

Dated: April 16, 2009.

**Randall W. Lutter,**

*Deputy Commissioner for Policy.*

[FR Doc. E9–9380 Filed 4–23–09; 8:45 am]

**BILLING CODE 4160–01–S**

[8] Letter from Steven Galson to State Boards of Pharmacy, *Acetaminophen Hepatotoxicity and Nonsteroidal Anti-Inflammatory Drug (NSAID)-Related Gastrointestinal and Renal Toxicity* (January 22, 2004), available on FDA's Web site at *http://www.fda.gov/cder/drug/analgesics/letter.htm*.)

[9] Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the Counter Human Use: Proposed Amendment of the Tentative Final Monograph: Required Warnings and Other Labeling, 71 FR 77314–52 (December 26, 2006) (Docket No.1977N–0094L) (amending 21 CFR 201.66, 201.322, 201.325, 343.50).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Injury Prevention and Control, Initial Review Group, (NCIPC, IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting of the aforementioned review group:

*Times and Dates:*

10 a.m.–10:10 a.m., May 18, 2009 (Open).

10:10 a.m.–4 p.m., May 18, 2009 (Closed).

*Place:* Teleconference, Toll Free: (877) 468–4185, Participant Passcode: 4475689.

*Status:* Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

*Purpose:* This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific research that focuses on prevention and control.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: TS09001, Libbey Montana Amphibole Epidemiology-Research Program (R01) and TS09002, Disease Progression in persons Exposed to Asbestos Contaminated Vermiculite Ore in Marysville, Ohio (R01).

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Lisa T. Garbarino, B.S., NCIPC, Division of Injury Response, CDC, 4770 Buford Highway, NE., M/S F62, Atlanta, Georgia 30341, Telephone (440) 723–1527. The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 16, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–9470 Filed 4–23–09; 8:45 am]

**BILLING CODE 4163–18–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**[CMS–1563–N]**

## Medicare Program; Meeting of the Practicing Physicians Advisory Council, June 1, 2009

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces a quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Council will meet to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary of Health and Human Services. This meeting is open to the public.

**DATES:** *Meeting Date:* Monday, June 1, 2009, from 8:30 a.m. to 5 p.m. e.d.t.

*Deadline for Registration Without Oral Presentation:* Thursday, May 28, 2009, 12 noon, e.d.t.

*Deadline for Registration of Oral Presentations:* Friday, May 15, 2009, 12 noon, e.d.t.

*Deadline for Submission of Oral Remarks and Written Comments:* Wednesday, May 20, 2009, 12 noon, e.d.t.

*Deadline for Requesting Special Accommodations:* Tuesday, May 26, 2009, 12 noon, e.d.t.

**ADDRESSES:** *Meeting Location:* The meeting will be held in Room 505A, in the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

*Submission of Testimony:* Testimonies should be mailed to Kelly Buchanan, Designated Federal Official (DFO), Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop C4–13–07, Baltimore, MD 21244–1850, or contact the DFO via e-mail at *PPAC_hhs@cms.hhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Kelly Buchanan, DFO, (410) 786–6132, or e-mail *PPAC_hhs@cms.hhs.gov*. News media representatives must contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free), (410) 786–9379 local) or the Internet at *http://www.cms.hhs.gov/home/regsguidance.asp* for additional information and updates on committee activities.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Secretary of Health and Human Services (the Secretary) is mandated by section 1868(a)(1) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and manual instructions related to physician services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the Council's consultation must occur before **Federal Register** publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) not later than December 31 of each year.

The Council consists of 15 physicians, including the Chair. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms.

Section 1868(a)(2) of the Act requires that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Section 1868(a)(3) of the Act provides for payment of expenses and per diem for Council members in the same manner as members of other advisory committees appointed by the Secretary. In addition to making these payments, the Department of Health and Human Services and CMS provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs in a manner to ensure appropriate balance of the Council's membership.

The Council held its first meeting on May 11, 1992. The current members are: John E. Arradondo, M.D., MPH; Vincent J. Bufalino, M.D., Chairperson; Joseph A. Giaimo, D.O.; Pamela A. Howard, M.D.; Roger L. Jordan, O.D.; Janice A. Kirsch, M.D.; Tye J. Ouzounian, M.D.; Gregory J. Przybylski, M.D.; Jeffrey A. Ross, DPM, M.D.; Jonathan E. Siff, M.D., MBA; Fredrica E. Smith, M.D.; Arthur D. Snow, Jr., M.D.; M. Leroy Sprang, M.D.; Christopher J. Standaert, M.D.; and Karen S. Williams, M.D.

### II. Meeting Format and Agenda

The meeting will commence with the Council's Executive Director providing a status report, and the CMS responses to the recommendations made by the Council at the March 9, 2009 meeting, as well as prior meeting recommendations. Additionally, an update will be provided on the Physician Regulatory Issues Team. In accordance with the Council charter, we are requesting assistance with the following agenda topics:

- Value-Based Purchasing.
- Recovery Audit Contractors (RAC) Update.
- Inpatient Prospective Payment System (IPPS)—Update.
- DMEPOS Surety Bond and Implementation.
- Part C and D Update.

For additional information and clarification on these topics, contact the DFO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to present a 5-minute oral testimony on agenda issues must register with the DFO by the date listed in the **DATES** section of this notice. Testimony is limited to agenda topics only. The number of oral testimonies may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to the DFO for distribution to Council members for review before the meeting by the date listed in the **DATES** section of this notice. Physicians and medical organizations not scheduled to speak may also submit written comments to the DFO for distribution by the date listed in the **DATES** section of this notice.

### III. Meeting Registration and Security Information

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

Since this meeting will be held in a Federal Government Building, the Hubert H. Humphrey Building, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. To gain access to the building, participants will be required to show a government-issued photo identification (for example, driver's license, or passport), and must be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will not be permitted into the Hubert H. Humphrey Building and will not be permitted to attend the Council meeting.

All persons entering the building must pass through a metal detector. In addition, all items brought to the Hubert H. Humphrey Building, whether personal or for the purpose of presentation, 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 the purpose of presentation.

Individuals requiring sign language interpretation or other special accommodations must contact the DFO via the contact information specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date listed in the **DATES** section of this notice.

**Authority:** (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)).)

Dated: April 16, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E9–9419 Filed 4–23–09; 8:45 am]

**BILLING CODE 4120–01–P**

## 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. App.), 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 N44DA–9–2214: Web-based Training for Primary Care Physicians on SBIRT.

*Time:* May 5, 2009.

*Time:* 9:30 a.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

*Contact Person:* Nadine Rogers, Ph.D., 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.*

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 of Committee:* National Institute on Drug Abuse Special Emphasis Panel N44DA–9–2215: Just Ask: Web-Based Training for SBIRT.

*Date:* May 5, 2009.

*Time:* 10:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

*Contact Person:* Nadine Rogers, Ph.D., 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.*

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 of Committee:* National Institute on Drug Abuse Special Emphasis Panel N44DA–9–2216–Web-Based Skills Training Agents (topic 91).

*Date:* May 5, 2009.

*Time:* 12:30 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

*Contact Person:* Nadine Rogers, Ph.D., 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.*

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 of Committee:* National Institute on Drug Abuse Special Emphasis Panel *In Vitro* Metabolism and Metabolite Quantification (09–8891).

*Date:* May 19, 2009.

*Time:* 9 a.m. to 2 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1439. *lf33c.nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel N01DA–9–2217: Data and Statistics Center for the CTN.

*Date:* May 27–28, 2009.

*Time:* 9:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Doubletree Bethesda Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Minna Liang, Ph.D.; Scientific Review Officer, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6101 Executive Blvd., Room 220, MSC 8401, Bethesda, MD 20852. 301–435–1432. *liangm@nida.nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel Communication Support (09–1139).

*Date:* May 28–29, 2009.

*Time:* 9 a.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room.220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1439. *lf33c.nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel Drug Testing for Clinical Trials (09–8882).

*Date:* June 3, 2009.

*Time:* 9 a.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1439. *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos 93279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–9255 Filed 4–23–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Part C Early Intervention Services Grant

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of Noncompetitive Replacement Award.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is issuing a non-competitive replacement award of Part C Early Intervention Services funds under Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006, to the Reading Hospital for services previously provided by the St. Joseph Medical Center in order to ensure continuity of critical HIV medical care and treatment services and to avoid a disruption of HIV clinical care to clients in the city of Reading, Pennsylvania, and all of Berks and Schuylkill Counties.

**SUPPLEMENTARY INFORMATION:**

*Grantee of Record:* St. Joseph Medical Center.

*Intended Recipient of the Award:* The Reading Hospital and Medical Center.

*Amount of the Award:* $334,051.

**Authority:** Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff–51.

*CFDA Number:* 93.918.

*Project Period:* The period of support for the replacement award is from March 1, 2009, to March 31, 2010.

*Justification for the Exception to Competition:*

Critical funding for HIV medical care and treatment services to clients in the city of Reading, as well as Berks and Schuylkill counties in Pennsylvania, will be continued through a noncompetitive replacement award to the Reading Hospital. This is a temporary replacement award as the previous grant recipient serving this population notified HRSA that it could not continue providing services after February 27, 2009, (the original competitive project period was July 1, 2006, through June 30, 2009). The Reading Hospital is the best qualified grantee for this supplement for the following reasons: It is in the same locality as former grantee; it currently provides HIV medical care to many of the former grantee's clients; and it has the capability of providing comprehensive HIV/AIDS services to the city of Reading and nearby counties. The Reading Hospital is able to continue providing critical services to the service population as originally supported under the award to St. Joseph's Medical Center while the service area is re-competed.

This supplement will cover the time period from March 1, 2009, through March 31, 2010. This service area will be included in the upcoming competition for the Part C HIV Early Intervention Services (EIS) competing application process for project periods starting April 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Maria C. Rios, via e-mail, *mrios@hrsa.gov,* or via telephone, 301–443–0493.

Dated: April 17, 2009.

**Marcia K. Brand,**

*Administrator.*

[FR Doc. E9–9382 Filed 4–23–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–D–0187]**

### Small Entity Compliance Guide on Prior Notice of Imported Food; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for the final rule on prior notice of imported food. The final rule issued under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), and it was published in the **Federal Register** of November 7, 2008. The SECG is entitled "What You Need to Know About Prior Notice of Imported Food Shipments—A Small Entity Compliance Guide," and it is intended to help all entities, especially small businesses, better understand the prior notice regulation.

**DATES:** Submit written or electronic comments on the SECG at any time.

**ADDRESSES:** Submit written requests for single copies of the SECG to the CFSAN Outreach and Information Center, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 1–877–366–3322, or email your request to *industry@fda.gov.*

Submit written comments concerning the SECG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the SECG to *http://www.regulations.gov.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to this SECG.

**FOR FURTHER INFORMATION CONTACT:** Laura Draski, Office of Regulatory Affairs (HFC–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 866–521–2297.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of November 7, 2008 (73 FR 66294), FDA issued the prior notice final rule implementing section 307 of the Bioterrorism Act. The prior notice final rule requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States.

FDA examined the economic implication of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that it would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG that explains the requirements of this regulation.

FDA is issuing this SECG as a level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). This SECG restates, in simplified format and language, FDA's current requirements for prior notice of imported food. As guidance, this document is not binding on either FDA or the public. FDA notes, however, that the regulation that serves as the basis for this guidance document establishes requirements for all covered activities. For this reason, FDA strongly recommends that affected parties consult the regulations at 21 CFR part 1, subpart I, in addition to reading this SECG.

#### II. Comments

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

### III. Electronic Access

Persons with access to the Internet may obtain this SECG at *http://www.cfsan.fda.gov/guidance.html.*

Dated: April 20, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–9358 Filed 4–23–09; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2009–0030]**

### Homeland Security Information Network Advisory Committee

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Information Network Advisory Committee (HSINAC) will meet from May 12–May 14, 2009, in Potomac, MD. The meeting will be open to the public.

**DATES:** The HSINAC will meet Tuesday, May 12, 2009, from 8 a.m. to 6 p.m., Wednesday, May 13, 2009 from 8 a.m. to 6 p.m. and on Thursday, May 14, 2009, from 8 a.m. to 1:30 p.m. Please note that the meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at the Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854–4436. Send written material, comments, and requests to make oral presentations to Marc Kutnik, Department of Homeland Security, 245 Murray Lane, SW., Bldg. 410, Washington, DC 20528. Requests to make oral statements at the meeting should reach the contact person listed below by May 05, 2009. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by May 05, 2009. Questions and comments must be identified by DHS–2009–0030 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: Marc.Kutnik@dhs.gov.* Include the docket number, DHS–2009–0030 in the subject line of the message.
- *Fax:* 202–282–8806
- *Mail:* Marc Kutnik, Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528.

*Instructions:* All submissions received must include the words "Department of Homeland Security" and 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 Homeland Security Information Network Advisory Committee, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marc Kutnik, 245 Murray Lane, SW., Bldg. 410, Washington, DC 20528, *Marc.Kutnik@dhs.gov,* 202–282–8336, fax 202–282–8806.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The mission of the Homeland Security Information Network Advisory Committee is to identify issues and provide independent advice and recommendations for the improvement of the Homeland Security Information Network (HSIN) to senior leadership of the Department, in particular the Director of Operations Coordination and Planning. The agenda for this meeting will include an update and discussion on efforts concerning the improvement of HSIN, discussions on federal, state, and local information sharing and portal consolidation, a briefing and discussion on the HSIN Mission Operators Committee and Business Case, and discussions pertaining to HSIN community best practices and the HSIN law enforcement and fire services communities.

### Procedural

This meeting is open to the public. The chairperson of the Homeland Security Information Network Advisory Committee shall conduct the meeting in a way that will, in his judgment, facilitate the orderly conduct of business. Please note that the meeting may end early if all business is completed.

Participation in HSINAC deliberations is limited to committee members and Department of Homeland Security officials.

All visitors to Bolger Center will have to pre-register to be admitted to the building. Please provide your name, telephone number by close of business on May 05, 2009 to Marc Kutnik (202–282–8336) (Marc.Kutnik@dhs.gov). Seating may be limited and is available on a first-come, first-served basis.

### 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 Marc Kutnik as soon as possible.

Dated: April 20, 2009.

**Robert Cohen,**

*Deputy Director of Operations Coordination and Planning.*

[FR Doc. E9–9431 Filed 4–23–09; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–693, Revision of a Currently Approved Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Form I–693, Report of Medical Examination and Vaccination Record, OMB Control No. 1615–0033.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 23, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0033 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Report of Medical Examination and Vaccination Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–693. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: *Individuals or households.* The information on the application will be used by USCIS in considering the eligibility for adjustment of status under 8 CFR part 209 and 8 CFR 210.5, 245.1, and 245a.3.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 responses at 2.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: April 21, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E9–9408 Filed 4–23–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5280–N–15]**

### 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.

**DATES:** *Effective Date: April 24, 2009.*

**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: April 16, 2009.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

[FR Doc. E9–9177 Filed 4–23–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5293–N–02]**

### Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2009–2)

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of sale of mortgage loans.

**SUMMARY:** This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2009–2). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

**DATES:** The Bidder's Information Package (BIP) will be made available to qualified bidders on or about April 20, 2009. Bids for the loans must be submitted on the bid date, which is currently scheduled for May 20, 2009. HUD anticipates that awards will be made on or before May 21, 2009. Closings are expected to take place between May 22, 2009 and June 5, 2009.

**ADDRESSES:** To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm.* Please mail and fax executed documents to KDX Ventures: KDX Ventures, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, *Attention:* MHLS 2009–2 Sale Coordinator, *Fax:* 1–617–531–3499.

**FOR FURTHER INFORMATION CONTACT:** John Lucey, Deputy Director, Asset Sales Office, Room 3136, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** HUD announces its intention to sell in MHLS 2009–2 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised primarily of non-performing mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans or may bid on individual loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan. Interested Mortgagors should review the Qualification Statement to

determine whether they may also be eligible to qualify to submit bids on one or more pools of Mortgage Loans or on individual loans in MHLS 2009–2.

**The Bidding Process**

The BIP will describe in detail the procedure for bidding in MHLS 2009–2. The BIP will also include a standardized non-negotiable loan sale agreement (Loan Sale Agreement). As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. In the event the bidder's aggregate bid is less than $100,000.00, the minimum deposit shall be not less than fifty percent (50%) of the bidder's aggregate bid. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between May 22, 2009 and June 5, 2009.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

**Due Diligence Review**

The BIP will describe the due diligence process for reviewing loan files in MHLS 2009–2. Qualified bidders will be able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

**Mortgage Loan Sale Policy**

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2009–2 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans, pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, 12 U.S.C. 1715z–11a(a).

**Mortgage Loan Sale Procedure**

HUD selected a competitive sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

**Bidder Eligibility**

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2009–2:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24, and Title 2 of the Code of Federal Regulations, Part 2424;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2009–2;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2009–2;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2009–2;

(7) Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before May 13, 2009, audited financial statements for fiscal years 2000 through 2008 for a project securing a Mortgage Loan;

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before May 13, 2009;

(9) Any entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to May 1, 2009, is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, but may bid on loan pools that do not contain Mortgage Loans that they have serviced or held at any time during the 2-year period prior to May 1, 2009; and

(10) Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence (subparagraph 9); (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this subparagraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2009–2.

**Freedom of Information Act Requests**

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2009–2, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2009–2, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

**Scope of Notice**

This notice applies to MHLS 2009–2 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: April 17, 2009.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. E9–9465 Filed 4–23–09; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Notice of Proposed New Information Collection for Donor Certification Form

**AGENCY:** Office of Conservation, Partnerships & Management Policy, Assistant Secretary—Policy, Management and Budget, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Conservation, Partnerships & Management Policy announces that it has submitted a request for approval of a new information collection to the Office of Management and Budget (OMB), and requests public comments on this submission.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by May 26, 2009, in order to be assured of consideration.

**ADDRESSES:** Send your written comments by facsimile 202–395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (1090–XXXX). Also, please send a copy of your comments to Beth Duff, Office of Conservation, Partnerships & Management Policy, U.S. Department of the Interior, MS 5123–MIB, 1849 C Street, NW., Washington, DC 20240, or send an e-mail to *beth_duff@ios.doi.gov*. Additionally, you may fax them to her at 202–208–7574. Individuals providing comments should reference Donor Certification Form.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to Beth Duff, Office of Conservation, Partnerships & Management Policy, U.S. Department of the Interior, MS 5123–MIB, 1849 C Street, NW., Washington, DC 20240, or call her at 202–208–5904, or e-mail *beth_duff@ios.doi.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of Conservation, Partnerships & Management Policy has submitted to OMB for approval for the Department and its bureaus to collect information from proposed donors relative to their relationship(s) with the Department. The Department and its individual bureaus all have gift acceptance authority. In support of the variety of donation authorities in the Department and increasing numbers of donations, it is the policy of the Department to ask those proposing to donate gifts valued at $25,000 or more to provide information regarding their relationship with the Department. The purpose of this policy is to ensure that the acceptance of a gift does not create legal or ethical issues for the Department, its bureaus, or potential donors. The information will be gathered through the use of a new form.

If this information were not collected from the prospective donor, the Department will have to collect the information. The information will be scattered throughout the Department. With eight major bureaus, 2,500 locations and 70,000 employees, it is not possible to collect the information about a particular donor in a timely manner to respond to a proposed donation. Having the donor certify his interactions with the Department gives the staff reviewing the proposed donation basic information.

#### II. Method of Collection

Individuals notifying the Department or one of its bureaus of a proposed offer of a gift valued at $25,000 or higher will be asked to submit a form listing several items of basic information.

(1) *Title:* Donor Certification Form.

| Information collected | Reason for collection |
|---|---|
| Name, and indication whether executing in an individual capacity, or on behalf of an organization. | To identify the donor, and whether the donor is acting individually or on behalf of an organization. |
| Declaration whether the donor is involved with litigation or controversy with the Department. | To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined. |
| Declaration whether the donor is engaged in any financial or business relationship with the Department. | To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined. |
| Declaration whether the donor has been debarred, excluded or disqualified from the nonprocurement common rule, or otherwise declared ineligible from doing business with any Federal government agency. | To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined. |
| Declaration as to whether the donation is expected to be involved with marketing or advertising. | To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined. |
| Declaration whether the donor is seeking to attach conditions to the donation. | To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined. |
| Declaration whether this proposed donation is or is not part of a series of donations to the Department. | To assist the Department in determining the scope and context of the donation, and to assist in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined. |
| Signature, Printed Name, Date, Organization, E-mail address, City, State, Zip, and daytime or work phone number. | To establish the contact information of the potential donor, and have the certifier sign the certification form. |

The proposed use of the information: The information collected will be used by the Department and its bureaus to assist them in properly considering proposed donations to the Department or to its bureaus in the amount of $25,000 or more. The information on the form, in conjunction with other information which may be known to one or more offices in the Department, will assist the Department in its efforts to maintain its integrity, impartiality, and the confidence of the public, in accepting donations.

**III. Data**

(1) *Title:* Donor Certification Form.

*OMB Control Number:* 1090–XXXX.

*Type of Review: Information Collection:* New.

*Affected Entities:* Individuals or households, Businesses, Not-for-profit institutions, Units of Government.

*Estimated Annual Number of Respondents:* 552.

*Frequency of Response:* Upon donation, generally no more than annual

(2) Annual reporting and recordkeeping burden:

*Estimated Number of Responses Annually:* 552.

*Estimated Burden per Response:* 20 minutes.

*Total Annual Reporting:* 184 hours.

(3) *Description of the need and use of the information:* This information will provide Department staff with the basis for beginning the evaluation as to whether the Department will accept the proposed donation. The authorized employee will receive the donor certification form with the proposed donation. The employee will then review the totality of circumstances surrounding the proposed donation to determine whether the Department can accept the donation and maintain its integrity, impartiality, and public confidence.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on September 26, 2008 (73 FR 55862). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

**IV. Request for Comments**

*The Department of the Interior invites comments on:*

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. If you wish to view any comments received, you may do so by scheduling an appointment with the Office of Conservation, Partnerships & Management Policy at the above address. A valid picture identification is required for entry into the Department of the Interior.

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 Office of Management and Budget control number.

Dated: April 17, 2009.

**Beth L. Duff,**

*Office of Conservation, Partnerships and Management Policy.*

[FR Doc. E9–9384 Filed 4–23–09; 8:45 am]

BILLING CODE 4310–RK–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 30-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Park Service (NPS) has submitted a request to OMB to renew approval of the collection of information in 36 CFR Part 51, Subpart J, regarding the assignment or encumbrance of concession contracts. NPS is requesting a 3-year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

**DATES:** Submit comments on or before May 26, 2009.

**ADDRESSES:** Submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0126), Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), by fax at 202/395–5806, or by electronic mail at *oira_docket@omb.eop.gov*. Please also mail or hand carry a copy of your comments to Ms. Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005 or via fax at 202/371–2090.

**FOR FURTHER INFORMATION CONTACT:** Jo A. Pendry, Chief, Commercial Services Program, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005 or via fax at 202/371–2090. You are entitled to a copy of the entire ICR package free-of-charge. You may access this ICR at *http://www.reginfo.gov/public/*.

*Comments Received on the 60-Day **Federal Register** Notice:*

The NPS published a 60-day notice to solicit public comments on this ICR in the **Federal Register** on July 11, 2008 (73 FR 39985). The comment period closed on September 9, 2008. No comments were received on this notice.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1024–0126.

*Title:* Proposed Sale of Concession Operations, 36 CFR 51, Subpart J.

*Form(s):* None.

*Type of Request:* Extension of a currently approved collection of information.

*Abstract:* The NPS authorizes private businesses known as concessioners to provide necessary and appropriate

visitor facilities and services in areas of the National Park System. Concession authorizations may be assigned, sold, transferred, or encumbered by the concessioner subject to prior written approval of the NPS. The NPS requires that certain information be submitted for review prior to the consummation of any sale, transfer, assignment, or encumbrance.

The information requested is used to determine whether or not the proposed transaction will result in an adverse impact on the protection, conservation, or preservation of the resources of the unit of the National Park System; decreased services to the public; the lack of a reasonable opportunity for profit over the remaining term of the authorization; or rates in excess of approved rates to the public. In addition, pursuant to the regulations at 36 CFR Part 51, the value of rights for intangible assets such as the concession contract, right of preference in renewal, user days, or low fees, belongs to the Government. If any portion of the purchase price is attributable either directly or indirectly to such assets, the transaction may not be approved. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Without such information, the NPS would be unable to determine whether approval of the proposed transaction would be adequate.

*Affected public:* Businesses, individuals, and nonprofit organizations.

*Obligation to respond:* Required to obtain or retain a benefit.

*Frequency of response:* On occasion.

*Estimated total annual responses:* 20.

*Estimated average completion time per response:* 80 hours.

*Estimated annual reporting burden:* 1,600 hours.

*Estimated annual nonhour cost burden:* $5,000.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that OMB will be able to do so.

Dated: April 17, 2009.

**Cartina Miller,**

*NPS Information Collection Clearance Officer.*

[FR Doc. E9–9413 Filed 4–23–09; 8:45 am]

BILLING CODE 4312–53–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–R–2009–N0057; 40136–1265–0000–S3]**

### Bayou Sauvage National Wildlife Refuge, Orleans Parish, LA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service) announce the availability of a draft comprehensive conservation plan (Draft CCP/EA) for Bayou Sauvage National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the Final CCP.

**DATES:** To ensure consideration, we must receive your written comments by May 26, 2009.

**ADDRESSES:** Send comments, questions, and requests for information to: Mr. Pon Dixson, Deputy Project Leader, Southeast Louisiana National Wildlife Refuge Complex, 61389 Highway 434, Lacombe, LA 70445. A copy of the Draft CCP/EA is available on both compact disc and hard copy, and it may be accessed and downloaded from the Service's Internet Site: *http://southeast.fws.gov/planning/.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Pon Dixson; telephone: 985/882–2014; fax: 985/882–9133; e-mail: *pon_dixson@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Introduction

With this notice we continue the CCP process for Bayou Sauvage NWR. We started the process through a notice in the **Federal Register** on May 16, 2008 (72 FR 27585).

#### Background

*The CCP Process*

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Bayou Sauvage NWR is in eastern Orleans Parish, Louisiana, and is entirely situated within the corporate limits of the city of New Orleans. It is the largest national wildlife refuge in an urban area of the United States, and is one of the last remaining marsh areas adjacent to the south shores of Lakes Pontchartrain and Borgne. The refuge consists of 24,000 acres of wetlands and is bordered on three sides by water: Lake Pontchartrain on the north, Chef Menteur Pass on the east, and Lake Borgne on the south. The western side of the refuge is bordered by the Maxent Canal and lands that consist of bottomland hardwood habitat and exotic species, such as Chinese tallow and china berry. Un-leveed portions of the refuge consist of estuarine tidal marshes and shallow water. The Hurricane Protection Levee System, along with roadbeds, created freshwater impoundments, which altered the plant communities as well as the fish communities within these impoundments. Small forested areas exist on the low, natural ridges formed along natural drainages and along manmade canals.

#### CCP Alternatives, Including our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative B as the proposed alternative. A full description is in the Draft CCP/EA. We summarize each alternative below.

*Alternative A: Continuation of Current Refuge Management (No Action)*

This alternative represents no change from current management of the refuge and provides a baseline. Management emphasis would continue to be directed towards accomplishing the refuge's primary purposes. Refuge staff would continue to restore and maintain emergent marsh—both tidally influenced and impounded, natural levee ridges, bottomland hardwood forests, spoil banks, and shallow open water bodies, all of which constitute a wide range of habitats within the refuge boundaries.

Current refuge management would continue to provide wintering and nesting habitats for migratory and resident waterfowl, wading birds, and migrating songbirds. The operation and management of the refuge would provide for the basic needs of these species, including feeding, resting, and breeding. The planting of vegetation used for food, nesting and cover, and moist-soil management in eight different water management units that cater to a variety of different species would continue to be priorities. At least two aerial waterfowl surveys would continue to be conducted.

*Alternative B: Restoring and Improving Refuge Resources (Proposed Alternative)*

This action was selected by the Service as the alternative that best signifies the vision, goals, and purposes of the refuge. Under Alternative B, the emphasis would be on restoring and improving refuge resources needed for wildlife and habitat management, while providing additional public use opportunities. This alternative would also allow the refuge to provide law enforcement protection that adequately meets the demands of an urban environment.

This alternative would focus on augmenting wildlife and habitat management to identify, conserve, and restore populations of native fish and wildlife species, with an emphasis on migratory birds and threatened and endangered species. This would partially be accomplished by increased monitoring of waterfowl, other migratory birds, and endemic species in order to assess and adapt management strategies and actions. The restoration of fresh and brackish marsh systems and hardwood forests would be a vital part of this proposed action and would be crucial to ensuring healthy and viable ecological communities following Hurricane Katrina. This restoration would require increased wetland vegetation and tree plantings, and the use of beneficial dredge, breakwater structures, and organic materials to promote reestablishment of emergent marsh and to reduce wave energy erosion along Lakes Pontchartrain and Borgne. Improving and monitoring water quality and active moist-soil management would assist in reestablishing freshwater marsh habitat.

The refuge would more aggressively control and, where possible, eliminate invasive plant species by seeking funding through the Service's invasive species control program. The control of Chinese tallow trees and cogon grass along the hardwood ridge would be a focal point. The control of nuisance wildlife would increase to include yearly population evaluations and more aggressive trapping programs for feral hogs and nutria.

Alternative B enhances the refuge's visitor services opportunities by: Improving and providing additional fishing opportunities; considering providing limited hunting opportunities on the refuge; providing environmental education that emphasizes refuge restoration activities, coastal conservation issues, and the diversity of water management regimes in the aftermath of Hurricane Katrina; establishing a visitor center or contact station on the refuge; developing and implementing a visitor services management plan; and enhancing personal interpretive opportunities. Volunteer programs and friends groups also would be expanded to enhance all aspects of refuge management and to increase resource availability.

Land acquisitions within the approved acquisition boundary would be based on importance of the habitats for target management species and for their public use value. The refuge headquarters would not only house administrative offices, but would offer interpretation of refuge wildlife and habitats, and would demonstrate habitat improvements for individual landowners. The headquarters facilities would be developed as an urban public use area with trails; buildings presently not being used and landscaping would be refurbished for visitor and community outreach.

In addition to the enforcement of all Federal and State laws applicable to the refuge to protect archaeological and historical sites, the staff would identify and develop a cultural resources plan to protect all known sites. The allocation of one law enforcement officer to the refuge would not only provide security for these resources, but would also ensure visitor safety and public compliance with refuge regulations.

*Alternative C: Optimize Public Use Opportunities*

Active management of refuge resources would be employed to optimize public use opportunities. Resources would be dedicated to increasing the public use activities of fishing, wildlife observation, wildlife photography, and environmental education and interpretation, and a limited hunting program would be considered. All purposes of the refuge and mandated monitoring of Federal trust species and archaeological resources would be continued, but other wildlife management would be dependent on public interests.

This alternative would utilize a custodial habitat management strategy. Moist-soil units would not be actively managed and would be allowed to revert back to brackish tidal marsh. These units would also be maintained near full pool level to facilitate public use opportunities, such as fishing and canoeing. Hardwood forest habitat in high public use areas would be restored and all other areas would recover naturally with no management intervention.

Increased wildlife observation, wildlife photography, and interpretation opportunities would result from the construction of an on-site visitor's center, canoe and birding tours, kiosks, and trail signs. Additionally, waterfowl and wildlife monitoring would be conducted periodically to identify high use areas for the visiting public to observe. Environmental education would be expanded by addressing a wide range of local and global environmental concerns and would be offered to a broader range of student groups and schools. New information brochures and tear sheets would be published to increase public outreach and to promote public use and recreational opportunities.

Land acquisitions within the approved acquisition boundary would be based on the importance of the habitat for public use. Administration plans would stress the need for increased maintenance of existing infrastructure and construction of new facilities that would benefit public use activities. The refuge would operate with the current level of staff. Law enforcement of refuge regulations and protection of wildlife and visitors would continue at current levels.

**Next Step**

After the comment period ends, we will analyze the comments and address them.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 16, 2009.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E9–9411 Filed 4–23–09; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–R–2009–N0045; 40136–1265–0000–S3]**

### Egmont Key National Wildlife Refuge, Hillsborough County, FL; Pinellas National Wildlife Refuge, Pinellas County, FL; and Passage Key National Wildlife Refuge, Manatee County, FL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Egmont Key, Pinellas, and Passage Key National Wildlife Refuges for public review and comment. These three refuges, known as the Tampa Bay Refuges, are managed as part of the Chassahowitzka National Wildlife Refuge (NWR) Complex. In this Draft CCP/EA, we describe the alternative we propose to use to manage these refuges for the 15 years following approval of the final CCP.

**DATES:** To ensure consideration, we must receive your written comments by May 26, 2009.

**ADDRESSES:** Requests for copies of the Draft CCP/EA should be addressed to: Mr. Richard J. Meyers, Assistant Refuge Manager, Chassahowitzka NWR Complex, 9500 Koger Boulevard North, Suite 102, St. Petersburg, FL 33702. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet site: *http://southeast.fws.gov/planning.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard J. Meyers, telephone: 727/570–5417; e-mail: *richard_meyers@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

**Introduction**

With this notice, we continue the CCP process for Egmont Key, Pinellas, and Passage Key National Wildlife Refuges. We started the process through a notice in the **Federal Register** on December 3, 2004 (69 FR 70276).

**Background**

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act and the National Environmental Policy Act.

Significant issues addressed in the Draft CCP/EA include: erosion; predatory/exotic/invasive species; human disturbance of wildlife, particularly with respect to illegal access to closed areas; fishing line and trash disposal; threatened and endangered species; bird and other wildlife surveys; environmental education and interpretation issues; and staffing, equipment, and facility needs.

Egmont Key National Wildlife Refuge (NWR) includes 392 acres and was established in 1974 to protect its significant natural, historical, and cultural resources from the impending threats of development. Egmont Key NWR is the only refuge island open to the public and has been traditionally visited for many years as a primary recreation destination. Egmont Key NWR seeks to provide nesting habitat for brown pelicans and other waterbirds, as well as to conserve and protect barrier island habitat and to preserve historical structures of national significance (*i.e.*, historic lighthouse, guard house, gun batteries, and brick roads). Presently, the island's approximately 244 acres of beach and coastal berm support more than 110 species of nesting, migrating, and wintering birds. The island is listed as critical habitat for endangered piping plovers and provides habitat and protection for endangered manatees and sea turtles. Egmont Key NWR has an unusually high population of gopher tortoises and box turtles. Two wildlife sanctuaries, one on the east side of the island and one at the south end of the island, comprise about 97 acres and are closed to public use. Cooperative management agreements between the Service, the U.S. Coast Guard (USCG), and the Florida Department of Environmental Protection entrust daily management activities of Egmont Key NWR to the Florida Park Service (FPS), which manages the island to protect and restore the historic structures and for swimming, sunbathing, shelling, and picnicking.

Pinellas National Wildlife Refuge (NWR) was established in 1951 as a breeding ground for colonial bird species. It contains seven mangrove islands encompassing about 394 acres. The refuge is comprised of Little Bird, Mule, Jackass, Listen, and Whale Island Keys and leases Tarpon and Indian Keys from Pinellas County. A Pinellas County seagrass sanctuary is located around Tarpon and Indian Keys and the use of internal combustion engines within this zone is prohibited to protect seagrass beds. Hundreds of brown pelicans and double-crested cormorants and dozens of herons, egrets, and roseate spoonbills nest within Tarpon and Little Bird Keys. Pinellas NWR provides important mangrove habitat for most long-legged wading species, especially for reddish egrets. All of the mangrove islands of Pinellas NWR are closed to public use year-round to protect migratory birds.

Passage Key National Wildlife Refuge (NWR) was originally designated as a Federal bird reservation by President Roosevelt in 1905, which then consisted of a 60-acre island with a freshwater lake and lush vegetation. However, erosion and hurricanes have virtually destroyed the key, and it is now a meandering sand bar varying in size from 0.5 to 10 acres, depending on weather. In 1970, Passage Key NWR was designated a Wilderness Area. The refuge's objective is to provide habitat for colonial waterbirds. Hundreds of brown pelicans, laughing gulls, black skimmer, and royal terns, and small numbers of herons and egrets, nested

annually until the island was destroyed by a hurricane in 2005. The key once hosted the largest royal tern and sandwich tern nesting colonies in the State of Florida. Because of its fragility, small size, and to protect the migratory birds that use the island, it is now closed to public use year-round.

**CCP Alternatives, Including Our Proposed Alternative**

We developed three alternatives for managing the refuges and chose Alternative B as the proposed alternative. A full description is in the Draft CCP/EA. We summarize each alternative below.

*Alternative A—No Action Alternative*

Under Alternative A, the no action alternative, management of the refuges would continue at the current level. The refuges would continue their primary mission of providing habitat for wildlife. Wildlife and habitat would be protected through a variety of management tools, such as area closures, predator control, law enforcement, exotic plant control, erosion control, and cleanup of trash. These activities (except for the closures) would be conducted on an opportunistic basis or under the direction and guidance of others.

The refuges would continue to be managed by one full-time assistant refuge manager, with the support of nine staff members 100 miles away at the Chassahowitzka NWR. The refuges would continue to be assisted by numerous partners in opportunistically conducting bird and other wildlife surveys, educating visitors, and encouraging wildlife observation and photography. The Service would continue its cooperative management agreement with the FPS to manage Egmont Key NWR, with the State being responsible for most public recreation and interpretation of natural and cultural resources, and the Service being primarily responsible for the management of all wildlife and habitat. Meetings between the two agencies would continue to be held approximately twice a year.

Under this alternative, the existing level of funding and staffing would be maintained. Accordingly, some positions would not be filled when vacated if funds needed to be reallocated to meet rising costs or new priorities.

*Alternative B—Proposed Alternative*

Under Alternative B, the proposed alternative, the Service would take more of a leadership role by coordinating and/or directing activities and decisions made by partners that have an impact on the refuges, including coordinating, directing, and conducting bird surveys and Atlantic loggerhead sea turtle surveys; coordinating additional bird surveys and monitoring and conducting research on the gopher tortoises of Egmont Key NWR; and, with partners, identifying, mapping, and protecting State-listed plant species on the refuges. The Service would promote and support increasing the Friends Group to more than 150 members.

Under this alternative, Service staff dedicated to the Tampa Bay Refuges would be increased to four full-time permanent employees and one part-time permanent employee, which would include the addition of a law enforcement officer to increase protection of wildlife, habitat, and visitor safety; a biological technician to conduct bird surveys, predator and exotic species control, and beach renourishment activities; a public use specialist to facilitate and create opportunities for environmental education, interpretation, and wildlife observation and photography; and a part-time administrative assistant. Larger office space to accommodate the increased staff along with the Friends Group would be acquired, as well as facilities for boat storage and use; also, a Visitor Center would be established.

The cooperative agreement with FPS to manage Egmont Key NWR would be enhanced under this alternative by establishing monthly communications and quarterly meetings. Further, the Service would facilitate the transfer of the USCG property on Egmont Key to the Service, and would establish the Service's interest in the Pilots Compound property in the event the occupancy of that property changes. Acquisition of these lands would enable the Service to better conserve, protect, and manage the habitat on Egmont Key.

*Alternative C*

Under Alternative C, the Service would take on an even greater leadership role at the refuges, enhancing and expanding the activities proposed under Alternative B. The Service staff dedicated to the Tampa Bay Refuges would be increased to seven full-time permanent employees, including two law enforcement officers, one biological technician, one public use specialist, one maintenance person/equipment operator, and an administrative assistant. The Service would promote and support increasing the Friends Group to 200–300 members. Additional equipment and facilities would be acquired to support the staff and increased activities on the refuges.

The additional staff members would allow the refuges to increase the frequency of some monitoring (*e.g.*, piping plover); initiate bird research; routinely monitor and research gopher tortoises; enhance protection of wildlife, habitats, and visitor safety; control exotic and invasive vegetation on a routine basis; and provide educational events on a routine basis, including weekly interpretive tours using concessionaire(s) selected and operating under Service contract.

Under this alternative, the Service would own and manage all of Egmont Key without sharing that responsibility with FPS—an overlay state park managed by FPS would no longer exist, allowing the Service to manage the island in a comprehensive manner.

**Next Step**

After the comment period ends, we will analyze the comments and address them.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 13, 2009.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E9–9412 Filed 4–23–09; 8:45 am]

BILLING CODE 4310–55–P

## INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

### Notice of Availability of a Draft Environmental Assessment and Draft Finding of No Significant Impact for Flood Control Improvements to the Arroyo Colorado Floodway

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico.

**ACTION:** Notice of Availability of Draft Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI).

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508), and the United States Section, International Boundary and Water Commission's (USIBWC) Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the USIBWC hereby gives notice of availability of the Draft Environmental Assessment and Draft FONSI for Flood Control Improvements to the Arroyo Colorado Floodway, which is part of the interior floodways in the Lower Rio Grande Flood Control Project.

**FOR FURTHER INFORMATION CONTACT:** Rita Crites, Environmental Protection Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4781; e-mail: *rfcrites@ibwc.gov*.

**DATES:** The Draft EA and Draft FONSI will be available April 27, 2009.

**SUPPLEMENTARY INFORMATION:**

### Background

The Arroyo Colorado is an ancient distributary of the Rio Grande, and it serves as drainage for crop irrigation, municipal wastewater returns, and as a floodway during periods of heavy precipitation in the Lower Rio Grande Valley. The project area includes 2.1 miles of the Divisor Dike, and approximately 8.4 miles of the Arroyo Colorado north levee.

The USIBWC prepared this EA for the proposed action to increase flood containment capacity of the Arroyo Colorado Levee System by raising the elevation of this segment for improved flood protection. This action will also address the 100-year flood protection criteria established by the Federal Emergency Management Agency (FEMA).

The beginning of this project is at the Divisor Dike near the juncture point of the Arroyo Colorado and the North Floodway in Hidalgo County and the ending is at White Ranch Road in Cameron County, Texas.

The proposed levee rehabilitation improvements consist of: (1) Raising the top-of-levee elevation, (2) conducting geotechnical investigations and testing to determine the type and extent of any required remediation improvements due to slope stability, seepage, levee settlement, and any other geotechnical issues that may cause levee failure during a 100-year flood event and (3) modifying, if necessary, hardware or structures located along the levee reaches. Any modifications will be in compliance with the Texas Historical Commission recommendations. The top elevation of the levee-raising improvements will be to provide containment of flood flows with a minimum freeboard of 3 feet for water surface elevations as calculated in the USIBWC 2003 Hydraulic Model for the LRGFCP. Raising on the riverside of the levee will be the most probable alternative given the nature of the right-of-way in the area.

### Alternatives

The USIBWC completed an EA of the potential environmental consequences of raising the Arroyo Colorado Floodway to meet current requirements for flood control. The EA, which supports the Finding of No Significant Impact, evaluated the Proposed Action and No Action Alternative.

### Availability

Single hard copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Home Page at *http://www.ibwc.gov/home.html*.

Dated: April 17, 2009.

**Robert McCarthy,**

*General Counsel.*

[FR Doc. E9–9322 Filed 4–23–09; 8:45 am]

BILLING CODE 7010–01–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on April 20,2009, a proposed Consent Decree in *United States of America et al.* v. *E.I. du Pont de Nemours & Co., and Lucite International, Inc.*, Civil Action No. 2:09–0385 was lodged with the United States District Court for the Southern District of West Virginia.

In this action the United States, on behalf of the Administrator of the United States Environmental Protection Agency, sought injunctive relief and civil penalties under Section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b), for alleged violations at a sulfuric acid regeneration plant ("Plant") owned by Lucite and operated by DuPont in Belle, West Virginia. The Complaint alleged violations of: (1) The Prevention of Significant Deterioration provisions of the Act, 42 U.S.C. 7470–92; (2) the New Source Performance Standards of the Act, 42 U.S.C. 7411; (3) the Title V Permit requirements of the Act, 42 U.S.C. 7661–7661f; and (4) the federally approved and enforceable state implementation plan which incorporates and/or implements the above-listed federal regulations.

The Consent Decree resolves the United States's Clean Air Act claims at the Plant by requiring that Defendants: (i) Pay a civil penalty of $2,000,000, to be split evenly with the State of West Virginia; and (ii) cease operations at the Plant by April 1, 2010, and surrender all air permits to the State. This settlement reflects the fact that Defendants have decided, for independent business reasons, to shut the Plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America et al.* v. *E.I. du Pont de Nemours & Co., and Lucite International, Inc.*, Civil Action No. 2:09–0385 (S.D. WV), D.J. Ref. 90–5–2–1–09251.

The Decree may be examined at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9–9399 Filed 4–23–09; 8:45 am]

BILLING CODE 4410–15–P

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Meeting notice.

**SUMMARY:** The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 28 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from State and Federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include:

(1) Standards to Invoke Noncriminal Justice Record Checks in the Matter of Emergencies and Disasters.

(2) Proposed Changes to the Security and Management Outsourcing Standard.

(3) Access to Department of Homeland Security Information by Local, State, and Federal Criminal Justice, Intelligence, and Authorized Noncriminal Justice Agencies: Update on the Progress to Date with Interoperability.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify Mr. Gary S. Barron at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Requesters will ordinarily be allowed up to 15 minutes to present a topic.

**DATES AND TIMES:** The Council will meet in open session from 9 a.m. until 5 p.m., on May 13–14, 2009.

**ADDRESSES:** The meeting will take place at the Renaissance Atlanta Hotel Downtown, 590 West Peachtree Street, NW., Atlanta, Georgia, telephone (404) 881–6000.

**FOR FURTHER INFORMATION CONTACT:** Inquiries may be addressed to Mr. Gary S. Barron, FBI Compact Officer, Compact Council Office, Module D3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone (304) 625–2803, (304) 625–2868.

Dated: April 8, 2009.

**Robert J. Casey,**

*Section Chief, Liaison, Advisory, Training and Statistics Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.*

[FR Doc. E9–9416 Filed 4–23–09; 8:45 am]

BILLING CODE 4410–02–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993 —; Development of Voluntary Standard (ANSI/ROV–1–200X) for Recreational Off-Highway Vehicles

Notice is hereby given that, on March 17, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 5 4301 et seq. ("the Act"), Development of Voluntary Standard (ANSI/ROV–1–200X) for Recreational Off-Highway Vehicles ("DVSROV") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BRP Inc., Valcourt, Quebec, Canada has been added as a party to this venture. Also, American Honda Motor Co., Inc., Torrance, CA and Kawasaki Motors Corp. U.S.A., Irvine, CA, have withdrawn as parties to this venture.

On July 24, 2008, DVSROV filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 12, 200 (7 FR 53043).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–9395 Filed 4–23–09; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Seafood Sustainability Foundation

Notice is hereby given that, on March 17, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), International Seafood Sustainability Foundation ("ISSF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Seafood Sustainability Foundation, McLean, VA. The nature and scope of ISSF's standards development activities are as follows:

ISSF will conduct scientific research to assess, evaluate, and establish science-based conservation measures and standards for sustainability of fish species across the world's oceans, at present focusing on tuna species. Its community membership will include industry, scientists, and non-governmental environmental organizations. ISSF is a nonprofit organization that has applied for tax exemption pursuant to Section 501(c)(3) of the Internal Revenue Code.

International Seafood Sustainability Association ("ISSA") is a non-exclusive, voluntary trade association formed to fund and establish 15SF. A condition to membership in ISSA is compliance with conservation standards established independently by ISSF. Membership in ISSA therefore indicates that all tuna products purchased, processed, and sold by the member originate from tuna caught in compliance with science-based conservation standards established by ISSF.

The collective activity of both ISSF and ISSA is limited to establishing science-based conservation measures and indicating compliance with those standards. The collective activity will not extend to processing, marketing, or

sales of any industry members' products.

For more information concerning the International Seafood Sustainability Foundation and Association, please contact Michael Cohen; Paul, Hastings, Janofsky & Walker LLP; 875 15th Street, NW., Washington, DC 20005.

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–9396 Filed 4–23–09; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on March 24, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BroadView Software, Toronto, Ontario, CANADA; Chris Lacinak (individual member), Brooklyn, NY; and Tobias Soppa (individual member), Leipzig, GERMANY have been added as parties to this venture. Also, Arbitron, Inc., Columbia, MD; AutoDesk, Montreal, Quebec, CANADA; and Jeff Romine, Sandy, UT have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on December 18, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 3, 2009 (74 FR 5948).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–9394 Filed 4–23–09; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2007–05, Membrane Bioreactor Demonstration

Notice is hereby given that, on March 9, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum Project No. 2007–05, Membrane Bioreactor Demonstration ("PERF Project No. 2007–05") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aramco Services Company, Houston, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF Project No. 2007–05 intends to file additional written notifications disclosing all changes in membership.

On February 26, 2009, PERF Project No. 2007–05 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 2009 (74 FR 15303).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–9397 Filed 4–23–09; 8:45 am]

**BILLING CODE 4410–11–M**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0178]**

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance and Availability of Draft Regulatory Guide (DG)–1220.

**FOR FURTHER INFORMATION CONTACT:** Bruce Lin, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 251–7653 or e-mail to *Bruce.Lin@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Performance-Based Containment Leak-Test Program," is temporarily identified by its task number, DG–1220, which should be mentioned in all related correspondence. DG–1220 is proposed Revision 1 of Regulatory Guide 1.163.

DG–1220 provides guidance on a performance-based leak-test program, leakage-rate test methods, procedures, and analyses that the NRC considers acceptable for use in complying with the Option B, performance-based requirements, in Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," to Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the Code of Federal Regulations (10 CFR Part 50). Licensees may voluntarily choose either Option A, "Prescriptive Requirements," or Option B to meet the requirements of Appendix J to 10 CFR Part 50.

#### II. Further Information

The NRC staff is soliciting comments on DG–1220. Comments may be accompanied by relevant information or supporting data and should mention DG–1220 in the subject line. Comments submitted in writing or in electronic

form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, TWB–5–A01, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to: nrcrep.resource@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1220 may be directed to the NRC contact, Bruce Lin at (301) 251–7653 or e-mail to *Bruce.Lin@nrc.gov.*

Comments would be most helpful if received by June 26, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1220 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML090490183.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 17th day of April 2009.

For the Nuclear Regulatory Commission.

**Andrea D. Valentin,**

*Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E9–9406 Filed 4–23–09; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos.: 70–7003, 70–7004]**

## USEC, Inc.; American Centrifuge Plant; American Centrifuge Lead Cascade Facility; Notice of Receipt of a License Transfer Application and Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Conforming Amendment and Opportunity To Provide Comments and Request a Hearing; [NRC–2009–0177]

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of request for written consent to transfer control of materials license and opportunity to request a hearing and provide written comments.

**DATES:** A request for a hearing must be filed by May 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** Osiris Siurano, Project Manager, Uranium Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3117; Fax number: (301) 492–3359; e-mail: *Osiris.Siurano-Perez@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering an application for approval of a transfer of control regarding Special Nuclear Material License Nos. SNM–7003 and SNM–2011. These licenses were issued on February 24, 2004, and April 13, 2007, respectively, to USEC Inc., (the Licensee), for its American Centrifuge Lead Cascade Facility (LCF) and American Centrifuge Plant (ACP), both located at the Portsmouth Gaseous Diffusion Plant site in Piketon, Ohio. The licenses authorize the Licensee to:

(1) possess and use source and special nuclear material at the LCF; and,

(2) construct and operate a gas centrifuge uranium enrichment facility, the ACP.

The application now being considered is dated February 10, 2009. The Licensee proposes to modify its existing corporate structure and has established a subsidiary limited liability corporation, American Centrifuge Holdings, LLC. American Centrifuge Holding, LLC consists of three additional subsidiaries: American Centrifuge Technology, LLC, American Centrifuge Enrichment, LLC, and American Centrifuge Operating, LLC. The Licensee requests NRC consent to transfer control of License Nos. SNM–7003 and SNM–2011 from USEC Inc. to the subsidiary limited liability company, American Centrifuge Operating, LLC. In addition, the Licensee requests NRC approval of changes to the LCF and the ACP Material Licenses, License Applications, and Security Program documents to reflect the changes in the Licensee's corporate structure. No physical or operational changes to the LCF or the ACP are being proposed. An NRC administrative review, documented in an e-mail sent to the Licensee on March 27, 2009, (ADAMS accession number ML090860886), found the application acceptable to begin a more detailed technical review. If the application is granted, the license would be amended for administrative purposes to reflect the transfer, by replacing references in the license to USEC Inc., with references to American Centrifuge Operating, LLC.

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 2.1301, the Commission is noticing in the **Federal Register** the receipt of the application for approval of the transfer of SNM–7003 and SNM–2001 because they involve major fuel cycle facilities licensed under 10 CFR part 70. The NRC is considering the issuance of an order in accordance with 10 CFR 70.36, authorizing the transfer of control from USEC, Inc. to American Centrifuge Operating, LLC. Pursuant to 10 CFR 70.36, no license granted under 10 CFR part 70, and no right thereunder to possess or utilize special nuclear material granted by any license issued pursuant to the regulations in this part, shall be transferred, assigned, or in any manner disposed of, either voluntary or involuntary, directly or indirectly, through transfer of control of any license to any person unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act (AEA), and gives its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed restructuring and reorganization will not affect the qualifications of the Licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

If the February 10, 2009, application is granted, the licenses would be amended to reflect the Licensee's new status as an LLC and USEC Inc.'s reorganized ownership. Before such a

license amendment is issued, the NRC will have made the findings required by the AEA and NRC's regulations. These findings will be documented in a Safety Evaluation Report (SER). An Environmental Assessment (EA) will not be performed because, pursuant to 10 CFR 51.22(c)(21), license transfer approvals and associated license amendments are categorically excluded from the requirement to perform an EA.

**II. Opportunity To Request a Hearing**

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected, and who desires to participate as a party, must file a request for a hearing. The hearing request must include a specification of the contentions that the person seeks to have litigated in the hearing, and must be filed in accordance with the NRC E-filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing rule requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request: (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, confirms that a docket has been created, and downloads the EIE viewer, he or she can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF), in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must, in accordance with 10 CFR 2.302(g), file a motion with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at: *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include Social Security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met. In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by May 14, 2009.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requestor;

2. The nature of the requester's right under the AEA to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions, which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information filed by the applicant or otherwise available to the petitioner at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within 10 days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

As indicated below, pursuant to 10 CFR 2.310(g), any hearing would be subject to the procedures set forth in 10 CFR part 2, subpart M.

### III. Opportunity To Provide Written Comments

In accordance with 10 CFR 2.1305, as an alternative to requests for hearings and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

### IV. Further Information

For further details with respect to this license transfer application, see the application dated February 10, 2009, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS accession numbers for the license transfer application are as follows: Incoming Request—ML090850065; Enclosure 1—ML090850083; Enclosure 2—Sensitive-Proprietary, Non Publically Available; Enclosure 3—ML090850095; and, Enclosure 4—ML090850098. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of April 2009.

For the Nuclear Regulatory Commission.

**Brian W. Smith,**

*Chief, Uranium Enrichment Branch, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E9–9405 Filed 4–23–09; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Request for a License to Export Radioactive Waste

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave

to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.rnc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this export license application follows.

NRC EXPORT LICENSE APPLICATION—DESCRIPTION OF MATERIAL

| Name of applicant; Date of application; Date received, Application No.; Docket No. | Material type | Total quantity | End use | Recipient country |
|---|---|---|---|---|
| AREVA NP Inc.; March 20, 2009; March 24, 2009; XW015; 11005789. | Class A radioactive waste as slightly contaminated non-combustibles (*e.g.*, glass, metal, slag) retrieved from the combustible Class A radioactive waste imported in accordance with NRC license IW009/01. | The total quantity authorized for export will not exceed quantities imported. The maximum quantity of radioactive contaminants will not exceed 2.0 kilograms (kg) U-235 contained in 40 kg uranium enriched to 5.0 w/o maximum. The maximum total volume of non-combustibles will not exceed 1,000 cubic feet or 25,000 kg. | Return to the original generator, Advance Nuclear Fuels, GmbH for appropriate disposition. | Germany. |

Dated this 16th day of April 2009 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

**Margaret M. Doane,**

*Director, Office of International Programs.*

[FR Doc. E9–9414 Filed 4–23–09; 8:45 am]

BILLING CODE 7590–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11705 and #11706]**

### Minnesota Disaster Number MN–00021

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1830–DR), dated 04/09/2009.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 03/16/2009 and continuing.

*Effective Date:* 04/14/2009.

*Physical Loan Application Deadline Date:* 06/08/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/09/2010.

**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:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 04/09/2009, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:*

Grant, Lake, Mahnomen, Otter Tail, Pennington, Red Lake, Roseau, Wadena.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–9422 Filed 4–23–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11679 and #11680]**

### Washington Disaster Number WA–00023

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–1825–DR), dated 03/02/2009.

*Incident:* Severe Winter Storm and Record and Near Record Snow.

*Incident Period:* 12/12/2008 through 01/05/2009.

*Effective Date:* 04/16/2009.

*Physical Loan Application Deadline Date:* 05/01/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/02/2009.

**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:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Washington, dated 03/02/2009, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Whitman, Ferry.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–9430 Filed 4–23–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11677 and #11678]**

### Oregon Disaster Number OR–00029

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 3.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA–1824–DR), dated 03/02/2009.

*Incident:* Severe Winter Storm, Record and Near Record Snow, Landslides, and Mudslides.

*Incident Period:* 12/13/2008 through 12/26/2008.

*Effective Date:* 04/02/2009.

*Physical Loan Application Deadline Date:* 05/01/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/02/2009.

**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:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oregon, dated 03/02/2009, is hereby amended to re-establish the incident period for this disaster as beginning 12/13/2008 and continuing through 12/26/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–9423 Filed 4–23–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59792; File No. PCAOB–2008–06]**

### Public Company Accounting Oversight Board; Notice of Filing of Proposed Amendment to Board Rules Relating to Inspections

April 20, 2009.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on December 9, 2008, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

### I. Board's Statement of the Terms of Substance of the Proposed Rule

On December 4, 2008, the Board adopted an amendment to its rule relating to the frequency of inspections. The proposed amendment adds a new paragraph (f) to existing Rule 4003. The text of the proposed amendment is set out below. Language added by the amendment is in italics.

Rule 4003. Frequency of Inspections

* * * * *

*(f) With respect to any foreign registered public accounting firm concerning which the preceding provisions of this Rule would set a 2008 deadline for the first Board inspection, such deadline is extended to 2009.*

### II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule*

(a) Purpose

The Sarbanes-Oxley Act of 2002 ("the Act") directs the Board to conduct a continuing program of inspections to assess registered public accounting firms' compliance with certain requirements.[1] The Act prescribes inspection frequency requirements but also authorizes the Board to adjust the frequency requirements by rule if the Board finds that an adjustment is consistent with the purposes of the Act, the public interest, and the protection of investors.[2] Inspection frequency requirements adopted by the Board are set out in PCAOB Rule 4003, "Frequency of Inspections."

The Board began a regular cycle of inspections of U.S. firms in 2004 and has conducted 911 such inspections, including repeat inspections of several firms. Inspections of non-U.S. firms began in 2005, and the Board has inspected 123 non-U.S. firms that have issued audit reports while registered with the Board. Those firms are located in 24 jurisdictions.[3] There are, however, 21 non-U.S. firms that have issued audit reports while registered and that Rule 4003 requires the Board to inspect by the end of 2008, but that the Board has not yet inspected. For the reasons described below, the Board has adopted Rule 4003(f) to extend for one year the deadline for the Board to conduct the first inspections of non-U.S. firms that are otherwise required before the end of 2008.[4]

The PCAOB has recognized since the outset of its inspection program that inspections of non-U.S. firms pose

[1] *See* Section 104(a) of the Act.

[2] *See* Section 104(b) of the Act.

[3] The Board has inspected non-U.S. firms located in Argentina, Australia, Bermuda, Brazil, Canada, Chile, Colombia, Greece, Hong Kong, India, Indonesia, Ireland, Israel, Japan, Kazakhstan, Mexico, New Zealand, Panama, Peru, Singapore, South Africa, South Korea, Taiwan R.O.C., and the United Kingdom.

[4] Existing Rule 4003 effectively sets deadlines for the Board's inspections not only of firms that issue audit reports, but also of firms that play a substantial role in the preparation or furnishing of an audit report (as defined in PCAOB Rule 1001(p)(ii)). The Board has previously submitted for Commission approval amendments to Rules 4003(b) and 4003(d) that would eliminate from the Rule any frequency requirement or deadline for the Board to inspect a firm that plays a substantial role but does not issue an audit report. Unless and until the Commission approves such a rule change, however, the one-year extension in proposed rule 4003(f) would (if approved by the Commission) apply to required 2008 PCAOB inspections of non-U.S. firms that have played a substantial role as well as to required 2008 inspections of non-U.S. firms that have issued audit reports.

special issues.[5] In its oversight of non-U.S. firms, the Board seeks, to the extent reasonably possible, to coordinate and cooperate with local authorities. Since 2003, when the PCAOB began operations, a number of jurisdictions have also developed their own auditor oversight authorities with inspection responsibilities or enhanced existing oversight systems.[6] The Board has a specific framework for working cooperatively with its non-U.S. counterparts to conduct joint inspections and, to the extent deemed appropriate by the Board in any particular case, relying on inspection work performed by that counterpart.[7] The Board has previously expressed the view that it is in the interests of the public and investors for the Board to develop efficient and effective cooperative arrangements with its non-U.S. counterparts.[8] In jurisdictions that have their own inspection programs, this may include conducting joint inspections of firms that are subject to both regulators' authority. Even where the Board does not work with a local regulator to conduct joint inspections, the Board communicates with its counterpart or other local authorities (such as securities regulators or other government agencies and ministries) regarding its inspections to be conducted in the jurisdiction.

In some jurisdictions, the PCAOB's ability to conduct inspections, either by itself or jointly with a local regulator, is complicated by the need to address with local authorities potential legal obstacles and sovereignty concerns. The Board seeks to work with the home-country authorities to try to resolve potential conflicts of laws.[9]

In addition, PCAOB Rule 4011 permits non-U.S. firms that are subject to Board inspection to formally request that the Board, in conducting its inspection, rely on a non-U.S. inspection to the extent deemed appropriate by the Board. If a Rule 4011 request is made, Rule 4012 provides that the Board will, at an appropriate time before each inspection of the firm, determine the degree, if any, to which the Board may rely on the non-U.S. inspection. Rule 4012 describes aspects of the non-U.S. system that the Board will evaluate in making that determination.

Where the need arises to try to resolve potential conflicts of law, or to evaluate a non-U.S. system in response to a Rule 4011 request, the effort can be substantial. The effort typically involves negotiating the principles of an arrangement for cooperation consistent with the inspection obligations that the Act imposes on the Board. It also involves the Board gaining a detailed understanding of the other jurisdiction's auditor oversight system in order for the Board to determine the degree of reliance it is willing to place on inspection work performed under that system in a particular inspection year.

Additional effort is involved in coordinating the scheduling of specific inspections. Where possible, the Board seeks to conduct inspections jointly with local authorities both to take advantage of potential efficiencies and to avoid imposing unnecessary regulatory burdens on the firm. Like the PCAOB, several of these other authorities proceed according to inspection frequency requirements. While some of the Board's counterparts are established and have inspection programs, many are new organizations still building up their inspections resources. As a result, synchronizing the inspections schedules of these authorities and the PCAOB's requirements may sometimes require one-time scheduling adjustments by the PCAOB and/or the other authority.

Notwithstanding these challenges, the Board has so far conducted 123 non-U.S. inspections. Fifty-seven of those inspections, in five jurisdictions, have been conducted jointly with other auditor oversight authorities, while 66 have been conducted solely by the PCAOB.

Because of the types of issues described above, however, the Board faces certain challenges related to conducting, in 2008, the inspections of 18 non-U.S. firms that have issued audit reports while registered and that the Board is currently required to inspect by the end of 2008.[10] Those 18 inspections involve firms in nine jurisdictions, several of which have newly established auditor oversight entities that have just recently started their own inspections programs. In some of those nine jurisdictions, the auditor oversight authority's 2008 inspection schedules did not include some or any of the firms the PCAOB is required to inspect in 2008. In still other jurisdictions, local authorities have raised sovereignty concerns or potential legal conflicts, and efforts to resolve those issues are incomplete.

The Board has made an effort to resolve issues with authorities in the nine jurisdictions in time to conduct these inspections in 2008.[11] The Board remains hopeful that ongoing discussions with these authorities will result in the resolution of outstanding issues. It is now apparent, however, that this will not occur in time to conduct those inspections in 2008. Accordingly, the choice the Board now faces is whether to (1) postpone these inspections while continuing discussions on the outstanding issues or (2) proceed with inspections by making inspection demands on the individual firms over the objection of local authorities, including in circumstances where local authorities take the position that a firm's cooperation in a Board inspection would violate local law.

Neither option is ideal. While the Board sees value in cooperation and joint inspections, that value must be balanced against the statutory presumption that PCAOB-registered firms will be subject to timely PCAOB inspections in order to protect the interests of investors in U.S. markets. On balance, in light of the status of the ongoing discussions with authorities in the nine jurisdictions described above, the Board believes that a rule amendment allowing the Board to

[5] *See* Briefing Paper, Oversight of Non-U.S. Public Accounting Firms (October 28, 2003); Final Rules Relating to the Oversight of Non-U.S. Public Accounting Firms, PCAOB Release No. 2004–005 (June 9, 2004) (hereinafter "Oversight of Non-U.S. Firms").

[6] In 2006, for instance, the European Union enacted a directive requiring the creation of an effective system of public oversight for statutory auditors and audit firms within each Member State. *See* The Directive 2006/43/EC of the European Parliament and the Council (May 17, 2006) (the "Eighth Directive"). In addition, among others, Canada created the Canadian Public Accountability Board, and in Australia, the responsibilities of the Australian Securities and Investments Commission were expanded to include auditor oversight. In Asia, Japan created the Certified Public Accountants and Auditing Oversight Board, South Korea gave responsibility for auditor oversight to its Financial Supervisory Service, and Singapore created the Accounting and Corporate Regulatory Authority.

[7] *See* PCAOB Rules 4011 and 4012; *see also* Oversight of Non-U.S. Firms at 2–3.

[8] *See* Oversight of Non-U.S. Firms at 2–3.

[9] *See* Oversight of Non-U.S. Firms at 3.

[10] Inspections of three other non-U.S. firms that have issued audit reports while registered and that the Board is currently required to conduct by the end of 2008 will be delayed beyond 2008 for reasons unrelated to the issues discussed above. In October 2007, after soliciting public comment, the Board adopted and submitted for Commission approval an amendment to Rule 4003 that would give the Board discretion not to conduct an otherwise required inspection of a firm if, after the firm issued the audit report that gave rise to the inspection requirement, the firm went two consecutive calendar years without issuing an audit report. The three non-U.S. firms referred to here fall into that category and, although the Commission has not acted on that proposed rule amendment, the Board's planning for, and conduct of, 2008 inspections did not include those three firms.

[11] In two of these jurisdictions, the Board was able to arrange for and conduct some joint inspections in 2008, but, due to scheduling conflicts, could not conduct joint inspections of all firms with 2008 deadlines.

postpone those inspections for up to one year is the appropriate course. For that reason, the Board is adopting a new paragraph (f) to Rule 4003, which extends for one year the deadline for the Board to conduct the first inspection of any non-U.S. firm that existing Rule 4003 otherwise requires the Board to conduct by the end of 2008. The Board is adopting Rule 4003(f) to take effect upon Commission approval.

In the Board's view, this adjustment to the inspection frequency requirement is consistent with the purposes of the Act, the public interest, and the protection of investors. The Board believes that its approach to implementing Rules 4011 and 4012, developing cooperative arrangements, and conducting joint inspections with foreign regulators is enhancing the Board's efforts to carry out its inspection responsibilities. There is long-term value in accepting a limited delay in inspections to continue working toward cooperative arrangements where it appears reasonably possible to reach them. The Board recognizes that some non-U.S. firms may be reluctant to comply with PCAOB inspection demands because of a concern that doing so might violate local law. Up to a point, the purposes of the Act, the public interest, and the protection of investors are better served by delaying a first inspection to work toward a cooperative resolution than by precipitating legal disputes involving conflicts between U.S. and non-U.S. law that could arise if the Board sought to enforce compliance with its preferred schedule without regard for the concerns of non-U.S. authorities.

The Board will continue to work toward cooperation and coordination with authorities in all relevant jurisdictions. The Board does not intend, however, to make any further adjustments to the inspection frequency requirements applicable to firms whose first inspection was due no later than 2008.[12]

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

*B. Board's Statement on Burden on Competition*

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule imposes no burden beyond the burdens clearly imposed and contemplated by the Act.

*C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others*

The Board did not solicit or receive comments before adopting the proposed rule.

**III. Date of Effectiveness of the Proposed Rule 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 as (i) 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 Board 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 changes are consistent with the requirements of Title I of 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/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number PCAOB–2008–06 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number PCAOB–2008–06. 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/pcaob/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCAOB.

All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number PCAOB–2008–06 and should be submitted on or before May 15, 2009.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–9367 Filed 4–23–09; 8:45 am]

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[12] Nothing in this notice is inconsistent with the Board's willingness to place reliance on a non-U.S. inspection consistent with Rules 4011 and 4012, or suggests any position on the nature of the inspection process in circumstances in which the Board relies on a non-U.S. inspection to the maximum extent that would be consistent with the Board's responsibilities under the Act.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59791; File No. SR–NYSE–2009–42]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Implementing NYSE Realtime Reference Price Service on a Permanent Basis

April 20, 2009.

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 16, 2009, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to establish the NYSE Realtime Reference Prices

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

service and to establish a flat monthly fee for that service. The Exchange currently provides this service pursuant to a pilot program [3] and now proposes to make the service permanent. The service allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange ("NYSE Realtime Reference Prices"). The text of the proposed rule change is available at the Exchange, 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 self-regulatory organization 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 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

a. *The Service*

The Exchange currently conducts a pilot program that has tested the viability of NYSE Realtime Reference Prices. In its filing, the Exchange stated that prior to the end of the pilot period, the Exchange would assess its experience with the service and either submit a proposed rule change that seeks to modify or eliminate the pilot program or to make it permanent.[4]

The Exchange has found that the pilot program provides a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices; and relieves vendors of administrative burdens. The product responds to the requirements for distribution of real-time last sale prices over the internet for reference purposes, rather than as a basis for making trading decisions. For those reasons, the Exchange is now proposing to make it a permanent part of the Exchange's market data offerings.

The NYSE Realtime Reference Prices service allows internet service providers, traditional market data vendors, and others ("NYSE-Only Vendors") to make available NYSE Realtime Reference Prices on a real-time basis.[5] The NYSE Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. The product includes only prices; it does not include the size of each trade or bid/asked quotations.

Under the pilot program, the Exchange does not permit NYSE-Only Vendors to provide NYSE Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires. The Exchange proposes to keep this same prohibition in the permanent offering

As with the pilot program, the permanent service would eliminate some of the administrative burdens associated with the distribution of real-time CTA prices. The permanent service would feature the same flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

b. *The Fee*

During the pilot program, the Exchange first established a $100,000 monthly flat fee that entitles an NYSE-Only Vendor to receive access to the NYSE Realtime Reference Prices datafeed. In the Fee-Reduction Filing, it reduced that fee to $70,000. The Exchange proposes to retain the $70,000 fee for the permanent service. For that fee, the NYSE-Only Vendor may provide unlimited NYSE Realtime Reference Prices to an unlimited number of the NYSE-Only Vendor's subscribers and customers. The pilot program does not impose any device or end-user fee for the NYSE-Only Vendors' distribution of NYSE Realtime Reference Prices and the Exchange is not proposing to add any new fees for the permanent service.

As with the pilot program, the Exchange proposes to require the NYSE-Only Vendor to identify the NYSE trade price by placing the text "NYSE Data" in close proximity to the display of each NYSE Realtime Reference Price or series of NYSE Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE may agree.

The NYSE-Only Vendor may make NYSE Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The flat fee enables internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution.

In setting the level of the NYSE Realtime Reference Prices fee, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq and NYSE Arca are charging for similar services (sic)

(2) Consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed service;

(3) The contribution of market data revenues that the Exchange believes is appropriate for entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed service;

(4) The contribution that revenues accruing from the proposed fee will make to meet the overall costs of the Exchange's operations;

(5) The savings in administrative and reporting costs that the NYSE Realtime Reference Prices service will provide to NYSE-Only Vendors; and

(6) The fact that the proposed fee provides an alternative to existing fees under the CTA Plan, an alternative that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the level of the fee is consistent with the approach set forth in the order by which the Commission approved ArcaBook fees.[6] In the ArcaBook Approval Order, the Commission stated that "when

[3] *See* Release No. 34–57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (File No. SR–NYSE–2007–04) and Release No. 34–58443 (August 29, 2008), 73 FR 52436 (September 9, 2008) (File No. SR–NYSE–2008–79; the "Fee-Reduction Filing").

[4] The Exchange initially proposed to end the pilot program on November 1, 2008. The Exchange has submitted three extensions of the end date for the pilot program on Forms 19b–4. (*See* Securities Exchange Act Release No. 34–58893 (October 31, 2008), 73 FR 66093 (November 6, 2008) (File No. SR–NYSE–2008–113), Securities Exchange (sic) Release No. 34–59185 (December 30, 2008), 74 FR 749 (January 7, 2009) (File No. SR–NYSE–2008–141) and Securities Exchange Act Release No. 34–59653 (March 30, 2009), 74 FR 15536 (April 6, 2009) (File No. SR–NYSE–2009–34)). The pilot program is currently scheduled to end on June 30, 2009.

[5] The Exchange notes that it will make the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

[6] *See* Release No. 34–59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (the "ArcaBook Approval Order").

possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory."[7] It noted that if significant competitive forces apply to a proposal, the Commission will approve it unless a substantial countervailing basis exists.

NYSE Realtime Reference Prices constitute "non-core data." The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of NYSE Realtime Reference Prices, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Realtime Reference Prices. The Exchange hopes that NYSE Realtime Reference Prices will enable vendors to distribute NYSE last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to NYSE Realtime Reference Prices significantly constrains the prices at which the Exchange can market NYSE Realtime Reference Prices. All national securities exchanges, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data, as well as the core data feed, are all sources of competition for NYSE Realtime Reference Prices. Currently, NYSE Arca and Nasdaq offer similar services. (The Exchange anticipates that NYSE Arca will soon file for permanent approval of the fee for its counterpart product.)

The information available in NYSE Realtime Reference is included in the CTA core data feed, which also includes the size of trades, as well as last sale information from other markets. Even though NYSE Realtime Reference Prices omits size and provides prices that are not consolidated with those of other markets, investors may select it as a less expensive alternative to the CTA Plan's consolidated last sale price services for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the core data feeds available to customers when trading and order-routing decisions can be implemented.)

c. *Contracts*

As with the pilot program, NYSE proposes to allow NYSE-Only Vendors to provide NYSE Realtime Reference Prices without requiring the end-users to enter into contracts for the benefit of the Exchange.

Instead, the Exchange proposes to require NYSE-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE-Only Vendors to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Network A Vendor Form"). The Network A Vendor Form will authorize the NYSE-Only Vendor to provide the NYSE Realtime Reference Prices service to its subscribers and customers.

The Network A Participants drafted the Network A Vendor Form as a one-size-fits-all form to capture most categories of market data dissemination. It is sufficiently generic to accommodate NYSE Realtime Reference Prices. The Commission has approved the Network A Vendor Form.[8]

The Exchange will supplement the Network A Vendor Form with an *Exhibit C* that will provide above-described terms and conditions that are unique to the NYSE Realtime Reference Prices service. The proposed *Exhibit C* is substantially similar to the Exhibit C that NYSE uses for the pilot program (except for provisions related to the conduct of the pilot program) and is attached to this proposed rule change as *Exhibit 5*, marked to show changes from the version used for the pilot program. The supplemental *Exhibit C* terms and conditions would govern:

- The restriction against providing the service in the context of a trading or order-routing service;
- The replacement of end-user agreements with a hyperlink to a notice;
- The substance of the notice; and
- The "NYSE Data" labeling requirement.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[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 and the requirements under Section 6(b)(5)[10] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Realtime Reference Prices service. In addition, the Exchange believes that the proposed fee would allow entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed service, to make an appropriate contribution towards meeting the overall costs of the Exchange's operations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NYSE Realtime Reference Prices proposes to provide an alternative to existing fees and does not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq and NYSE Arca have commenced to make available. For those reasons, the Exchange does not believe that this 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*

The Exchange has discussed the proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Realtime Reference Prices service by becoming NYSE-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and this proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

[7] Id. at 74771.

[8] *See* Securities Exchange Act Release Nos. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4–281); 49185 (February 4, 2004), 69 FR 6704 (February 11, 2004) (SR–CTA/CQ–2003–01).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

### 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–NYSE–2009–42 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–42. 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 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–NYSE–2009–42 and should be submitted on or before May 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–9387 Filed 4–23–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59790; File No. SR–NYSEArca–2009–32]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Implementing the NYSE Arca Realtime Reference Prices Service on a Permanent Basis

April 20, 2009.

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 15, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish the NYSE Arca Realtime Reference Prices service and to establish a flat monthly fee for that service. The Exchange currently provides this service pursuant to a pilot program[3] and now proposes to make the service permanent. The service allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange ("NYSE Arca Realtime Reference Prices"). The text of the proposed rule change is available at the Exchange, 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 self-regulatory organization 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 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

a. The Service

The Exchange currently conducts a pilot program that has tested the viability of NYSE Arca Realtime Reference Prices. In its filing, the Exchange stated that prior to the end of the pilot period, the Exchange would assess its experience with the service and either submit a proposed rule change that seeks to modify or eliminate the pilot program or to make it permanent.[4]

The Exchange has found that the pilot program provides a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices; and relieves vendors of administrative burdens. The product responds to the requirements for distribution of real-time last sale prices over the internet for reference purposes, rather than as a basis for making trading decisions. For those reasons, the Exchange is now proposing to make it a permanent part of the Exchange's market data offerings.

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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] *See* Securities Exchange Act Release No. 34–58444 (August 29, 2008), 73 FR 51872 (September 5, 2008) (SR–NYSEArca–2008–96).

[4] The Exchange initially proposed to end the pilot program on November 1, 2008. The Exchange has submitted three extensions of the end date for the pilot program on Forms 19b–4. (*See* Securities Exchange Act Release No. 34–58895 (October 31, 2008), 73 FR 66956 (November 12, 2008) (File No. SR–NYSEArca–2008–122), Securities Exchange (sic) Release No. 34–59184 (December 30, 2008), 74 FR 755 (January 7, 2009) (File No. SR–NYSEArca–2008–143) and Securities Exchange Act Release No. 34–59662 (March 31, 2009), 74 FR 15571 (April 6, 2009) (File No. SR–NYSEArca–2009–25)). The pilot program is currently scheduled to end on June 30, 2009.

The NYSE Arca Realtime Reference Prices service allows internet service providers, traditional market data vendors, and others ("NYSE Arca-Only Vendors") to make available NYSE Arca Realtime Reference Prices on a real-time basis.[5] The NYSE Arca Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. The product includes only prices; it does not include the size of each trade or bid/asked quotations.

Under the pilot program, the Exchange does not permit NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Arca-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires. The Exchange proposes to keep this same prohibition in the permanent offering.

As with the pilot program, the permanent service would eliminate some of the administrative burdens associated with the distribution of real-time CTA prices. The permanent service would feature the same flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

b. The Fee

During the pilot program, the Exchange established a $30,000 monthly flat fee that entitles an NYSE Arca-Only Vendor to receive access to the NYSE Arca Realtime Reference Prices datafeed. The Exchange proposes to retain that fee for the permanent service. For that fee, the NYSE Arca-Only Vendor may provide unlimited NYSE Arca Realtime Reference Prices to an unlimited number of the NYSE Arca-Only Vendor's subscribers and customers. The pilot program does not impose any device or end-user fee for the NYSE Arca-Only Vendors' distribution of NYSE Arca Realtime Reference Prices and the Exchange is not proposing to add any new fees for the permanent service.

As with the pilot program, the Exchange proposes to require the NYSE Arca-Only Vendor to identify the NYSE Arca trade price by placing the text "NYSE Arca Data" in close proximity to the display of each NYSE Arca Realtime Reference Price or series of NYSE Arca Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE may agree.

The NYSE Arca-Only Vendor may make NYSE Arca Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The flat fee enables internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution.

In setting the level of the NYSE Arca Realtime Reference Prices fee, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq and NYSE are charging for similar services;

(2) Consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed service;

(3) The contribution of market data revenues that the Exchange believes is appropriate for entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed service;

(4) The contribution that revenues accruing from the proposed fee will make to meet the overall costs of the Exchange's operations;

(5) The savings in administrative and reporting costs that the NYSE Arca Realtime Reference Prices service will provide to NYSE Arca-Only Vendors; and

(6) The fact that the proposed fee provides an alternative to existing fees under the CTA and Nasdaq/UTP Plans, an alternative that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the level of the fee is consistent with the approach set forth in the order by which the Commission approved NYSE Arca's ArcaBook fees.[6] In the ArcaBook Approval Order, the Commission stated that "when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory."[7] It noted that if significant competitive forces apply to a proposal, the Commission will approve it unless a substantial countervailing basis exists.

NYSE Arca Realtime Reference Prices constitute "non-core data." The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of NYSE Arca Realtime Reference Prices, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Arca Realtime Reference Prices. The Exchange hopes that NYSE Arca Realtime Reference Prices will enable vendors to distribute NYSE Arca last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to NYSE Arca Realtime Reference Prices significantly constrains the prices at which the Exchange can market NYSE Arca Realtime Reference Prices. All national securities exchanges, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data, as well as the core data feed, are all sources of competition for NYSE Arca Realtime Reference Prices. Currently, NYSE and Nasdaq offer similar services. (The Exchange anticipates that NYSE will soon file for permanent approval of the fee for its counterpart product.)

The information available in NYSE Arca Realtime Reference Prices is included in the CTA and Nasdaq UTP core data feeds, which also include the size of trades, as well as last sale information from other markets. Even though NYSE Arca Realtime Reference Prices omits size and provides prices that are not consolidated with those of other markets, investors may select it as a less expensive alternative to the CTA and Nasdaq/UTP Plans' consolidated last sale price services for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the core data feeds available to customers when trading and order-routing decisions can be implemented.)

[5] The Exchange notes that it will make the NYSE Arca Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA and Nasdaq/UTP Plans.

[6] *See* Release No. 34–59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (the "ArcaBook Approval Order").

[7] Id. at 74771.

c. Contracts

As with the pilot program, NYSE Arca proposes to allow NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices without requiring the end-users to enter into contracts for the benefit of the Exchange.

Instead, the Exchange proposes to require NYSE Arca-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE Arca-Only Vendors to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Network A Vendor Form"). The Network A Vendor Form will authorize the NYSE Arca-Only Vendor to provide the NYSE Arca Realtime Reference Prices service to its subscribers and customers.

The Network A Participants drafted the Network A Vendor Form as a one-size-fits-all form to capture most categories of market data dissemination. It is sufficiently generic to accommodate NYSE Arca Realtime Reference Prices. The Commission has approved the Network A Vendor Form.[8]

The Exchange will supplement the Network A Vendor Form with an *Exhibit C* that will provide above-described terms and conditions that are unique to the NYSE Arca Realtime Reference Prices service. The proposed *Exhibit C* is substantially similar to the Exhibit C that NYSE Arca uses for the pilot program (except for provisions related to the conduct of the pilot program) and is attached to this proposed rule change as *Exhibit 5*, marked to show changes from the version used for the pilot program. The supplemental *Exhibit C* terms and conditions would govern:

- The restriction against providing the service in the context of a trading or order-routing service;
- The replacement of end-user agreements with a hyperlink to a notice;
- The substance of the notice; and
- The "NYSE Arca Data" labeling requirement.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[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 and the requirements under Section 6(b)(5)[10] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Arca Realtime Reference Prices service. In addition, the Exchange believes that the proposed fee would allow entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed service, to make an appropriate contribution towards meeting the overall costs of the Exchange's operations.

The Exchange notes that its proposed fee compares favorably with the fees that Nasdaq and NYSE are charging for similar services. Because the proposed fee is substantially lower than those of Nasdaq and NYSE, it offers any vendor that wishes to provide its customers with a single market's data (as opposed to a more expensive consolidated data service) a less expensive alternative to Nasdaq and NYSE. In addition, for that lower fee, vendors receive Exchange prices for securities of Networks A, B and C, something that differentiates the Exchange's product from the NYSE product.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NYSE Arca Realtime Reference Prices proposes to provide an alternative to existing fees and does not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq and NYSE have commenced to make available. For those reasons, the Exchange does not believe that this 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*

The Exchange has discussed the proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Arca Realtime Reference Prices service by becoming NYSE Arca-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and this proposed rule change reflects their input. 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**

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–NYSEArca–2009–32 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–32. 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

[8] *See* Securities Exchange Act Release Nos. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4–281); 49185 (February 4, 2004), 69 FR 6704 (February 11, 2004) (SR–CTA/CQ–2003–01).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

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 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–NYSEArca–2009–32 and should be submitted on or before May 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–9402 Filed 4–23–09; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59794; File No. SR–Phlx–2009–17]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc., Order Approving Proposed Rule Change Relating to the Nomination and Election of Candidates for Governor and Independent Governor

April 20, 2009.

On February 23, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Certificate of Incorporation and By-Laws to modify its processes relating to the nomination and election of candidates for the Board of Governors ("Board"). The proposed rule change was published for comment in the **Federal Register** on March 16, 2009.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

In its filing, the Exchange sought to conform its governance structure, including its process for the nomination and election of candidates for Governor and Designated Independent Governor positions, to more closely resemble that of its corporate sibling, The NASDAQ Stock Market LLC ("Nasdaq").[4] In particular, the Exchange proposed several changes to its governance structure, including (i) bifurcating the "Nominating, Elections and Governance Committee" into a separate "Nominating Committee" and a "Member Nominating Committee"; (ii) modifying the processes for nominating candidates for Governor and Designated Independent Governor; (iii) modifying the procedures for Member Organization Representatives to vote for Designated Governor nominees and the procedures for meetings of Members and Member Organizations; (iv) changing the procedures for filling vacancies on the Board, and the timeframe for submitting Board resignations; and (v) adding several new definitions, including "Industry Member," "Non-Industry Member," and "Member Representative member." The Exchange also proposed to amend its Certificate of Incorporation and its By-Laws to delete the positions of Vice Chair and PBOT Governor.

The Commission has carefully reviewed the proposed rule change and 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[5] including, in particular, Section 6(b)(1) of the Act,[6] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; Section 6(b)(3) of the Act,[7] which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs, and provided that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer; and Section 6(b)(5) of the Act,[8] which requires that an exchange have rules 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, protect investors and the public interest.

Among other things, the Exchange proposed to bifurcate its Nominating, Elections and Governance Committee into (1) a Member Nominating Committee that would be responsible for nominating candidates for each vacant Designated Governor[9] position and would also nominate candidates for appointment by the Board for each vacant or new position on any committee that is to be filled with a Member Representative member, and (2) a Nominating Committee that would nominate candidates for all other vacant Governor positions that are not nominated by the Member Nominating Committee. All members of the Member Nominating Committee would be a current associated person of a current member organization and would be appointed annually by the Board following consultations with Member Organization Representatives. The Nominating Committee would consist of a number of non-industry members that equal or exceed the number of industry members. In addition, a number of Public Members would be represented on the Nominating Committee, and no officer or employee of the Exchange could serve in any voting or non-voting capacity on the committee.

Further, the Exchange proposed to modify its nominating process, including the procedures for Member Organization Representatives to vote for Designated Governor nominees and the procedures for meetings of Members and Member Organizations, to more closely align them with Nasdaq's process and procedures. Among other things, the proposed procedures would continue to afford Member Organization Representatives the ability to nominate candidates for Designated Governor positions subject to certain conditions. In addition, in the event of a contested

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59538 (March 9, 2009), 74 FR 11152 ("Notice").

[4] Both the Exchange and Nasdaq are subsidiaries of The NASDAQ OMX GROUP, Inc. *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving changes to the Exchange's governing documents in connection with its acquisition by The NASDAQ OMX Group, Inc.).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(3).

[8] 15 U.S.C. 78f(b)(5).

[9] The term "Designated Governor," which includes the Member Governor and a number of Designated Independent Governors, refers to a Governor who is selected through a process that is subject to the input of the Exchange's Member Organization Representatives. *See* Proposed Phlx By-Law Article I, Section 1–1(e) (defining "Designated Governor" as proposed to be amended by Phlx to exclude the PBOT Governor position).

vote for a Designated Governor position, Member Organization Representatives would have the opportunity to vote on the list of candidates, and the Exchange would utilize a balloting process rather than hold a formal meeting of members.

The Exchange also proposed to delete the position of Vice Chair, which is a position that Nasdaq does not maintain.[10] In addition, the Exchange proposed to eliminate the PBOT Governor position and replace it with a new Designated Independent Governor position.[11] The Exchange's current Certificate of Incorporation specifies that the Board shall be composed of "[a] number of Designated Independent Governors, which, together with the Member Governor and the PBOT Governor, shall equal at least 20% of the total number of Governors* * *"[12] Because the Exchange proposed to replace the PBOT Governor position with a new Designated Independent Governor, which position, like all other "Designated" Governor positions, would be selected pursuant to a process that involves member input, the proposal does not change the composition of the Board with respect to the minimum percentage of Governors that would be selected pursuant to member input.[13]

Finally, the Exchange proposed to modify the process for filing vacancies on the Board to reflect the newly proposed structure. Among other things, in the event of a vacancy, the appropriate nominating committee would nominate, and the Board would appoint, a replacement Governor. For example, in the event of a vacancy in the Member Governor position, the new Member Nominating Committee would nominate a replacement.

Accordingly, the proposed changes will more closely align Phlx's governance structure to that of Nasdaq, which, like the Exchange, is a subsidiary of NASDAQ OMX GROUP, Inc. At the same time, the proposed changes will continue to assure the fair representation of the Exchange's members in the selection of the Exchange's directors and administration of its affairs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Phlx–2009–17) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

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[10] The function of the Vice Chair was to preside over meetings of the Board in the absence of the Chair. *See* Phlx By-Law Sec. 28–12.

[11] With the acquisition of the Exchange by The NASDAQ OMX GROUP, Inc., the Philadelphia Board of Trade, Inc ("PBOT") (n/k/a NASDAQ OMX Futures Exchange, Inc.) became a subsidiary of the parent holding company. Accordingly, the Exchange determined that it was no longer appropriate to provide for this special representation on the Board. *See* Notice, *supra* note 3, at 74 FR 11157.

[12] *See* the Exchange's Certificate of Incorporation, Article Sixth.

[13] The election of the Designated Governors is conducted pursuant to the Exchange's Trust Agreement under which an independent trustee exercises voting authority with respect to the one outstanding share of Series A Preferred Stock, which share has the exclusive right to elect and remove such Governors. The Series A Preferred Stock is voted by the trustee, pursuant to the Trust Agreement, as directed by Phlx members in accordance with the Exchange's governing documents.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59793; File No. SR–CBOE–2009–024]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Its Obvious Error Rules

April 20, 2009.

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 April 8, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 6.25, *Nullification and Adjustment of Equity Options Transactions*, and 24.16, *Nullification and Adjustment of Transactions in Index Options, Options on ETFs and Options on HOLDRS*. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### 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 and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. *Purpose*

CBOE proposes to amend Rules 6.25 and 24.16, pertaining to the nullification and adjustment of options transactions, in several respects.

*Merging Rules.* The Exchange is proposing to merge Rule 24.16 (which currently relates to only index, ETF and HOLDRS options) into Rule 6.25 (which currently relates to only equity options) to form a single obvious error rule. This merger will simplify the administration of the rules and incorporate a uniform obvious error approach for all equity, index, ETF, and HOLDRS options.

*Obvious Pricing Errors.* The Exchange is proposing certain changes to the Obvious Pricing Error provision of Rule 6.25. Under the current rule, an Obvious Pricing Error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by a specified amount. For purpose of the rule, the "Theoretical Price" of an option series is currently defined, for series traded on at least one other options exchange, as the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option class in the previous two calendar months. If there are no quotes for comparison, Trading Officials[3] determine the Theoretical Price.

First, the Exchange is proposing to amend Rule 6.25's definition of "Theoretical Price" to base it on the national best bid or offer ("NBBO") instead of the market with the most

[3] The term "Trading Officials" currently means two Exchange members designated as Floor Officials and one member of the Exchange's staff designated to perform Trading Official functions. *See* Rules 6.25.02 and 24.16.02.

liquidity. Using the NBBO to define Theoretical Price is similar to how "fair market value" is currently defined for obvious pricing errors under Rule 24.16.[4]

Second, the Exchange is proposing to permit Trading Officials to establish the Theoretical Price when the NBBO for the affected series, just prior to the erroneous transaction, is at least two times the permitted bid/ask differential under subparagraph (b)(iv)(A) of Rule 8.7, *Obligations of Market-Makers*. This provision is similar to a provision in the Nasdaq OMX Phlx's ("Phlx") obvious error rule, Phlx Rule 1092.

Third, the Exchange is proposing to provide for the adjustment of Obvious Pricing Error transactions involving non-CBOE Market-Makers provided the adjusted price does not violate the non-CBOE Market-Maker's limit price. By comparison, under the current provisions of Rule 6.25, such Obvious Pricing Error transactions involving non-CBOE Market-Makers are generally nullified (though certain transactions involving non-broker-dealer Customer orders are subject to adjustment if notification of the error is received more than fifteen minutes after the transaction). Allowing for adjustments to the extent possible within a non-CBOE Market-Maker's limit price is similar to how Rule 24.16 currently operates.

Fourth, the Exchange is proposing to revise the Obvious Pricing Error provision as it pertains to transactions occurring as part of the Rule 6.2A, *Rapid Opening System* ("ROS"), or Rule 6.2B, *Hybrid Opening System ("HOSS")*, rotations. Currently, for transactions occurring as part of ROS or HOSS, Theoretical Price is defined as the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). The Exchange is proposing to revise the Theoretical Price calculation to provide additional conditions that would apply during regular ROS and 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, which are the same as the conditions that currently apply for HOSS transactions under Rule 24.16, are intended to reasonably factor the amount of available liquidity into the Theoretical Price calculation during these rotations. Specifically, with respect to regular ROS and 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).[5] Any nullifications or adjustments would occur on a pro rata basis considering the overall size of the ROS or HOSS opening trade.[6]

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 carryover a condition from Rule 24.16 that the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) must be for at least the size of the HOSS opening transaction(s). If the size of the quote is less than the size of the opening transaction(s), then the Obvious Pricing Error provision shall not apply.[8]

Fifth, the Exchange is proposing to extend the expanded notification period applicable to transactions during opening rotations involving non-broker-dealer Customers to include certain orders entered before the opening that are executed immediately following the opening rotation. Specifically, Rule 6.25 currently requires that members notify CBOE Trading Officials or designated personnel in the control room within a short time period following the execution of a trade (generally 15 minutes) if they believe the trade qualifies as an Obvious Pricing Error. However, an expanded notification period is available for transactions during option rotation where at least one party to the transaction is a non-broker-dealer Customer. The application of this expanded notification period is currently limited to executions during opening rotations occurring as part of ROS or HOSS. The Exchange is proposing to amend the expanded notification period to be applicable to transactions involving non-broker-dealer Customers' marketable orders that are entered before the opening rotation and that are executed as part of the Hybrid Agency Liaison ("HAL") on the opening process, which is an automated procedure that auctions marketable orders entered prior to the opening rotation but that are not able to be executed as part of the HOSS single clearing price under Rule 6.2B.03. The Exchange is also proposing to make the expanded notification period applicable to transactions involving non-broker-dealer Customers' complex orders that are entered before the opening rotation and that are executed immediately following the opening rotation through the Exchange's electronic Complex Order Book under Rule 6.53C, *Complex Orders on the Hybrid System*, provided such a complex order would have been marketable against the opening rotation price(s) but for the fact that the complex orders do not eligible to participate in the opening rotation process under Rule 6.2B. As with our reasoning for adopting the existing relief for transactions during ROS and HOSS opening

[4] Under Rule 24.16, an Obvious Pricing Error is currently deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed minimum error amount. The "fair market value" of an option is currently defined as the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, fair market value is determined by Trading Officials. For singly listed issues, fair market value is the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

[5] For erroneous sell transactions, the size of the bid would be used. For erroneous buy transactions, the size of the offer would be used. 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 $1.10 and offered 150 contracts at $1.25. 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 lower than the fair market value of $1.10 by at least the prescribed minimum error amount of $0.25. 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 nullification or adjustment under the Obvious Pricing Error provision.

[6] Thus, 50 contracts executed against CBOE Market-Maker B would have a price adjustment to $1.10 (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 $1.10 (provided the adjusted price does not violate C's limit price).

[7] 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. The Obvious Pricing 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.

[8] 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 Theoretical Price and whether an Obvious Pricing 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 Pricing Error provision.

rotations, our intention of extending the expanded notification period to cover these two scenarios involving orders entered prior to the opening rotation is to protect the non-broker-dealer Customer who fails to discover an Obvious Pricing Error within 15 minutes of execution from being forced to accept an execution price that results from an Obvious Pricing Error.

Lastly with respect to Obvious Pricing Errors in binary options, the Exchange is proposing to provide that any price adjustment for a binary option series (including any adjustment penalty that may be applicable to transactions between CBOE Market-Makers) [9] shall not exceed the applicable exercise settlement amount for the binary option. As defined in CBOE Rule 22.1(e), the term "exercise settlement amount" as when used in reference to a binary option means the amount of cash that a holder will receive upon exercise of the contract.[10]

*Catastrophic Pricing Errors*

The Exchange is proposing to adopt a Catastrophic Pricing Error provision to address certain extreme circumstances, which provision would be similar to International Securities Exchange's ("ISE") catastrophic pricing error provision, ISE Rule 720. In particular, the Exchange proposes to add criteria for identifying "Catastrophic Errors" and making adjustments when Catastrophic Errors occur, as well as a streamlined procedure for reviewing actions taken in these extreme circumstances. As discussed above, currently under Rule 6.25, trades that result from an Obvious Pricing Error may be adjusted or busted according to objective standards. Under the Rule, whether an Obvious Pricing Error has occurred is determined by comparing the execution price to the Theoretical Price of the option. The rule requires that members notify CBOE Trading Officials or designated personnel in the control room within a short time period following the execution of a trade (generally 15 minutes) if they believe the trade qualifies as an Obvious Pricing Error. Trades that qualify for adjustment or nullified under the Rule to a price that matches the theoretical price plus or minus an adjustment penalty for transactions between CBOE Market-Makers, which is $0.15 if the Theoretical Value is under $3 and $0.30 if the Theoretical Value is at or above $3.

In formulating the Obvious Pricing Error rule, the Exchange has weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made an Obvious Pricing Error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. The Exchange states that, while it believes that the Obvious Pricing Error rule strikes the correct balance in most situations, in some extreme situations, members may not be aware of errors that result in very large losses within the time periods required under the Rule. In this type of extreme situation, CBOE believes members should be given more time to seek relief so that there is a greater opportunity to mitigate very large losses and reduce the corresponding large windfalls. However, to maintain the appropriate balance, the Exchange believes members should only be given more time when the execution price is much further away from the Theoretical Price than is required for Obvious Pricing Errors, and that the adjustment "penalty" should be much greater, so that relief is only provided in extreme circumstances.[11]

Accordingly, the Exchange proposes to amend Rule 6.25 to address "Catastrophic Errors." Under the new provision, members will have until 7:30 a.m. Central Time on the day following the trade to notify Trading Officials or designated personnel in the control room of a potential Catastrophic Error. For trades that take place in an expiring series on expiration Friday, notification must be received by 4 p.m. Central Time that same day. Once notification of a Catastrophic Error has been received within the required time period, a panel comprised of at least one (1) member of the Exchange's staff designated to perform Catastrophic Error Panel functions and four (4) Exchange members (the "Panel") will review the Catastrophic Error claim. Fifty percent of the number of Exchange members on the Panel must be directly engaged in market making activity and fifty percent of the number of Exchange members on the Panel must act in the capacity of a floor broker.

In the event the Panel determines that a Catastrophic Error did not occur, the member that initiated the review will be charged $5,000 to reimburse the Exchange for the costs associated with reviewing the claim. A Catastrophic Error would be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the option by an amount equal to at least the amount shown in the second column of the chart below (the "Minimum Amount"), and the adjustment would be made plus or minus the amount shown in column three of the chart below (the "Adjustment Value").[12] At all price levels, the Minimum Amount and the Adjustment Value for Catastrophic Errors would be significantly higher than for Obvious Pricing Errors, which the Exchange believes, would limit the application of the proposed rule to situations where the losses are very large.

| Theoretical price | Minimum amount | Adjustment value |
|---|---|---|
| Below $2 | $1 | $1 |
| $2 to $5 | 2 | 2 |
| Above $5 to $10 | 3 | 3 |
| Above $10 to $50 | 5 | 5 |
| Above $20 to $50 | 7 | 7 |
| Above $50 to $100 | 10 | 10 |
| Above $100 | 15 | 15 |

[9] As discussed further below, Rule 6.25 assesses a "penalty" in that the adjustment price is not as favorable as what the party making the error would have received had it not made the error.

[10] This proposed limitation on obvious pricing error adjustments for binary options is similar to an existing limitation on obvious pricing error adjustments for Credit Options. *See* Rule 29.15, *Nullification and Adjustments for Credit Option Transactions.*

[11] The Exchange does not believe the type of extreme situation that is covered by the proposed rule would occur in the normal course of trading. Rather, this type of situation could potentially occur as a result of, for example, an error in a member's quotation system that causes a market maker to severely misprice an option.

[12] Under the proposal, the proposed Minimum Amount would be the same as the corresponding Adjustment Values for Catastrophic Errors. By contrast, under ISE's rule for catastrophic errors, the minimum error amount and corresponding adjustment value may vary. *See* proposed CBOE Rule 6.25(a)(1) and (d), and ISE Rule 720(a)(2) and (d)(3).

*Erroneous Prints & Quotes in the Underlying.* The Exchange is proposing various changes to the provisions of Rule 6.25 relating to erroneous prints and quotes in the underlying. Under the current rule, an option trade resulting from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market may be nullified, provided the option trade results from a 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 for the same period. For purposes of the erroneous print provision, the "average trade" in the underlying security is determined by adding the prices of each trade during the four minute period (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question). The "average quote width" is determined by adding the quote widths for each separate quote during the four minute period (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question). In addition, electronic trades resulting from an erroneous quote in the underlying security may be adjusted or nullified in accordance with the adjustment calculation for Obvious Pricing Errors. An "erroneous quote" occurs when the underlying security has a width of $1 and has a width at least five times greater than the average quote width (as defined above) for such underlying security on the primary market during the period encompassing two minutes before and after the dissemination of the quote.

First, for consistency, the Exchange is proposing to amend the provision to allow for adjustments and nullifications of erroneous prints in the underlying (currently the provision calls for nullifications only). This change to allow for adjustments or nullifications is consistent with Rule 6.25's existing treatment of erroneous quotes in the underlying market and Rule 24.16's existing treatment of erroneous prints and quotes in underlying or related instruments.

Second, to make the administration of the rule less time consuming and less burdensome, the Exchange is also proposing to revise the provisions to determine the "average quote width" in the underlying by adding the quote widths of sample quotations at regular 15-second intervals during the two minutes preceding and following an erroneous transaction. This sampling approach is similar to Phlx Rule 1092.

Third, the Exchange is proposing to modify the erroneous trade and quote provisions to allow the Exchange to designate the applicable underlying security(ies) or related instruments for any option, which is how Rule 24.16 currently operates for ETF, HOLDRS, and index options. Under the revised rule, the Exchange would identify particular underlying or, with respect to ETF(s), HOLDRS(s), and index options, 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 "related instrument(s)" may include related ETF(s), HOLDRS(s), and/or index value(s),[13] and/or related futures product(s),[14] and the "relevant market(s)" may include one or more markets. The underlying or related instrument(s) and relevant market(s) will be designated by the Exchange 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. Again, this is currently how Rule 24.16 operates for ETF, HOLDRS and index options. The only substantive change being made by incorporating this provision into Rule 6.25, is that the Exchange would now have the ability to designate the "relevant market(s)" for equity options (whereas currently the Rule 6.25 references only the "primary market").

Thus, as an example for illustrative purposes only, for options on the Powershares QQQ Trust (the "Nasdaq 100 ETF"), the Exchange may determine to designate the underlying ETF (ETF symbol "QQQQ") 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.[15] As another example for illustrative purposes only, for the Exchange's class of options on International Business Machines Corporation, the underlying instrument would be IBM. The Exchange may determine to designate one or more underlying stock exchanges as the "relevant market(s)," such as the New York Stock Exchange ("NYSE") and the CBOE Stock Exchange ("CBSX").[16] The

[13] 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* Rule 24.16(a)(3).

[14] As with Rule 24.16, under Rule 6.25 the Exchange 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 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.)

[15] 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 amount at least five times greater than the average quote width for the futures product during the same period. 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.

[16] Using this example, under the revised rule, the relevant market(s) would be announced by Regulatory Circular. Thereafter, for a transaction in the IBM options class to be adjusted or nullified due to an erroneous print in an underlying security that is later cancelled or corrected, the trade must be the result of an erroneous report of the underlying IBM stock value on NYSE or CBSX that is higher or lower than the average price in the stock on the NYSE or CBSX market, as applicable, 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. To be adjusted or nullified due to an erroneous quote in the underlying security, an erroneous quote would occur when the IBM quote

Continued

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 equity, 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.

*Trading Officials & Obvious Error Panels.* The Exchange is proposing to amend its definition of the term Trading Officials. The term "Trading Officials" is currently defined in Rule 6.25 to mean two Exchange members designated as Floor Officials and one member of the Exchange's staff designated to perform Trading Official functions. The Exchange is proposing to change this definition to mean three Exchange officials designated to perform Trading Official functions, at least one of which is an Exchange member designated as a Floor Official and at least one of which is a member of the Exchange's staff designated to perform Trading Official functions. The Exchange is proposing to make the change at this time because it recently determined to change the composition of its Floor Officials committee to include more Exchange staff and the change in composition of the Trading Officials is more in keeping with the increasing role of the Exchange staff.

Finally, the Exchange is proposing to change a reference from "non-DPM floor brokers" to simply "floor brokers" in the composition requirements for Obvious Error Panels, which review certain determinations rendered by Trading Officials and the senior official in the Exchange's control room under Rule 6.25(b).[17] DPMs (which stands for Designated Primary Market-Makers) no longer function as floor brokers under CBOE Rules, so the Exchange is proposing that the outdated reference be removed.[18]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[19] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] 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. The proposed rule changes will simplify the administration of the Exchange's obvious error rules and incorporate a uniform obvious error approach for all equity, index, ETF, and HOLDRS options while maintaining reasonable and objective criteria for these types of reviews.

*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 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 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 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–CBOE–2009–024 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2009–024. 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 changes 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–024 and should be submitted on or before May 15, 2009.

on the NYSE or CBSX market, 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 IBM on the relevant market during the time period encompassing two minutes before and after the dissemination of such quote.

[17] Currently, Rule 6.25(c)(i) provides that an Obvious Error Panel is compromised [sic] of at least one (1) member of the Exchange's staff designated to perform Obvious Error Panel functions and four (4) Exchange members. The rule also provides that fifty percent of the Exchange members on the Obvious Error Panel must be directly engaged in market making activity and fifty percent must act in the capacity of a non-DPM floor broker.

[18] *See* Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (SR–CBOE–2005–46) (order approving a rule change related to the removal of agency responsibilities from DPMs and the establishment of PAR Officials).

[19] 15 U.S.C. 78s(b)(1).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–9388 Filed 4–23–09; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59789; File No. SR–FINRA–2009–009]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 1122 (Filing of Misleading Information as to Membership or Registration) in the Consolidated FINRA Rulebook

April 20, 2009.

On March 3, 2009, 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" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD IM–1000–1 as FINRA Rule 1122 in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook")[3] without material change. The proposed rule change was published for comment in the **Federal Register** on March 19, 2009.[4] The Commission received no comment letters in response to the proposed rule change. This order approves the proposed rule change.

NASD IM–1000–1 provides that the filing of membership or registration information as a Registered Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action. The proposed rule change renumbers NASD IM–1000–1 as FINRA Rule 1122 in the Consolidated FINRA Rulebook and clarifies its applicability to members and persons associated with members by specifying that "no member or person associated with a member" shall file incomplete or misleading membership or registration information. FINRA also eliminates the reference to the filing of registration information "as a Registered Representative" to clarify that the rule applies to the filing of registration information regarding any category of registration. In addition, FINRA deletes the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the proposed adoption of the NASD IM as a stand-alone FINRA rule.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association,[5] and in particular, with Section 15A(b)(6) of the Act,[6] 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's adoption of NASD IM–1000–1 as FINRA Rule 1122 in the Consolidated FINRA Rulebook clarifies its applicability and provides notice to members of behavior that violates just and equitable principles of trade.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–FINRA–2009–009) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

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[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual members must also comply with NASD Rules. For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 ("Rulebook Consolidation Process").

[4] *See* Securities Exchange Act Release No. 59563 (March 12, 2009), 74 FR 11792.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59782; File No. SR–BATS–2009–009]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

April 17, 2009.

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 April 14, 2009, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] 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 proposes to modify its fee schedule applicable to use of the Exchange. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 15, 2009.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 Exchange proposes to modify its fee schedule applicable to use of the Exchange effective April 15, 2009, in order to make modifications to certain of the Exchange's non-standard routing charges. The Exchange proposes to charge a consistent, discounted fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance will be $0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Specifically, BATS proposes to charge $0.0017 per share for BATS + NYSE Destination Specific Orders executed at NYSE, $0.0027 per share for BATS + NYSE ARCA Destination Specific Orders executed at NYSE Arca, and $0.0029 per share for BATS + NASDAQ Destination Specific Orders executed at NASDAQ, while such market centers currently charge removal rates of $0.0018 per share, $0.0028 per share, and $0.0030 per share,[5] respectively. In conjunction with this proposal, the Exchange proposes to set forth each of these fees under a new, separate heading, in order to make clear the order types to which "One Under" pricing applies. The new "One Under" pricing does not apply to securities priced below $1.00 nor does it apply to odd lot orders routed to NYSE Arca; such order types will continue to be priced as set forth on the Exchange's fee schedule. In addition, the Exchange will maintain the pricing currently charged by the Exchange for Destination Specific Orders sent to all other market centers that display Protected Quotations[6] (each a "Protected Market Center") other than the NYSE, NYSE Arca or NASDAQ.

2. Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues and that the changes it has proposed to provide discounted rates for routing to NYSE, NYSE Arca, and NASDAQ will benefit its Members. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

*(B) Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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–BATS–2009–009 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2009–009. 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 changes 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 BATS. 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–BATS–2009–009 and should be submitted on or before May 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–9370 Filed 4–23–09; 8:45 am]

BILLING CODE 8010–01–P

[5] This fee was announced by NASDAQ to its members on April 13, 2009, and will become effective on April 15, 2009. *See* NASDAQ Equity Trader Alert #2009–23.

[6] As defined in BATS Rule 1.5(s).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59786; File No. SR–NASDAQ–2009–033]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish InterACT, a New Service, and Related Fees.

April 17, 2009.

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 9, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] 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 the Substance of the Proposed Rule Change

Nasdaq proposes to adopt new Rule 7049 to establish fees for InterACT,[4] a tool to help member firms avoid reporting violations on the FINRA/NASDAQ Trade Reporting Facility ("TRF") and Regulation NMS trade throughs.

The text of the proposed rule change is below. Proposed new language is *underlined*; proposed deletions are in brackets.[5]

* * * * *

***7049. Nasdaq InterACT***

*Nasdaq InterACT is a surveillance tool that provides summaries of a subscribing member's trade activity for the FINRA/NASDAQ Trade Reporting Facility. Such summaries include the total number of trades that have been reported to the Facility, various statistics associated with those trades reported (including: declines, cancels, step-outs, as-ofs, etc), the total number of trades that must be reviewed for acceptance, and the total number of Regulation NMS trade throughs.*

*InterACT is available to each member firm at no cost for a 60 day trial period. Thereafter, InterACT is available for a subscription fee of $300 per month, per user, for the first three users, and $100 per month, per user, for each additional user, with a maximum fee of $1,500 per month, per member firm.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq proposes to establish a new add-on service to the Nasdaq Workstation and Weblink ACT 2.0, and establish related fees. InterACT is a new compliance tool that allows member firms to supervise in real-time trade activity required to be reported to the TRF. The TRF is a transaction reporting facility managed by the Financial Industry Regulatory Authority, Inc. ("FINRA"). FINRA Rule 7230A(b) details how and when trade reports are to be submitted to the TRF. Specifically, FINRA Rule 7230A(b) requires that transactions in reportable securities be reported to the TRF within ninety seconds after execution by a party to the transaction.[6] FINRA Rule 7230A(b) further requires that member firms accept or decline transactions entered into the TRF by the reporting counterparty to a transaction within twenty minutes. InterACT provides subscribers with real-time totals of the number of trades that have exceeded the ninety second or twenty minute thresholds. This proactive alerting tool will allow subscribers to quickly identify violations of FINRA Rule 7230A(b) and take action to remediate the source of the violation. In this regard, InterACT provides a link to query the trades, which will allow users to gain full access to the details of the trades identified.[7] InterACT also provides subscribers with the number of trade reports that are nearing the twenty minute threshold to accept or decline the reported transaction, which will assist firms in identifying any backlogs and allocating resources necessary to avoid a violation of FINRA Rule 7230A(b).

In addition to aiding member firms with their TRF reporting compliance, InterACT provides subscribers with tools to assist in complying with Rule 611 of Regulation NMS[8]. Rule 611 under the Act[9] requires trading centers, which include certain broker-dealers and market makers,[10] to, among other things, avoid trading through protected orders and regularly surveil to ascertain the effectiveness of the policies and procedures designed to prevent trade throughs.[11] Such firms must take prompt action to remedy deficiencies in their policies and procedures.[12] To assist member firms with compliance with these requirements, InterACT provides real time totals of the number of a subscribing member firm's trade throughs during the day. The totals differentiate between the number of trade throughs marked as exempt and the number of trade throughs that are not.[13] As such, these reports provide a useful tool with which subscribers are able to quickly identify occurrences of trade throughs, determine whether such trade throughs are marked exempt, and, when appropriate, to take action to remediate the cause of any non-exempt trade throughs.[14]

InterACT can only be accessed using an existing Nasdaq Workstation or Weblink ACT 2.0 user account. Members subscribing to InterACT are charged a monthly fee per user, which provides InterACT access for each Nasdaq Workstation and Weblink ACT 2.0 user account selected for subscription to InterACT. Nasdaq proposes to offer InterACT to each subscribing member firm initially at no cost for a sixty-day trial period, after which Nasdaq proposes to charge a subscription fee of $300 per month, per user for the first three users, and $100

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Commission notes that Nasdaq is also establishing the InterACT service with this proposed rule change.

[5] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com*. The Commission notes that there are no deletions.

[6] FINRA Rule 7230A(c) details the reporting responsibilities of the parties to the transaction.

[7] Detailed information regarding each trade that exceeded the applicable deadline is available for fee through Nasdaq's Regulation Reconnaissance service.

[8] 17 CFR 242.611.

[9] *Id.*

[10] 17 CFR 242.600(b)(78).

[11] 17 CFR 242.611(a).

[12] *Id.*

[13] Certain transactions are eligible for an exception to the trade through rule. 17 CFR 242.611(b).

[14] Detailed information regarding each trade through is available for an additional fee through Nasdaq's Regulation Reconnaissance service.

per month, per user for each additional user. Nasdaq proposes to limit the maximum fee charged to a subscriber to $1,500 per month, per member firm. Nasdaq believes the subscription fee fairly reflects the value of this product. Use of InterACT is voluntary and the subscription fee will be imposed on all purchasers equally based on the number of users selected. The proposed fee will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and Section 6(b)(4) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. As noted, use of InterACT is voluntary and the subscription fees will be imposed on all purchasers equally based on the number of users, with a maximum fee of $1,500 per month, per member firm. The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things.[17]

Nasdaq also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act[18] because 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. InterACT will assist subscribing member firms to quickly identify violations of FINRA Rule 7230A(b) and Rule 611 under the Act,[19] in turn allowing member firms to quickly remediate the cause of the violation and stem subsequent violations. InterACT will also provide subscribers with real time totals of open trades awaiting review and acceptance within the twenty minute period required by FINRA Rule 7230A(b). As a consequence, the subscriber will be aware of any review backlog and may take action to avoid a violation.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder,[21] Nasdaq has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for thirty days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has provided 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. Nasdaq believes that the filing may appropriately be designated for filing under Rule 19b–4(f)(6) because the filing provides a useful enhancement to an existing facility of Nasdaq that is designed to assist members in detecting and avoiding rule violations, and establishes a reasonable fee for such enhancement.

*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–NASDAQ–2009–033 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–033. 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 also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–033 and should be submitted on or before May 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Florence E. Harmon,**

*Deputy Secretary.*

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[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] The Commission notes that in setting these fees, Nasdaq has also allowed for a profit margin of some amount, although that amount has not been disclosed to the Commission. Telephone conversation on April 15, 2009 among Sean Bennett, Nasdaq, Katherine England, SEC, and Joseph Morra, SEC.

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 242.611.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59781; File No. SR–NYSEArca–2009–28]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the ETFS Silver Trust

April 17, 2009.

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 6, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving 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 Exchange proposes to list and trade shares ("Shares") of the ETFS Silver Trust (the "Trust") pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyx.com*, at the Exchange's principal office 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."[3] The Commission has previously approved listing on the Exchange under Rule 8.201 shares of the iShares Silver Trust and the streetTRACKS Gold Trust,[4] and, prior to their listing on the Exchange, approved listing of the iShares Silver Trust on the American Stock Exchange LLC (now known as "NYSE Amex LLC").[5] In addition, the Commission has approved trading of the iShares Silver Trust and the streetTRACKS Gold Trust on the Exchange pursuant to UTP.[6]

The Trust will issue ETFS Silver Shares ("Shares") which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of silver bullion, less the Trust's expenses.[7]

ETFS Services USA LLC is the sponsor of the Trust,[8] Bank of New York Mellon is the trustee of the Trust ("Trustee"),[9] and HSBC Bank U.S.A., N.A.is the custodian of the Trust ("Custodian").[10]

The Exchange represents that the Shares satisfy the requirements of Rule 8.201 and thereby qualify for listing on the Exchange.[11]

Global Over-The-Counter Market

According to the Registration Statement, the global trade in silver consists of Over-the-Counter ("OTC") transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options.

The OTC silver market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London (the biggest venue), New York and Zurich.

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making members of the LBMA, the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market. The eleven market-making members of the LBMA are: Barclays Bank plc, Deutsche Bank AG, HSBC Bank USA, N.A. (through its London branch), Goldman Sachs International, JPMorgan Chase Bank, ScotiaMocatta (a division of the Bank of Nova Scotia), Société Générale, Mitsui & Co. Precious Metals Inc., Bear Stearns Forex Inc., Royal Bank of Canada, and UBS AG. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery and other factors. Bullion dealers customize transactions to meet clients' requirements. The OTC market has no formal structure and no open-outcry meeting place.

[3] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[4] *See* Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust); 56224 (August 8, 2007) 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust).

[5] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72).

[6] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[7] *See* the Registration Statement for the ETFS Silver Trust on Form S–1, filed with the Commission on March 20, 2009 (No. 333–156307). The descriptions of the Trust, the Shares and the silver market contained herein are based on the Registration Statement.

[8] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated April 14, 2009.

[9] The Trustee is generally responsible for the day-to-day administration of the Trust. This includes (1) selling the Trust's silver as needed to pay the Trust's expenses (silver sales are expected to occur approximately monthly in the ordinary course), (2) calculating the net asset value ("NAV") of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and The Depository Trust Company ("DTC") and (4) monitoring the Custodian.

[10] The Custodian is responsible for the safekeeping of the Trust's silver deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian also facilitates the transfer of silver in and out of the Trust through silver accounts it will maintain for Authorized Participants and the Trust. The Custodian is a market maker, clearer and approved weigher under the rules of the London Bullion Market Association ("LBMA").

[11] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

The main centers of the OTC market are London, New York and Zurich. Mining companies, central banks, manufacturers of jewelry and industrial products, together with investors and speculators, tend to transact their business through one of these market centers. Centers such as Dubai and several cities in the Far East also transact substantial OTC market business, typically involving jewelry and small bars (1 kilogram or less). Bullion dealers have offices around the world and most of the world's major bullion dealers are either members or associate members of the LBMA. Of the eleven market-making members of the LBMA, six offer clearing services. There are a further 59 full members, plus a number of associate members around the world. These numbers may change from time to time as new members are added and existing members drop out.

The London Bullion Market

Although the market for physical silver is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the "London Good Delivery Lists," which are the lists of LBMA accredited melters and assayers of silver. The LBMA also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.[12]

The term "loco London" silver refers to silver physically held in London that meets the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of a LBMA acceptable refiner) and appearance set forth in "The Good Delivery Rules for Gold and Silver Bars" published by the LBMA. Silver bars meeting these requirements are described in the Trust's prospectus as "London Good Delivery Bars." The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams = 32.1507465 troy ounces and 1 troy ounce = 31.1034768 grams. A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the OTC market. A London Good Delivery must contain between 750 ounces and 1100 ounces of silver with a minimum fineness (or purity) of 999.0 parts per 1000. A London Good Delivery Bar must also bear the stamp of one of the refiners who are on the LBMA-approved list. Unless otherwise specified, the silver spot price always refers to that of a London Good Delivery Bar. Business is generally conducted over the phone and through electronic dealing systems.

Once daily during London trading hours there is a fix ("London Fix") which provides reference silver prices for that day's trading. According to the Registration Statement, many long-term contracts will be priced on the basis of the London Fix, and market participants will usually refer to this price when looking for a basis for valuations. The London Fix is the most widely used benchmark for daily silver prices and is quoted by various financial information sources.

Three market making members of the LBMA conduct the Silver Fixing meeting under the chairmanship of The Bank of Nova Scotia-ScotiaMocatta by telephone at 12 noon London time each working day. The other two members of the Silver Fixing are Deutsche Bank AG and HSBC Bank USA, NA.

Orders are placed either with one of the three fixing members or with another bullion dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a "trying price," reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The silver price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. According to the Registration Statement, the London Fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

Futures Exchanges

According to the Registration Statement, the most significant silver futures exchanges are the COMEX, operated by Commodities Exchange, Inc., a subsidiary of New York Mercantile Exchange, Inc. ("NYMEX"), and the Tokyo Commodity Exchange (TOCOM). Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options traded. Trading costs on these exchanges is negotiable. The Exchange represents that, as a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the silver represented by the contracts traded. Both COMEX and TOCOM permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

Market Regulation

The global silver markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority ("FSA") as provided by the Financial Services and Markets Act 2000 ("FSM Act"). Under this act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls.

The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England.

The TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry (METI), the regulatory authority that oversees the operations of the TOCOM.

According to the Registration Statement, the Trust will not trade in silver futures contracts on COMEX or on any other futures exchange. The Trust will take delivery of physical silver that complies with the LBMA silver delivery rules. Because the Trust will not trade in silver futures contracts on any futures exchange, the Trust will not be regulated by the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act ("CEA")

[12] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

as a "commodity pool," and will not be operated by a CFTC-regulated commodity pool operator. Investors in the Trust will not receive the regulatory protections afforded to investors in regulated commodity pools, nor may COMEX or any futures exchange enforce its rules with respect to the Trust's activities. In addition, investors in the Trust will not benefit from the protections afforded to investors in silver futures contracts on regulated futures exchanges.

Product Description

The activities of the Trust will be limited to (1) issuing Baskets (as defined below) of Shares in exchange for the silver deposited with the Custodian as consideration, (2) selling silver as necessary to cover the Sponsor's Fee, Trust expenses not assumed by the Sponsor and other liabilities, and (3) delivering silver in exchange for Baskets of Shares surrendered for redemption. The Trust will not be actively managed. It will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of silver.

The investment objective of the Trust is for the Shares to reflect the performance of the price of silver bullion, less the Trust's expenses. The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in silver. An investment in physical silver requires expensive and sometimes complicated arrangements in connection with the assay, transportation, warehousing and insurance of the metal. Although the Shares will not be the exact equivalent of an investment in silver, they provide investors with an alternative that allows a level of participation in the silver market through the securities market.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act. The Trust will not hold or trade in commodity futures contracts regulated by the CEA, as administered by the CFTC. According to the Registration Statement, the Trust is not a commodity pool for purposes of the CEA, and the Sponsor and Trustee are not subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

Creation and Redemption Process

Issuances of Shares will be made only in baskets of 100,000 shares or multiples thereof ("Baskets").[13] The Trust will issue and redeem Baskets daily, by or through registered broker-dealers that have entered into participant agreements (each, an "Authorized Participant")[14] with the Trustee. The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of silver and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined net asset value ("NAV") of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

The total deposit required to create each Basket (the "Creation Basket Deposit") will be an amount of silver and cash, if any, that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to purchase is properly received as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets.[15]

The amount of the required silver deposit is determined by dividing the number of ounces of silver held by the Trust by the number of Baskets outstanding, as adjusted for estimated accrued but unpaid fees and expenses, as described in the Registration Statement.

The Shares will not be individually redeemable but will only be redeemable in Basket size. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.*, 100,000 Shares). Redeeming Authorized Participants will receive an allocation of silver to their accounts, in accordance with procedures set forth in the Registration Statement. Shares will be registered in book-entry form through DTC.

The Exchange states that the Creation Basket Deposit necessary for the creation of a Basket will slightly diminish each day depending on the Trust's daily expense accrual and the market price of silver. The initial Creation Basket Deposit will be a specified number of ounces of silver (with each Share initially representing one ounce of silver). On each day that the Exchange is open for regular trading, The Bank of New York Mellon will adjust the quantity of silver constituting the Creation Basket Deposit as appropriate to reflect sales of silver needed for payment of the Sponsor's fee (which is similar to an expense ratio) and any extraordinary expenses or liabilities not assumed by the Sponsor. The Bank of New York Mellon will determine the Creation Basket Deposit for a given business day by subtracting the daily expense accrual from the previous day's total ounces of silver in the Trust and then dividing the number of Baskets outstanding. Fractions of an ounce of silver smaller than .001 will be disregarded.

The creation/redemption process in connection with the Shares is an in-kind exchange of silver for Shares, rather than an exchange of silver for cash. Except for the accrual of the Sponsor's fee or extraordinary expenses or liabilities, the process is based entirely on the delivery of silver in exchange for Shares. Thus, throughout each business day, the Exchange states that the actual number of ounces required for the Creation Basket Deposit usually will not change even though the value of the Creation Basket Deposit may change based on the market price of silver.

Valuation of Silver, Definition of Net Asset Value and Adjusted Net Asset Value ("ANAV")

According to the Registration Statement, as of the London Fix on each day that the Exchange is open for regular trading or, if there is no London Fix on such day or the London Fix has not been announced by 12 noon New York time on such day, as of 12 noon New York time on such day (the "Evaluation Time"), the Trustee will

[13] Initially, each Share represents one ounce of silver.

[14] An "Authorized Participant" is a person who (1) is a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, (2) is a participant in DTC, (3) has entered into a Participant Agreement with the Trustee and the Sponsor, and (4) has established an Authorized Participant Unallocated Account with the Custodian.

[15] The amount of any required cash deposit is determined as follows. The estimated unpaid fees, expenses and liabilities of the Trust accrued through the purchase order date are subtracted from any cash held or receivable by the Trust as of the purchase order date. The remaining amount is divided by the number of Shares outstanding immediately before the purchase order date and then multiplied by the number of Shares being created pursuant to the purchase order. If the resulting amount is positive, this amount is the required cash deposit. If the resulting amount is negative, the amount of the required silver deposit will be reduced by the number of fine ounces of silver equal in value to that resulting amount, determined at the price of silver used in calculating the NAV of the Trust on the purchase order date.

evaluate the silver held by the Trust and determine both the ANAV and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust's silver on the basis of that day's London Fix or, if no London Fix is made on such day or has not been announced by the Evaluation Time, the next most recent London Fix determined prior to the Evaluation Time will be used, unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate as a basis for evaluation. In the event the Trustee and the Sponsor determine that the London Fix or last prior London Fix is not an appropriate basis for evaluation of the Trust's silver, they shall identify an alternative basis for such evaluation to be employed by the Trustee.[16]

Once the value of the silver has been determined, the Trustee will subtract all estimated accrued but unpaid fees, expenses and other liabilities of the Trust from the total value of the silver and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor's Fee.

To determine the Trust's NAV, the Trustee will subtract the amount of estimated accrued but unpaid fees computed by reference to the ANAV of the Trust and to the value of the silver held by the Trust from the ANAV of the Trust. The resulting figure is the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the Exchange (which includes the net number of any Shares created or redeemed on such evaluation day).

Shortly after 4 p.m. E.T. each business day, the Trust will disseminate the NAV for the Shares and the Creation Basket Deposit (for orders properly placed by 4 during the day). The Creation Basket Deposit and NAV will be publicly available simultaneously to all market participants and will be communicated to all Authorized Participants via facsimile or electronic mail message and on the Trust's Web site. The Exchange also will disclose the NAV on its Web site.

Liquidity

The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by the non-concurrent trading hours between the major silver markets and the Exchange. While the Shares will trade on the Exchange from 4 a.m. to 8 p.m. E.T., liquidity in the OTC market for silver will be reduced after the close of the major world silver markets, including London, Zurich, and the COMEX. As a result, trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity.

Availability of Information Regarding Silver Prices

Although the spot price of silver will not be disseminated over the facilities of CTA, the last sale price for the Shares, as is the case for all equity securities traded on the Exchange will be disseminated over the CTA's Network B. In addition, there is a considerable amount of silver[17] price and market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London silver fix is also disseminated by various market data vendors and is available from the LBMA's Web site. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of silver and last sale prices of silver futures contracts and related options, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver prices directly from market participants.[18] Complete real-time data for silver futures contracts and options prices traded on the COMEX is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at *http://www.nymex.com*. The Exchange also notes that there are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. Current silver spot prices are also generally available with bid/ask spreads from silver bullion dealers.[19]

Availability of Information Regarding Shares

The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Asked Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV,[20] within appropriate ranges for each of the four previous calendar quarters; (e) the Creation Basket Deposit; (f) the Prospectus; and (g) other applicable quantitative information.

As described above, the NAV for the Trust will be calculated and disseminated daily.

The Exchange also will disseminate for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value (as discussed below), recent NAV, and shares outstanding. The Exchange will also make available on its Web site daily trading volume, closing prices, NAV and the Creation Basket Deposit. The London silver fix price is readily available from the LBMA at *http://www.lbma.org.uk*, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at *http://www.nyx.com* to the Trust's Web site at *http://www.etfsecurities.com*.

Dissemination of Indicative Trust Value

The Trustee will calculate the NAV of the Trust once each trading day. In addition, the Trust will cause to be made available on a daily basis the required amount of silver to be

[16] The Exchange, pursuant to Rule 7.12, has discretion to halt trading in the Shares if the London Fix is not determined or available for an extended time period based on extraordinary circumstances or market conditions.

[17] The period of greatest liquidity in the silver market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in New York, London, Zurich and other centers coincides with futures and options trading on the COMEX division of the NYMEX. This period lasts for approximately four hours each New York business day morning.

[18] In addition, ICAP's EBS platform also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to market data subscribers. Approximately 1.5 million ounces in gold, 10 million ounces in silver and $190 billion a day in spot foreign exchange transactions is traded each day over the EBS trading platform. *See http://www.icap.com.*

[19] The silver spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time.

[20] The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

deposited in connection with the issuance of Shares in Basket size.

In order to provide updated information relating to the Trust for use by investors, professionals, and Authorized Persons wishing to create or redeem Shares, the Exchange will disseminate through the facilities of CTA an updated Indicative Trust Value ("ITV"). The Indicative Trust Value will be disseminated on a per Share basis at least every 15 seconds during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m. ET). The Indicative Trust Value, as calculated by the Exchange or a third party financial data provider, will be calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver from silver dealer pricing.[21] The ITV on a per Share basis disseminated during the Exchange's Core Trading Session should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Trust Value based on the amount of silver required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with Shares trading on the Exchange or the creation or redemption of Shares.

Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than $350 million (as adjusted for inflation) at any time after the first anniversary after the Trust's formation and the Trustee receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares ("Shareholders") owning at least 75% of the outstanding Shares. Additional termination events are described in the Registration Statement.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in Rule 8.201(d) for initial and continued listing of the Shares.

[21] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Arca, to Christoper W. Chow, Special Counsel, Commission, dated April 9, 2009.

It is anticipated that a minimum of 100,000 Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the iShares Silver Trust, the streetTRACKS Gold Trust, the iShares COMEX Gold Trust and exchange-traded funds. It is anticipated that the initial price of a Share will be approximately $10.00. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). 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.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying silver, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying silver, related futures or options on futures or any other related derivative (including the Shares). In addition, NYSE Arca Equities Rule 8.201(g) prohibits an ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the underlying silver, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares 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 conditions in the underlying silver market have caused disruptions and/or lack of trading, 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 will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[22]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) 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 and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading 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. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying silver, silver futures contracts, options on silver futures, or any other silver derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG")

[22] *See* NYSE Arca Equities Rule 7.12.

from other exchanges who are members of the ISG.[23] Also, the Exchange has an Information Sharing Agreement with NYMEX for the purpose of sharing information in connection with trading in or related to COMEX silver futures contracts.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. *Specifically, the Information Bulletin will discuss the following:* (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable and that silver is a wasting asset); (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; (3) how information regarding the ITV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of silver trading during the Core and Late Trading Sessions after the close of the major world silver markets, and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b)[24] of the Act in general and furthers the objectives of Section 6(b)(5)[25] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Exchange believes that the proposal will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

*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. 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–2009–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–28. 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 publicly available. All submissions should refer to File Number SR–NYSEArca–2009–28 and should be submitted on or before May 15, 2009.

**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.[26] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5)[27] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The listing and trading of an additional type of

[23] A list of ISG members is available at *http://www.isgportal.org*. The Exchange notes that TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 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).

[27] 15 U.S.C. 78f(b)(5).

commodity-based product should enhance competition among market participants and thereby benefit investors and the marketplace.

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[28] which sets forth Congress's 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. The Exchange will make available, through the facilities of the CTA, the last sale price information for the Shares. In addition, the Exchange will disseminate each day through the facilities of the CTA the number of Shares outstanding and the ITV on a per-Share basis at least every 15 seconds from 9:30 a.m. to 4 p.m. ET. The Web site for the Trust, which will be publicly accessible, contains information related to the NAV, including the Bid-Asked Price, the Creation Basket Deposit, calculation information and data related to the premium or discount of the Bid-Asked Price against the NAV, the Prospectus, and other applicable quantitative information, including trading volume data, NAV, and closing prices. Shortly after 4 p.m. ET each business day, the Trust will disseminate the NAV for the Shares, and the Creation Basket Deposit. Information on silver prices and markets is available on public Web sites and through professional and subscription services, and investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers. Complete real-time data for silver futures contracts and options prices traded on the COMEX is available by subscription from information services such as Reuters or Bloomberg, and information on silver is available from published or other public sources. NYMEX also provides delayed futures and options information free of charge.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange has represented that the Trustee will calculate, and the Trust will disseminate, the NAV per Share daily, and make the NAV available to all market participants at the same time. In addition, NYSE Arca Equities Rule 8.201(i) provides that, in connection with trading in an underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivative, including Commodity-Based Trust Shares, an ETP Holder acting as a Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares is restricted from using any material non-public information received from any person associated with such ETP Holder regarding by such person in the underlying physical commodity, related commodity futures or options on commodity futures, or other related commodity derivatives.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 8.201(e)(2) provides that, when the Exchange is the listing market, if the value of the underlying commodity or ITV is no longer calculated or available on at least a 15-second delayed basis, the Exchange would consider suspending trading in the Shares. The Exchange has further represented that trading on the Exchange in the Shares 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 conditions in the underlying silver market have caused disruptions and/or lack of trading; 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 will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule. NYSE Arca Equities Rule 8.201(e)(2) also provides that the Exchange may seek to delist the Shares in the event the value of the underlying silver or the ITV is no longer calculated or available as required.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing Exchange rules governing the trading of equity securities.

In support of this proposal, the Exchange has made representations, including:

(1) The Exchange's surveillance procedures are adequate to deter and detect violations of Exchange rules and applicable federal securities laws.

(2) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is conditioned on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[29] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Exchange's proposal to list and trade the Shares does not present any novel or significant regulatory issues. Previously, the Commission approved a proposal by the Exchange to list and trade shares of another trust that holds silver bullion pursuant to NYSE Arca Equities Rule 8.201.[30]

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NYSEArca–2009–28) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–9385 Filed 4–23–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59788; File No. SR–FINRA–2007–024]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments Involving Best Execution and Interpositioning

April 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[29] 15 U.S.C. 78s(b)(2).

[30] *See* Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing and trading of shares of the iShares Silver Trust). *See also* Securities Exchange Act Release No. 53521 (March 20, 2006); 71 FR 14967 (March 24, 2006) (SR–Amex–2005–072) (approving listing and trading of shares of the iShares Silver Trust on the American Stock Exchange LLC).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. On April 13, 2009, 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 amended, 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 2320 to update members' best execution obligations involving interpositioning and to amend NASD Rule 3110(b), NASD IM–2320, and FINRA Rule 6635 to reflect the redesignation of certain paragraphs in NASD Rule 2320.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA 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, 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 2320(b) (the "Interpositioning Rule") requires that, when interposing a third party between a member and the best available market for a security, the member must show that the total cost or proceeds of the transaction were better than the prevailing inter-dealer market. Accordingly, it is a violation of the Interpositioning Rule if a member interposes a third party and the total cost of the transaction is equal to or greater than that of the prevailing inter-dealer market or the total proceeds of the transaction were equal to or less than that of the prevailing inter-dealer market.

Although unclear from the legislative history of the Interpositioning Rule, it appears that the intent of requiring a "better than" standard, rather than an "equal to" standard, was to deter members from interposing a third party in transactions that should be sent directly to a market maker.[3] Since the adoption of the Interpositioning Rule in 1968, there have been substantial changes to the ways in which markets function, including technological advances, increased market transparency in the equities markets, and the development of electronic communication networks and order routing services. These changes enable firms, under certain circumstances, to use intermediaries and third parties to improve the handling of orders with no additional cost to the customer. Firms are now frequently able to send an order to a third party with minimal or no delay in the execution of the customer's order and with no additional cost to the customer. In addition, there are occasions when the use of a third party may be necessary to effectuate the execution of an order. For example, a firm may need to involve a third party if it receives an order for a foreign security that may not trade in the United States and the firm lacks the ability to execute the order without involving another broker-dealer. The language of the Interpositioning Rule could be read to include such circumstances, even if the customer incurs no additional cost or the cost is necessary to effectuate the trade. FINRA believes that the current language of the Interpositioning Rule does not reflect the reality of recent technological advances in order handling and that the rule could be read to prohibit conduct that does not adversely affect the customer and, in some cases, benefits the customer.

The proposed rule change is intended to address the potential overbreadth of the current Interpositioning Rule while making clear that interpositioning third parties in a way that results in customer harm is still prohibited. The proposed rule change would replace the current Interpositioning Rule with a more general statement that the factors enumerated in Rule 2320(a) apply to those situations contemplated by the Interpositioning Rule (*i.e.*, orders routed to third parties between a member and the best available market). Rule 2320(a) states that members and persons associated with a member must use reasonable diligence to ascertain the best market for a security when handling transactions for or with a customer or a customer of another broker-dealer. Among the factors to be considered in determining whether a member has used reasonable diligence to ascertain the best market for a security, are: (1) The character of the market for the security, *e.g.*, price, volatility, relative liquidity, and pressure on available communications; (2) the size and type of transaction; (3) the number of markets checked; (4) accessibility of the quotation; and (5) the terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member. In addition, Rule 2320(a) requires members and persons associated with a member to buy or sell in the best market "so that the resultant price to the customer is as favorable as possible under prevailing market conditions."

Rather than focusing exclusively on cost, as the current Interpositioning Rule does, the proposed rule change would apply the standards in Rule 2320(a) to the execution of all orders, including those involving interposed third parties. Thus, although the cost (or, as phrased in 2320(a), the resultant price) to a customer would remain a crucial factor in determining whether a member has fulfilled its best execution obligations under Rule 2320, particularly in the context of retail customer order executions, the proposed rule change would allow an analysis of a variety of factors, based on the terms of the customer's order and instructions, rather than focusing solely on cost any time a member interposes a third party between the member and the best available market for a security.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the mid-1980s, as part of extensive amendments to NASD rules, several changes to the Interpositioning Rule were proposed but never adopted. *See NASD Notice to Members 89–20* (February 17, 1989); *NASD Notice to Members 86–9* (February 7, 1986). One of the proposed changes, which is similar to the current proposed rule change, would have prohibited interpositioning unless a member could demonstrate that the price paid or received by the customer was "better than or equal to" the prevailing inter-dealer price. One commenter to that proposal, the Securities Industry Association, which merged with the Bond Market Association to form the Securities Industry and Financial Markets Association, supported the proposal, noting that if a member deems it advantageous for legitimate business reasons to buy or sell a security from a non-market maker and the customer receives a price equal to the inter-dealer price, the customer would not be prejudiced.

[4] A member's best execution obligations under NASD Rule 2320 require a member to buy or sell a security in the best market for the subject security "so that the resultant price to the customer is as

However, interpositioning that is unnecessary or violates a member's general best execution obligations—either because of unnecessary costs to the customer or improperly delayed executions—would still be prohibited.

The effective date of the proposed rule change will be the date of Commission approval. FINRA will announce the approval in a *Regulatory Notice* within 30 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,[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 the proposed rule change will allow for a determination of best execution to be based on all of the facts and circumstances surrounding an order rather than a singular focus on one aspect of the transaction.

*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 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–FINRA–2007–024 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2007–024. 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 publicly available. All submissions should refer to File Number SR–FINRA–2007–024 and should be submitted on or before May 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–9374 Filed 4–23–09; 8:45 am]

BILLING CODE 8010–01–P

favorable as possible under prevailing market conditions." However, other FINRA rules also apply when handling customer orders. For example, NASD Rule 2440 and FINRA Rule 2010 prohibit members from charging customers more than a fair commission or service charge, taking into consideration all relevant circumstances. If a member interposes a third party that charges a commission or service charge, the member must ensure that the total resulting commissions or service charges paid by the customer are fair. Consequently, unnecessarily interposing a third party in a transaction and passing on to a customer a fee charged by that third party would violate NASD Rule 2440 and FINRA Rule 2010.

[5] 15 U.S.C. 78o–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59784; File No. SR–FINRA–2009–019]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 1010 (Electronic Filing Requirements for Uniform Forms) and 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the Consolidated FINRA Rulebook

April 17, 2009.

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, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 adopt, subject to certain amendments, NASD Rules 1140 (Electronic Filing Rules) and 3080 (Disclosure to Associated Persons When Signing Form U–4) as FINRA rules in the consolidated FINRA rulebook. The proposed rule change would renumber NASD Rule 1140 as FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) and NASD Rule 3080 as FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the consolidated FINRA rulebook.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA 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, 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to adopt, subject to certain amendments; NASD Rule 1140 (Electronic Filing Rules) as new FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) and NASD Rule 3080 (Disclosure to Associated Persons When Signing Form U–4) as new FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4). The details of the proposed rule change are described below.

Proposed FINRA Rule 1010

Web CRD is an interactive, web-based registration system that maintains the qualification, employment and disclosure information, fingerprint requirements, registration fees and renewal fees for more than half a million registered persons.[4] NASD Rule 1140 supports the information reported to Web CRD by requiring each member to file its Forms U4, U5, BR, BDW, and BD amendments (referred to collectively as "Uniform Forms")[5] via electronic process or such other process as FINRA may prescribe to Web CRD.[6] NASD Rule 1140 also requires that the member retain and provide upon regulatory request every original, signed initial and transfer Form U4 that form the basis of the member's electronically filed Forms U4 and every record of the member's electronically filed initial and amended Forms U5.[7]

Additionally, NASD Rule 1140 requires each member to identify a registered principal(s) or corporate officer(s) who has a position of authority over registration functions to be responsible for supervising the firm's electronic filings. Also, the registered principal(s) or corporate officer(s) who has the responsibility to review and approve the electronically filed forms must acknowledge, electronically, that he is filing the information on behalf of the member and the member's associated persons. Finally, the rule permits a member to use third-party providers to submit electronic filings; however, the member remains ultimately responsible for the timeliness and content of the filings.[8]

The proposed rule change amends these rule requirements in several respects. First, the proposed rule change codifies FINRA's position that every initial and transfer electronic Form U4 must be based on an original, manually signed Form U4 provided to the member by the person on whose behalf the Form U4 is being filed.[9] While the current rule specifies that an electronic initial and transfer Form U4 must be based on a signed Form U4, it does not expressly state that such signatures be manual. FINRA believes it is important to have clear evidence of the associated person's execution of the initial and transfer Form U4s, including his or her agreement to the attestations set forth in the form.

Second, the proposed rule change modifies the signature requirement with respect to amendments to disclosure information in the Form U4. Currently, amendments to Form U4 that provide disclosure information must be signed by the associated person on whose behalf the filing is made. However, the new FINRA rule would permit a firm to file amendments to the Form U4 disclosure information without obtaining the registered person's manual signature if the firm uses reasonable efforts to (1) provide the registered person with a copy of the amended disclosure information prior to filing and (2) obtain the registered person's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed. The proposed rule change also requires a member, as part of its recordkeeping requirements, to retain the written acknowledgment in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request.[10]

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[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[4] The Central Registration Depository (CRD®), which was developed jointly by FINRA and the North American Securities Administrators Association (NASAA), was first launched in 1981 to centralize the registration process for the securities industry. Over the past two decades, the system has been expanded and modified extensively to meet the evolving needs of FINRA's constituencies. CRD became an interactive, web-based registration system (Web CRD) on August 16, 1999. *See* NASD *Notice to Members* 99–63 (August 1999) (SEC Approves and Adopts Revised Forms and Electronic Filing Requirement; New Member Applicants Should Continue to File Paper Forms).

[5] The initial Form BD is also a Uniform Form. However, it is filed with the new membership application, pursuant to NASD Rule 1013 (New Member Application and Interview).

[6] *See* NASD Rule 1140(a) (requiring all forms required to be filed by Article IV, Sections 1 (Application for Membership), 7 (Transfer and Termination of Membership), and 8 (Registration of Branch Office) and Article V, Sections 2 (Application for Registration) and 3 (Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification) to be filed via electronic process or such other process as FINRA may prescribe); *see also* Securities Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728 (July 7, 1999) (Order Approving File No. SR–NASD–99–28); NASD *Notice to Members* 99–63 (August 1999) (informing members of revised Forms U4, U5, BD, and BDW and requirement that such forms and their amendments must be filed electronically pursuant to NASD Rule 1140).

[7] NASD Rule 1140 also addresses the continued submission of paper fingerprint cards in the Web CRD electronic filing environment by requiring a member, upon electronically filing a Form U4, to promptly submit the fingerprint information for the person named in the Form U4. Pursuant to NASD Rule 1140, FINRA may make a registration effective pending receipt of the fingerprint card and also place a person in an inactive status if FINRA does not receive the fingerprint card within 30 days of the filing of a Form U4.

[8] *See* Securities Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728, 36729 (July 7, 1999) (Order Approving File No. SR–NASD–99–28) (specifically noting that members may use service bureaus to submit their electronic filings required by NASD Rule 1140 but noting that the members remain ultimately responsible for the timeliness and content of the filings).

[9] Under the CRD system, the member submits the form on behalf of the associated person by typing the person's name into the signature box on the electronic form.

[10] In February 2008, at FINRA's request, the SEC staff issued a no-action letter regarding the ability of FINRA members to rely on Web CRD to satisfy their record retention requirements under SEA Rule 17a–4 with respect to certain Forms U4, U5 and BR filed in Web CRD. *See* Letter from Thomas K. McGowan, Assistant Director, Division of Trading and Markets, SEC, to Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, FINRA, dated February 19, 2008. In short, such relief extends to, among other things, Form U4 amendments that do not require the

Third, the proposed rule change clarifies that a member must submit disclosure information to [sic] which it has knowledge in those cases where the member is not able to obtain an associated person's manual signature or written acknowledgment of the amendment. FINRA believes it is important to codify the firm's obligation to submit such disclosure information, consistent with the obligation under Article V, Section 2 of the FINRA By-Laws that every Form U4 be kept current. Proposed supplementary material sets forth examples of reasons why a member may not be able to obtain the associated person's manual signature or written acknowledgment. They include, but are not limited to, the associated person refusing to acknowledge the information in writing, being on active military duty, or otherwise being unavailable during the period provided for filing the amendment. In such instances, the proposed supplementary material instructs a member to enter "Representative Refused to Sign/ Acknowledge" or "Representative Not Available" or a substantially similar entry in the signature box to the electronic form. This instruction is generally consistent with current practice in instances where an associated person is unable or unavailable to sign a disclosure information amendment.[11]

Fourth, the proposed rule change incorporates Web CRD's current practice of permitting Form U4 administrative information to be amended without obtaining the associated person's signature (manual or otherwise).[12] Proposed supplementary material explains that such administrative information includes items such as the addition of state or self-regulatory organization registrations, exam scheduling, and updates to residential, business, and personal history.

Fifth, the proposed rule change proposes supplementary material expressly permitting the registered principal(s) or corporate officer(s) who is responsible for supervising a firm's electronic filings to delegate to another associated person (who need not be registered) the electronic filing of the member's forms via Web CRD. The delegatee may also acknowledge, electronically, that he is making the filing on behalf of the member and the member's associated person. The proposed supplementary material makes clear, however, that the principal(s) or corporate officer(s) may not delegate any of his or her supervision, review and approval responsibilities and must take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

Sixth, the staff proposes to retain, but relocate to supplementary material, the provision allowing firms to enter into third-party agreements for the electronic filing of the required forms. The supplementary material makes clear that the firm remains responsible for complying with the requirements of the rule.

Finally, the staff proposes to make other technical changes, such as making clarifying rule cross-references, replacing the reference to fingerprint "cards" with fingerprint "information,"[13] and noting the applicable retention periods for the forms under SEA Rule 17a–4.[14]

Proposed FINRA Rule 2263

NASD Rule 3080 (Disclosure to Associated Persons When Signing Form U4) requires members to provide each associated person, whenever the associated person is asked to sign a new or amended Form U4, with certain written disclosures regarding the nature and process of arbitration proceedings. The associated person agrees to be bound by this process upon signing a Form U4. The disclosures required by NASD Rule 3080 may be given by the same member firm to the same associated person on more than one occasion during that person's employment, if the associated person has reason to re-sign the Form U4. NASD Rule 3080 does not address any private arbitration agreements that the associated person might enter into with the member firm.

The disclosure language in NASD Rule 3080 explains that the Form U4 contains a predispute arbitration clause, indicates in which Item of the Form U4 the clause is located[15] and advises the associated person to read the predispute arbitration clause. Rule 3080 was modeled on the disclosure given to customers when signing predispute arbitration agreements with member firms, as contained in NASD Rule 3110(f).[16]

Specifically, NASD Rule 3080 provides that, before signing a Form U4, an associated person should understand the following (1) the associated person is giving up the right to sue a member, customer or another associated person in court, except as provided by the rules of the arbitration forum in which a claim is to be filed; (2) there is an exception to the arbitration requirement for claims of statutory employment discrimination[17] (such a claim may be arbitrated at FINRA only if the parties have agreed to arbitrate it); (3) arbitration awards are generally final and binding; (4) discovery is generally more limited in arbitration than in court; (5) arbitrators do not have to explain the reasons for their awards; (6) the panel of arbitrators may include either public or industry arbitrators; and

registered person's signature. Because FINRA's request for no-action relief excluded Form U4 amendments that provide or update disclosure information (on the basis that such amendments required the registered person's signature), FINRA sought clarification from SEC staff on the extent of the relief in light of the proposed rule change. The SEC staff has affirmed in a conversation with FINRA staff that, if the proposed rule change is approved, the no-action relief provided in the February 19, 2008 letter will extend to Form U4 amendments that provide or update disclosure information that are submitted pursuant to the proposed rule change without obtaining the registered person's manual signature. Telephone conversation between Thomas K. McGowan, Assistant Director, Division of Trading and Markets, SEC, and Patrice Gliniecki, Senior Vice President & Deputy General Counsel and Richard E. Pullano, Associate Vice President & Chief Counsel, Registration and Disclosure, FINRA, dated March 5, 2009.

[11] FINRA will consider future enhancements to the CRD system that may include incorporating a "drop down" menu, or some substantially similar method for recording the reason the registered person has not acknowledged the filing, to assist firms in completing the signature section in these circumstances.

[12] *See* Securities Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728, 36729 n.7 (July 7, 1999) (Order Approving File No. SR–NASD–99–28); *see also* Securities Exchange Act Release No. 37439 (July 15, 1996), 61 FR 37950 (July 22, 1996) (Order Approving File No. SR–NASD–96–21).

[13] This proposed change recognizes that recent technological improvements to FINRA's fingerprinting plan permit members to submit fingerprints and identifying information to FINRA using either paper fingerprint cards or by electronically sending a digitized image of the fingerprints. *See* Securities Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006) (Order Approving [sic] NASD Fingerprint Plan). The document is entitled, "Declaration of Effectiveness of the Fingerprint Plan of the National Association of Securities Dealers, Inc."

[14] The proposed rule clarifies that initial and amendments to Forms U4 (and related acknowledgments) must be retained until at least three years after the registered person's employment and any other connection with the member has terminated. *See* SEA Rule 17a–4(e)(1). In addition, initial and amendments to Forms U5 must be retained for at least three years, the first two years in an easily accessible place. *See* SEA Rule 17a–4.

[15] The member is responsible for updating this item number on new disclosure statements if it changes in later versions of the Form U4. *See* Securities Exchange Act Release No. 42061 (October 27, 1999), 64 FR 59815, 59817 n.11 (November 3, 1999) (Order Approving File No. SR–NASD–99–08).

[16] FINRA is proposing to renumber NASD Rule 3110(f) as FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Accounts), a stand-alone rule in the disclosure section of the Consolidated FINRA Rulebook. *See* FINRA *Regulatory Notice* 08–25 (May 2008) (Proposed Consolidated FINRA Rules Governing Books and Records Requirements).

[17] *See* FINRA Rule 13201.

(7) the rules of some arbitration forums may impose time limits for bringing a claim in arbitration; in some cases, a claim that is ineligible for arbitration may be brought in court.

The proposed rule change transfers NASD Rule 3080 into the Consolidated FINRA Rulebook as FINRA Rule 2263 with several minor changes. First, the proposed rule change amends the current title "Disclosure to Associated Person When Signing Form U–4" to clarify that the rule relates to arbitration disclosures. Accordingly, the new proposed title is "Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4."

Second, proposed FINRA Rule 2263 clarifies that a member must provide the required arbitration disclosures whenever a member asks an associated person, pursuant to proposed FINRA Rule 1010 (as described above), to manually sign an initial or amended Form U4, or to otherwise provide written (which may be electronic) acknowledgement of an amendment to the Form.

Lastly, the proposed rule change updates the rule language to reflect recent amendments to FINRA's Code of Arbitration Procedure requiring arbitrators to provide an explained decision to the parties in eligible cases if there is a joint request by all parties at least 20 days before the first scheduled hearing date.[18]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 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,[19] 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 the proposed changes to NASD Rule 1140 will clarify and streamline the Form U4 electronic filing and amendment requirements for both members and members' associated persons, consistent with the goals of investor protection. FINRA also believes that the proposed changes to NASD Rule 3080 will clarify the required arbitration disclosures and when members must provide those disclosures to their associated persons.

*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 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–FINRA–2009–019 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–019. 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–2009–019 and should be submitted on or before May 15, 2009

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–9372 Filed 4–23–09; 8:45 am]

BILLING CODE 8010–01–P

[18] *See* Securities Exchange Act Release No. 59358 (Feb. 4, 2009), 74 FR 6928 (Feb. 11, 2009) (Order Approving File No. SR–FINRA–2008–051).

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved Information Collections and a new collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and

recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974. E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1332 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400. E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than June 23, 2009. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–3758 or by writing to the e-mail address listed above.

1. *Social Security Benefits Application—20 CFR 404.310–.311, .315–.322, .330–.333, .601–.603, and .1501–.1512—0960–0618.* This collection comprises the various application modalities for retirement, survivors, and disability benefits. These modalities include paper forms (SSA Forms SSA–1, SSA–2, and SSA–16), Modernized Claims System (MCS) screens for in-person field office interview applications, and the Internet-based iClaim application. This information collection request (ICR) will expand the potential user base for the iClaim.

*Type of Collection:* Revision to an existing OMB-approved information collection.

*Paper Forms/Accompanying MCS Screens Burden Information:*

FORM SSA–1

| Collection method | Number of respondents | Frequency of response | Average burden per response (min) | Estimated annual burden (hours) |
|---|---|---|---|---|
| MCS | 172,200 | 1 | 11 | 31,570 |
| MCS/Signature Proxy | 1,549,800 | 1 | 10 | 258,300 |
| Paper | 21,000 | 1 | 11 | 3,850 |
| Medicare-only MCS | 299,000 | 1 | 7 | 34,883 |
| Medicare-only Paper | 1,000 | 1 | 7 | 117 |
| Totals | 2,043,000 | | | 328,720 |

FORM SSA–2

| Collection method | Number of respondents | Frequency of response | Average burden per response (min) | Estimated annual burden (hours) |
|---|---|---|---|---|
| MCS | 36,860 | 1 | 15 | 9,215 |
| MCS/Signature Proxy | 331,740 | 1 | 14 | 77,406 |
| Paper | 3,800 | 1 | 15 | 950 |
| Totals | 372,400 | | | 87,571 |

FORM SSA–16

| Collection method | Number of respondents | Frequency of response | Average burden per response (min) | Estimated annual burden (hours) |
|---|---|---|---|---|
| MCS | 218,657 | 1 | 20 | 72,886 |
| MCS/Signature Proxy | 1,967,913 | 1 | 19 | 623,172 |
| Paper | 24,161 | 1 | 20 | 8,054 |
| Totals | 2,210,731 | | | 704,112 |

ICLAIM BURDEN INFORMATION

| Form type | Number of respondents | Frequency of response | Average burden per response (min) | Estimated annual burden (hours) |
|---|---|---|---|---|
| iClaim 3rd Party | 28,118 | 1 | 15 | 7,030 |
| iClaim Applicant after 3rd Party Completion | 28,118 | 1 | 5 | 2,343 |
| First Party iClaim | 541,851 | 1 | 15 | 135,463 |
| Medicare-only iClaim | 200,000 | 1 | 10 | 33,333 |
| Totals | 798,087 | | | 178,169 |

*Aggregate Public Reporting Burden:* 1,298,572 hours.

2. *Electronic Records Express (Third Parties)—20 CFR 404.1700–404.1715—0960–0767.* Electronic Records Express is an online system that enables medical providers and various third party representatives to submit disability claimant information electronically to SSA as part of the disability application process. We are revising this OMB number to add new functionality for third parties who use this system.

*Type of Request:* Revision of an existing OMB-approved information collection.

*Number of Respondents:* 66,000.

*Frequency of Response:* 40.

*Average Burden per Response:* 1 minute.

*Estimated Annual Burden:* 44,000 hours.

3. *Registration of Individual for Appointed Representative Services—0960–0732.* SSA uses Form SSA–1699 to register the following people:

- Individuals appointed as representatives;
- Individuals who will perform advocacy services on behalf of an appointed representative;
- Individuals who will act on behalf of an appointed representative and want access to our electronic services;
- Individuals who will serve as administrators for an entity appointed as a representative.

By registering these individuals, SSA: (1) Authenticates and authorizes them to do business with us; (2) allows them access to our records for the claimants they represent; (3) facilitates direct payment of authorized fees to appointed representatives; and (4) collects information needed to meet Internal Revenue Service (IRS) requirements to issue specific IRS forms, if we pay these representatives in excess of a specific amount ($600).

This ICR is for changes we will implement later in the year. The respondents are appointed claimant representatives.

*Type of Request:* Revision to an OMB-approved information collection.

| Collection method | Number of respondents | Frequency of response | Average burden per response (min) | Estimated annual burden (hours) |
|---|---|---|---|---|
| SSA–1699 (paper form) | 52,800 | 1 | 30 | 26,400 |
| Internet-based SSA–1699 | 13,200 | 1 | 22 | 4,840 |
| Totals | 66,000 | | | 31,240 |

4. *State Agency Report of Obligations for SSA Disability Programs (SSA–4513); Time Report of Personnel Services for Disability Determination Services (SSA–4514); State Agency Schedule of Equipment Purchased for SSA Disability Programs (SSA–871)—20 CFR 404.1626—0960–0421.* SSA uses Forms SSA–4513, SSA–4514, and SSA–871 to collect data necessary for detailed analysis and evaluation of costs State Disability Determination Services (DDS) incur in making disability determinations for SSA. SSA also utilizes the data to determine funding levels for each DDS. Respondents are State DDSs.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 54.

*Estimated Annual Burden:* 756 hours.

| | Respondents | Frequency of response | Total annual responses | Average burden per response (min) | Estimated annual burden (hours) |
|---|---|---|---|---|---|
| SSA–4513 & Addendum | 54 | 4 | 216 | 90 | 324 |
| SSA–4514 | 54 | 4 | 216 | 90 | 324 |
| SSA–871 | 54 | 4 | 216 | 30 | 108 |
| Total | 162 | | | | 756 |

5. *Application for Special Benefits for World War II Veterans—20 CFR 408, Subparts B, C and D—0960–0615.* Title VIII of the Social Security Act (Special Benefits for Certain World War II Veterans) allows a qualified World War II veteran who resides outside the United States to receive monthly payments. The regulations set out the requirements an individual needs to meet to qualify for and become entitled to Special Veterans Benefits (SVB). SSA uses Form SSA–2000–F6 to elicit the information necessary to determine entitlement to SVB. The respondents are individuals who are applying for SVB under Title VIII of the Social Security Act.

*Type of Request:* Revision of an OMB-approved information collection.

| Section No. | Number of respondents | Frequency of response | Average burden per response (min) | Estimated annual burden (hours) |
|---|---|---|---|---|
| § 408.202(d); § 408.210; § 408.230(a); § 408.305; §§ 408.310-.315 | 100 | 1 | 20 | 33 |
| § 408.232(a) | 1 | 1 | 15 | 0 |
| § 408.320 | 1 | 1 | 15 | 0 |
| § 408.340 | 1 | 1 | 15 | 0 |
| § 408.345 | 1 | 1 | 15 | 0 |
| § 408.351(d) & (f) | 1 | 1 | 30 | 1 |
| § 408.355(a) | 1 | 1 | 15 | 0 |
| § 408.360(a) | 1 | 1 | 15 | 0 |
| § 408.404(c) | 6 | 1 | 15 | 2 |
| §§ 408.410–.412 | 6 | 1 | 15 | 2 |

| Section No. | Number of respondents | Frequency of response | Average burden per response (min) | Estimated annual burden (hours) |
|---|---|---|---|---|
| § 408.420(a), (b) | 71 | 1 | 15 | 18 |
| §§ 408.430 & .432 | 66 | 1 | 30 | 33 |
| § 408.435(a), (b), (c) | 71 | 1 | 15 | 18 |
| § 408.437(b), (c), (d) | 6 | 1 | 30 | 3 |
| Totals | 333 | | | 110 |

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than May 26, 2009. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–3758 or by writing to the above e-mail address.

1. *Request for Withdrawal of Application—20 CFR 404.640—0960–0015.* Individuals complete Form SSA–521 to request withdrawal of an application for benefits. SSA uses the information from Form SSA–521 to process the request for withdrawal. The respondents are applicants for Old Age, Survivors, and Disability Insurance (OASDI) benefits.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 100,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 5 minutes.

*Estimated Annual Burden:* 8,333 hours.

2. *Application for Search of Census Records for Proof of Age—20 CFR 404.716—0960–0097.* SSA uses the information from Form SSA–1535–U3 to provide the Census Bureau with identification information sufficient to allow an accurate search of census records to establish proof of age for an individual applying for Social Security benefits. When preferred evidence of age is not available and the available evidence is not convincing, SSA may request the U.S. Department of Commerce, Bureau of the Census, to search its records to establish a claimant's date of birth. The Census Bureau uses the information from a completed, signed SSA–1535–U3 to bill SSA for the search. The respondents are applicants for Social Security benefits who need to establish their date of birth as a factor of entitlement.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 18,030.

*Frequency of Response:* 1.

*Average Burden per Response:* 12 minutes.

*Estimated Annual Burden:* 3,606 hours.

3. *Workers' Compensation/Public Disability Questionnaire—20 CFR 404.408—0960–0247.* Section 224 of the Social Security Act provides for the reduction of disability insurance benefits (DIB) when the combination of DIB and any workers' compensation (WC) and/or certain Federal, State, or local public disability benefits (PDB) exceeds 80 percent of the worker's average current earnings. SSA uses Form SSA–546 to collect the data necessary to determine if the worker's receipt of WC/PDB payments will cause a reduction of DIB. The respondents are applicants for Title II DIB.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 100,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 15 minutes.

*Estimated Annual Burden:* 25,000 hours.

4. *Claimant's Medication—20 CFR 404.1512, 416.912—0960–0289.* In cases where a claimant is requesting a hearing after denial of his or her claim for Social Security benefits, SSA uses Form HA–4632 to request information from the claimant regarding the medications he or she is using. This information helps the Administrative Law Judge hearing the case to inquire fully into the medical treatment the claimant is receiving and the effect of medications on the claimant's medical impairments and functional capacity. Respondents are applicants for OASDI benefits and/or Supplemental Security Income (SSI) payments.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 200,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 15 minutes.

*Estimated Annual Burden:* 50,000 hours.

5. *Statement of Funds You Provided to Another and Statement of Funds You Received—20 CFR 416.1103(f)—0960–0481.* Forms SSA–2854 and SSA–2855 collect information on an SSI beneficiary's allegations that he or she borrowed funds informally from a non-commercial lender; *e.g.*, a relative or friend. The borrower/beneficiary and the lender of the funds complete these statements. SSA requires information from Forms SSA–2854 and SSA–2855 to determine whether the proceeds from the transaction are income to the borrower. If the transaction constitutes a bona fide loan, the proceeds are not income to the borrower. Form SSA–2855 (Statement of Funds You Received) requests information from the SSI applicant/recipient by personal interview. Form SSA–2854 (Statement of Funds You Provided to Another) requests information by mail from the other party to the transaction. The respondents are SSI recipients who informally borrow money and those persons who lend the funds.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 40,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 10 minutes.

*Estimated Annual Burden:* 6,667 hours.

6. *Self-Employment/Corporate Officer Questionnaire—20 CFR 404.435(e), 404.446—0960–0487.* SSA uses Form SSA–4184 to develop earnings and corroborate the claimant's allegations of retirement when the claimant is self-employed or a corporate officer. SSA uses the information to determine an individual's OASDI benefit amount. The respondents are self-employed individuals or corporate officers who apply for OASDI benefits.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 50,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 20 minutes.

*Estimated Annual Burden:* 16,667 hours.

**Note:** This is a correction notice. SSA published this information collection as an extension on February 17, 2009 at 74 FR 7506. Since we are revising the Privacy Act Statement, this is now a revision.

7. *Application for SSA Employee Testimony—20 CFR 403.100–155—*

*0960–0619.* SSA regulations at 20 CFR 403.100–155 establish policies and procedures for an individual, organization, or governmental entity to request official agency information, records, or testimony of an agency employee in a legal proceeding when the agency is not a party. The request, which must be in writing to the Commissioner, must fully set out the nature and relevance of the sought testimony. Respondents are individuals or entities who request testimony from SSA employees in a legal proceeding.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 100.

*Frequency of Response:* 1.

*Average Burden per Response:* 60 minutes.

*Estimated Annual Burden:* 100 hours.

8. *Authorization for the Social Security Administration To Obtain Account Records from a Financial Institution and Request for Records (Medicare Low-Income Subsidy)—0960–0729.* Under the aegis of the Medicare Modernization Act of 2003, Medicare beneficiaries can apply for a subsidy for the Medicare Prescription Drug Plan (Part D) program. In some cases, SSA will verify the details of applicants' accounts at financial institutions to determine if they are eligible for the subsidy. Form SSA–4640 gives SSA the authority to contact financial institutions about applicants' accounts. Financial institutions will also use the form to verify the information SSA requested. The respondents are applicants for the Medicare Part D program subsidy and financial institutions where applicants have accounts.

*Type of Request:* Extension of an OMB-approved information collection.

| | Medicare part D subsidy applicants | Financial institutions | Totals |
|---|---|---|---|
| Number of Respondents | 10,000 | 10,000 | 20,000. |
| Frequency of Response | 1 | 1 | 1. |
| Average Burden per Response (minutes) | 1 minute | 4 minutes | 5 minutes. |
| Estimated Annual Burden (hours) | 167 hours | 667 hours | 834 hours. |

*Total Estimated Annual Burden:* 834 hours.

9. *Request To Pay Civil Monetary Penalty by Installment Agreement—20 CFR 498–0960–NEW.* SSA uses Form SSA–640 to obtain the information necessary to determine a repayment rate for individuals who have a civil monetary penalty imposed on them for fraudulent conduct related to SSA-administered programs. SSA needs this financial information to ensure the repayment rate is in the best interest of both the individual and the agency. The respondents are recipients of Social Security benefits and non-entitled individuals who must pay a civil monetary penalty.

*Type of Request:* New information collection.

*Number of Respondents:* 400.

*Frequency of Response:* 1.

*Average Burden per Response:* 120 minutes.

*Estimated Annual Burden:* 800 hours.

Dated: April 17, 2009.

**John Biles,**

*Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.*

[FR Doc. E9–9318 Filed 4–23–09; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 6592]**

### Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: E-Teacher Scholarship Program and Professional Development Workshop

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/L–09–04.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Key Dates:* (Pending award of funds).

*Anticipated Award Date:* September 1, 2009.

*Anticipated Program Start Date:* September 14, 2009.

*Anticipated Program End Date:* December 31, 2010.

*Application Deadline:* June 8, 2009.

*Executive Summary:* The Office of English Language Programs of the Bureau of Educational and Cultural Affairs (ECA/A/L) announces an open competition for the E-Teacher Scholarship Program and Professional Development Workshop. Accredited U.S. post-secondary educational institutions or consortia of such institutions meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to implement the following two components: (1) Seven different ten- to twelve-week Online, university level English as a Foreign Language (EFL) professional development courses for a total of approximately five hundred EFL teachers from throughout the world, and (2) a three-week professional development workshop for approximately twenty-six EFL professionals from diverse geographic regions of the world. For the Online courses, participants will receive university level instruction in the most recent English language teaching methods and techniques as well as an introduction to U.S. educational values and will interact with U.S. experts via innovative distance learning. The professional development workshop will provide the participants a basis for their continuing contact with U.S. counterparts in order to promote mutual understanding between the people of the U.S. and other countries.

Post-secondary educational institutions are encouraged to apply in a consortium with other post-secondary institutions, although they may apply independently. The E-Teacher Scholarship Program and Professional Development Workshop advance the U.S. Department of State's goals by improving the quality of English language teaching throughout the world.

ECA will award one Cooperative Agreement for the administration of these two program components to be implemented during the academic year 2009–2010. The total funding available for program and administrative purposes is anticipated to be approximately $750,000.

#### I. Funding Opportunity Description

**Authority:** Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the

Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

*Purpose:* The E-Teacher Scholarship Program and Professional Development Workshop offer professional development for English language teaching professionals through Online courses provided by one or more U.S. universities. The courses introduce the most recent English language teaching methods and techniques, including English for Specific Purposes, offer the opportunity to engage in a distance-learning program that employs the latest in modern technology, and provide direct access to U.S. experts with whom participants might not normally have the opportunity to interact. By creating a forum for international communication and by encouraging critical thinking and the active application of new information skills and other aspects of successful learning, the E-Teacher Scholarship Program and Professional Development Workshop foster the Bureau's goal of mutual understanding.

*Background:* In FY–2004, the U.S. Department of State launched the E-Teacher Scholarship Program as a pilot program. ECA contracted with six U.S. post-secondary institutions to deliver five courses: Assessment for EFL, Teaching Critical Thinking, English for Business, English for Law, and Teaching English to Young Learners (primary school level). The Program is currently operating or has operated in the following 79 countries: Afghanistan, Albania, Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Burma, Cambodia, Chad, Chile, China, Colombia, Costa Rica, Cuba, Cyprus, the Dominican Republic, Ecuador, Egypt, Georgia, Guinea, Haiti, India, Indonesia, Iraq, Israel, Jordan, Kazakhstan, Kenya, Kosovo, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Maldives, Mali, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Qatar, Russia, Saudi Arabia, Senegal, South Africa, Sri Lanka, Sudan, Syria, Tajikistan, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uruguay, Uzbekistan, Venezuela, Vietnam, West Bank/Gaza, and Yemen. All participants are nominated through U.S. Embassies and selected by the Office of English Language Programs (ECA/A/L). In the past, the program was funded by ECA through purchase agreements. The FY–09 program will be funded for the first time through a Cooperative Agreement and will incorporate for the first time the professional development workshop component.

*Guidelines:* In addition to providing practical and applicable information about using innovative English language teaching methods, the seven courses and the workshop are required to have adequate and appropriate content to give the participants insights into U.S. culture. Another important goal of the E-Teacher Scholarship Program and Professional Development Workshop is for participants to share the knowledge gained during the program with colleagues through workshops or professional presentations in their home countries. To best meet this latter goal, proposals should include some type of follow-on component, such as a final project or a module for the effective dissemination or application of the information provided in the program.

*Cooperative Agreement:* In a Cooperative Agreement, ECA/A/L is substantially involved in the program activities, above and beyond routine grant monitoring, including the selection of the scholarship participants based on input from the U.S. Embassies. For the Online course component, ECA/A/L will also oversee the curriculum, make recommendations for program start dates, propose revisions in program format when necessary, and maintain close communication with the course provider(s) for proper program management. For the workshop component, ECA/A/L will consult with the provider on the content, design, and length of the program and recommend revisions when necessary.

*Cooperative Agreement Recipient Responsibilities:* The recipient consortium or organization awarded the E-Teacher Scholarship Program and Professional Development Workshop Cooperative Agreement from ECA will be responsible for the following activities:

1. Provide seven different ten- to twelve-week Online, university level English Language Teaching (ELT) professional development courses during the U.S. academic year 2009–2010. With a maximum of thirty students per class, the number of classes for each subject will depend on the demand for the courses and the capacity of the course provider(s). Each course could be offered in both the fall and spring semesters of the academic year. The courses will familiarize participants with U.S. student-centered teaching methods and the latest methods and techniques in teaching English as a Foreign Language. To build on and incorporate components of ECA/A/L's existing materials in "Shaping the Way We Teach English" (see *http://OELP.uoregon.edu/Shaping.html* to view the materials), three of the courses should be Assessment, Teaching Critical Thinking, and Teaching English to Young Learners. Each course should include some of the materials in "Shaping the Way We Teach English," specifically the video segments. The course provider should expand and update these materials, as appropriate, to create the full course. The remaining courses should be relevant to the professional development of English language teachers worldwide and may include, for example, Teaching Grammar Communicatively, General Methodology, or other essential aspects of English language teaching, as well as courses in English for Specific Purposes (ESP), such as English for Business or English for Law. These additional courses should incorporate a video component, similar to the format of the "Shaping" modules, which may be used by ECA/A/L in its teacher training programs with English language teachers abroad. The proposal should include for each course projected dates and a syllabus of content. The award recipient must subsequently submit for each course an annotated bibliography of recommended titles related to each course (approximately fifteen to twenty titles per course). ECA/A/L retains the right to print, publish, repurpose, and distribute abroad the bibliography in all media, including electronic media, and in all languages and editions.

2. Design and administer in collaboration with ECA/A/L one three-week professional development workshop for twenty-six foreign English language teaching professionals nominated by the U.S. Embassies' Public Affairs Section with input from the Regional English Language Officer (RELO) and approved by ECA/A/L. The workshop, which will be implemented in the summer of 2010, will focus on methodology, linguistic enhancement, educational leadership, cultural interchange, and "best practices" in the classroom. The participants will be encouraged to develop a teacher-training project to implement in their home countries following the exchange program.

The workshop should encompass the following elements:

(a) Orientation upon arrival in the U.S.;

(b) Intensive education in relevant topics and language teaching methodologies;

(c) Cultural and community service activities to encourage interaction and mutual understanding.

Applicant organizations should submit a narrative outlining a comprehensive strategy for the administration and implementation of the program. The narrative should include a design for the program, a syllabus of course content, and a plan for monitoring and evaluating the foreign English teachers' academic performance in the program.

3. Submit intermediate and end-of-project reports of database information in Microsoft Word and Excel formats, as appropriate, to ECA/A/L.

It is anticipated that the Cooperative Agreement will begin on or about September 1, 2009, and the recipient should complete all program activities by December 31, 2010. The program workshop will take place in the summer of 2010. Please refer to additional program specific guidelines in the Project Objectives, Goals, and Implementation (POGI) document.

**II. Award Information**

*Type of Award:* Cooperative Agreement.

ECA's level of involvement in this program is listed under number 1 above.

*Fiscal Year Funds:* 2009.

*Approximate Total Funding:* $750,000.

*Approximate Number of Awards:* 1.

*Approximate Average Award:* $750,000.

*Anticipated Award Date:* September 1, 2009.

*Anticipated Project Completion Date:* December 31, 2010.

*Additional Information:* Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this Cooperative Agreement for two additional fiscal years, before openly competing it again. Subsequent agreements may include activities to extend the Program to other countries throughout the world and may not include start up costs for certain activities described in this RFGP and the Project Objectives, Goals, and Implementation (POGI) as being completed in FY–2009.

**III. Eligibility Information**

III.1. Eligible applicants: Applications may be submitted by public or private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, ECA encourages applicants to provide the highest possible levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, the recipient organization must maintain written records to support all costs which are claimed as its contribution as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

Cooperative Agreements awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. ECA anticipates awarding one Cooperative Agreement in an amount up to $750,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply for this Cooperative Agreement. ECA encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

**IV. Application and Submission Information**

**Note:** Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, ECA staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package:

Please contact Michael Rudder, Program Officer in the Office of English Language Programs, ECA/A/L, Room 304, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 453–8846, or fax (202) 453–8858 to request a Solicitation Package. When making your request, please refer to the Funding Opportunity Number ECA/A/L–09–04 located at the top of this announcement.

Alternatively, an electronic application package may be obtained from the grants.gov Web site at *http://grants.gov*. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Michael Rudder and refer to the Funding Opportunity Number ECA/A/L–09–04 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*. Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under the IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or Cooperative Agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424, which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. Applicants must have non-profit status with the IRS at the time of

application. *Please note:* Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit the information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If the organization is a private non-profit organization which has not received a grant or Cooperative Agreement from ECA in the past three years, or if the organization received non-profit status from the IRS within the past four years, the necessary documentation to verify non-profit status as directed in the PSI document must be submitted in the application. Without this documentation, the proposal will be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence To All Regulations Governing The J–Visa:

The Bureau of Educational and Cultural Affairs (ECA) places critically important emphasis on the security and proper administration of the Exchange Visitor (J–Visa) Programs and adherence by grantees and sponsors to all regulations governing the J–Visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting, and other requirements. The award recipient organization will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J–Visa) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to the Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines:

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of U.S. political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the proposal. Public Law 104–319 stipulates that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that each proposal include a draft survey questionnaire or other evaluation/assessment technique plus a description of the methodology to be used to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on the institutions in which the participants work or partner institutions. The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. The evaluation plan should include a description of the project's objectives, anticipated project outcomes, and how and when the applicant will measure these outcomes (performance indicators). The more that these outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. Applicants should also show how the project objectives link to the goals of the program described in this RFGP.

The monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent the specific results a project is intended to achieve and are usually measured as an extent of change. Findings on both outputs and outcomes should be reported, but the focus should be on outcomes.

Applicants should assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of

experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavioral and institutional changes are normally considered longer-term outcomes.

Overall, the quality of the monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to ECA upon request.

IV.3e. Applicants should take the following information into consideration when preparing their budgets:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. ECA specifically recommends that applicants submit a plan and budget not to exceed $200,000 for the three-week workshop for twenty-six participants to be conducted under the terms of this Cooperative Agreement. ECA/A/L will closely supervise the Cooperative Agreement recipient's activities in the development of these plans and will have final approval authority of same.

IV.3e.2. Allowable costs for the program, as outlined in detail in the POGI, include the following:

(1) ECA's goal is to maximize the number of English language teaching participants and expects that approximately eighty-five percent *or more* of the funds provided through this Cooperative Agreement will be used for implementation of mandatory program elements described under Section 1 of this RFGP. Also, applicants should explain how they will ensure cost-effective arrangements based on non-credit enrollment and/or other methods according to formulas that can be protected from increases in tuition rates.

(2) Administrative costs may include staff salaries, including staff to plan and conduct the workshop aspects/elements of the Program and the Program Monitoring and Evaluation requirements specified in IV.3d.3. of the RFGP.

(3) The budget for designing and administering the workshop should include, but not be limited to, the following: The participants' international and domestic transportation, U.S. per diem, space rental, workshop materials, etc. For travel budgeting purposes, participants will come from around the world. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

*Application Deadline Date:* June 8, 2009.

*Reference Number:* ECA/A/L–09–04.

*Methods of Submission:* Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2.) Electronically through *http://www.grants.gov*.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov web portal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov web portal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*. Please follow the instructions available in the "Get Started" portion of the site (*http://www.grants.gov/GetStarted*).

*Applications must be shipped no later than the above deadline.* Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify an applicant upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and 15 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/L—09–04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. ECA will provide these files electronically to the

appropriate Public Affairs Section at the U.S. Embassy for its review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov web portal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*. Please follow the instructions available in the "Get Started" portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of an applicant's Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

*Therefore, we strongly recommend that an applicant not wait until the application deadline to begin the submission process through Grants.gov.*

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time, of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system and will be technically ineligible.* Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3f. Intergovernmental Review of Applications:

Executive Order 12372 does not apply to this program.

**V. Application Review Information**

*V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the U.S. Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards Cooperative Agreements resides with the Bureau's Grants Officer.

Review Criteria

1. Program Planning and Ability to Achieve Program Objectives: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. Multiplier: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

4. Institutional Capacity and Track Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposed programs should include at least one staff member with a minimum of a Master's degree in the field of Teaching English as a Second/Foreign Language or Applied Linguistics. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. Evaluation and Follow-on: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to be used to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent. Proposals should provide a plan for continued follow-on activity (without Bureau support) which insures that Bureau supported programs are not isolated events.

6. Cost Effectiveness and Cost Sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through

other private sector support as well as institutional direct funding contributions.

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation.

**VI. Award Administration Information**

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original Cooperative Agreement proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. The following additional requirements apply to this project:

A critical component of current U.S. government Iran policy is the support for indigenous Iranian voices. The State Department has made the awarding of grants for this purpose a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. sections 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department will collect information from grantees and sub-grantees regarding the identity and background of their key employees and Boards of Directors.

**Note:** To assure that planning for the inclusion of Iran complies with requirements, please contact ECA/A/L Program Officer Michael Rudder at telephone 202–453–8846 or e-mail *RudderME@state.gov* for additional information.

VI.2—Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget (OMB) Circular A–122, "Cost Principles for Nonprofit Organizations"

OMB Circular A–21, "Cost Principles for Educational Institutions"

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments"

OMB Circular A–110 (Revised), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations"

OMB Circular A–102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments"

OMB Circular A–133, "Audits of States, Local Government, and Non-profit Organizations"

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants; http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements:

The Cooperative Agreement organization must provide ECA with a hard copy original plus one copy of the following reports:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) A concise, one-page final program report summarizing program outcomes no more than ninety days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3.) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

The Cooperative Agreement recipient will be required to provide reports analyzing its evaluation findings to the Bureau in its regular program reports. Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request. All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Additional Program Data Requirements: The Cooperative Agreement organization will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with ECA upon request. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the Cooperative Agreement or who benefit from its funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three business days prior to the official opening of the activity.

**VII. Agency Contacts**

For questions about this announcement, contact: Michael Rudder, Office of English Language Programs, ECA/A/L, Room 304, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 453–8846 and fax (202) 453–8858, *RudderME@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/L–09–04.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, ECA staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any ECA representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 17, 2009.

**C. Miller Crouch,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–9353 Filed 4–23–09; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

[Public Notice 6591]

### Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: U.S.-Russia Language, Technology, Math, and Science Program

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/S/X–09–04.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Application Deadline:* Application Deadline, June 8, 2009

*Executive Summary:* The Teacher Exchange Branch in the Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State, announces an open competition for a Cooperative Agreement in the amount of approximately $300,000 to support the FY 2009 U.S.-Russia Language, Technology, Math, and Science Program. This program will provide a four-week professional development program in the U.S. for secondary school teachers from Russia, followed by a two-week program in Russia for U.S. teachers and the Russian educators, and a workshop in Russia led by the Russian teachers for Russian colleagues. U.S. organizations meeting the provisions described in Internal Revenue Code section 26 501(c)(3) are eligible to apply.

#### I. Funding Opportunity Description

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

*Purpose:* The U.S.-Russia Language, Technology, Math, and Science Program will bring outstanding secondary school teachers from Russia to the United States to augment their subject area teaching skills and knowledge of the U.S., as well as provide an opportunity for U.S. teachers to participate in a professional development program in Russia. The overall goals of the program are: (1) To enable Russian and U.S. teachers to learn from their counterparts' education system and to improve classroom teaching in both countries through the exchange of ideas and expertise; (2) to develop the leadership skills of Russian and U.S. teachers through seminars and workshops in the United States and Russia; (3) to give additional visibility to the teaching profession in Russia and to create among key Russian teaching professionals a deeper understanding of the U.S., so that they may share their experiences of living in the United States with students and teachers in their home communities in Russia.

Applicant organizations should seek to maximize the number of participants through a cost-effective approach to program administration. The ratio of Russian to U.S. participants should be approximately 3:1.

Proposals should outline six distinct program components:

A. Program publicity, recruitment, and selection of teachers in Russia with the support of a local office or on-the-ground partner organization. The Department anticipates that recruitment will focus on a single Russian region in consultation with the Public Affairs Section of the U.S. Embassy in Russia, and that the region will be one in which teachers have had little or no previous involvement with exchange opportunities. Therefore, proposals should explain how an organization's local office or partner organization will have the flexibility to undertake a limited but highly focused recruitment effort in a remote region of Russia.

B. Program publicity, recruitment, and selection of U.S. teachers.

C. A four-week U.S.-based institute during the fall of 2010: the institute should support teachers from the disciplines of math, science, information technology, and English as a Foreign Language (EFL) and provide two separate sessions: one for teachers in EFL and the other for the remaining three teaching disciplines. Russian EFL teachers participating in the institute should have strong written and oral English skills as evidenced by an institutional TOEFL score of 450 or higher on the written test. Russian math, science, and information technology teachers should be provided with a program that includes simultaneous translation. All participants should be teaching professionals with at least five to ten years of experience.

D. Visit of U.S. teachers to the home schools of some of the Russian teachers who participated in the U.S. program to share best practices during the spring of 2011;

E. A one-day professional development workshop in Russia led by teachers who participated in the U.S. program for their Russian colleagues in all four teaching disciplines, with separate sessions provided for EFL teachers and for teachers in the other disciplines.

F. Follow-on and alumni activities.

Applicants should propose a calendar that will include a coherent sequence of the various program components within the guidelines noted in the Project Objectives, Goals, and Implementation (POGI) for this RFGP.

The U.S.-Russia Language, Technology, Math, and Science Program will be funded through a Cooperative Agreement. Please note that in a Cooperative Agreement, the Teacher Exchange Branch (ECA/A/S/X) is substantially involved in program activities above and beyond routine monitoring. ECA/A/S/X activities and responsibilities for this program are as follows:

- Formulation of program policy;
- Approval and input on program timetables, agendas, and administrative procedures;
- Guidance in execution of all program components;
- Review and approval of all program publicity and recruitment materials;
- Approval of participants;
- Approval of decisions related to special circumstances or problems throughout the duration of the program;
- Approval of follow-on and alumni projects;
- Assistance with participant emergencies; and
- Liaison with the Public Affairs Section, U.S. Embassy Moscow.

#### II. Award Information

*Type of Award:* Cooperative Agreement.

*Fiscal Year Funds:* 2009.

*Approximate Total Funding:* $300,000.

*Approximate Number of Awards:* 1.

*Approximate Average Award:* $300,000.

*Anticipated Award Date:* September 15, 2009.

*Anticipated Project Completion Date:* December 31, 2011.

*Additional Information:*

**III. Eligibility Information**

*III.1. Eligible Applicants*

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

*III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

*III.3. Other Eligibility Requirements*

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $300,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

**IV. Application and Submission Information**

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*IV.1. Contact Information To Request an Application Package*

Please contact William Heaton in the Teacher Exchange Branch, ECA/A/S/X, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 453–8888, fax: (202) 453–8890, e-mail: *heatonwe@state.gov,* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X–09–04 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify William Heaton, Teacher Exchange Branch, and refer to the Funding Opportunity Number ECA/A/S/X–09–04 located at the top of this announcement on all other inquiries and correspondence.

*IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

*IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. *Please note:* Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to all Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all

regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Bureau requests that the award recipient issue DS–2019 forms under a Bureau SEVIS program number to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. It is anticipated that funding for the cooperative agreement for program administration will be approximately $300,000. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. Application Deadline and Methods of Submission

*Application Deadline Date:* June 8, 2009.

*Reference Number:* ECA/A/S/X–09–04.

*Methods of Submission:* Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1—Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and five copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–09–04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Section at the U.S. embassy in Moscow for its review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

*Please Note:* ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov*. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

*Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.*

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov website, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

**V. Application Review Information**

*V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by

the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreements resides with the Bureau's Grants Officer.

*Review Criteria*

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

7. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

## VI. Award Administration Information

*VI.1. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

*VI.2. Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants; http://fa.statebuy.state.gov.*

*VI.3. Reporting Requirements*

You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

*VI.4. Program Data Requirements*

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

## VII. Agency Contacts

For questions about this announcement, contact: William Heaton, Teacher Exchange Branch, ECA/A/S/X, U.S. Department of State, SA–44, 301 4th Street, SW., Room 349, Washington, DC 20547, phone: (202) 453–8888, fax: (202) 453–8890, e-mail: *heatonwe@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–09–04.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with

applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 17, 2009.

**C. Miller Crouch,**

*Acting Assistant Secretary, for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–9350 Filed 4–23–09; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 6590]**

### Inclusion of Expiration Dates in Presidential Permits for International Border Crossings

**SUMMARY:** The Department of State announces, in consultation with relevant Federal agencies, that it will include an expiration date among the conditions it establishes in Presidential permits that it issues for the construction, operation, and maintenance of border crossing facilities. Based on the Department's experience and on interagency consultations, the Department intends to provide for the expiration of permits for vehicular border crossings (*i.e.*, crossings for cars, trucks, buses, and trains) ten (10) years after issuance unless the permittee notifies the Department within that timeframe that construction has begun, and for the expiration of permits for all other border crossing facilities (*e.g.*, pipelines, conveyor belts, pedestrian crossings, etc.) five (5) years after issuance unless the permittee notifies the Department within that timeframe that construction has begun. The Department believes that this provision provides sufficient time for viable projects to move forward while preventing unexecuted permits from creating needless uncertainty and/or hindering the development of worthy projects that would better serve the national interest.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Darrach, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov*; by phone at 202–647–9894; or by mail at Office of Mexican Affairs—Room 3909, Department of State, 2201 C St., NW., Washington, DC 20520. Information about Presidential permits is available at *http://www.state.gov/p/wha/rt/permit/*.

**SUPPLEMENTARY INFORMATION:** Executive Order (EO) 11423 of August 16, 1968, as amended, authorizes the Secretary of State to issue Presidential permits for the construction, connection, operation, and maintenance of facilities crossing the international borders of the United States, including, but not limited to, bridges and pipelines connecting the United States with Canada or Mexico. EO 13337, dated April 30, 2004, amended EO 11423, *inter alia*, by expanding the Presidential permit program to include at-grade land border crossings. In order to issue a Presidential permit, the Secretary or her delegate must find that a border crossing is in the U.S. national interest. Within the context of appropriate border security, safety, health, and environmental requirements, it is in the U.S. national interest to facilitate the efficient movement of legitimate goods and travelers across U.S. borders.

Since 1968, the Department has issued 21 Presidential permits for non-pipeline border crossings on the U.S.-Mexico border and one for the U.S.-Canada border. Of the 21 U.S.-Mexican border projects that have received permits, most began construction within two to five years. One permitted project took 16 years to be built, one is under construction nearly 30 years after receiving a permit, and three are not likely to be built although they have had permits more than 10 years (one of these permits is more than 30 years old). These permits were issued to the City of Mission, Texas (1978), the Union Pacific Railroad Company (1995), and the Brownsville Navigation District (1997). The Department is currently evaluating whether it should revoke these permits, given the change of circumstances in each of the project areas, development of nearby projects, inaction by the permittees on the proposed projects, and lack of interest in pursuing the corresponding projects in Mexico.

The Presidential permit process, which emphasizes interagency and binational coordination, is designed to ensure that border crossings are built if and only if there is clear local, binational, and interagency support for the project and construction is in the U.S. national interest. It is not in the U.S. national interest to commit scarce government resources (*e.g.*, Customs and Border Protection inspectors, highway improvement funds, etc.) as well as private resources (*e.g.*, land, capital, etc.) for border crossing projects that cannot be successfully implemented within a reasonable time period. The lapse of time may have an impact on the Department's national interest determination. While the Department may find a project to be in the U.S. national interest under a certain set of circumstances in one period, those circumstances may change over time so that five or ten years later, the Department may conclude that the project is no longer in the U.S. national interest or that the relevant agencies should reconsider their recommendations on the Department's initial grant of the permit. Border regions are dynamic and fast-changing and it is important that an outdated permit not be used to build a border crossing on a site that is no longer appropriate for a crossing due to the lapse of time (*e.g.*, due to changes in transportation patterns, development patterns, etc.).

At the same time, the Department recognizes that, by their nature, border crossing projects are complex, time consuming, and subject to political, financial, regulatory, and logistical setbacks. It is unrealistic to expect permits to be implemented instantly and it would be inefficient to set permit expiration dates on such a short timeframe that the relevant agencies are required to review them repeatedly while waiting for construction to begin.

The Department has determined, after consulting with relevant Federal agencies, including the Border Facilitation Working Group, and giving the matter careful consideration, that Presidential permits for vehicular border crossings (for cars, trucks, buses, and trains) will be valid for a period of ten (10) years, while permits for all other border crossing facilities (*e.g.*, pipelines, conveyor belts, pedestrian crossings, etc.) will be valid for a period of five (5) years. In the Department's experience, vehicular border crossings typically involve intricate coordination among numerous agencies and often use Federal financing that is not immediately available, whereas other border crossing projects are generally smaller in scale, less expensive, and dependent on private financing that is more readily available. The Department intends to tie the expiration condition in the permit to the date the permit is signed and expects that this expiration condition will be satisfied by the permittee's notice to the Department

that the construction authorized by the permit has begun.

If, after a permit has expired, a permittee continues to believe that the project should be built, the Department would welcome the submission of a revised Presidential permit application that demonstrats current local support, shows that the project is financially feasible, and explains based on updated traffic and other studies why the project continues to be in the U.S. national interest. This new application would generally need to be accompanied by updated environmental review documents, in keeping with the Council on Environmental Quality's guidance that environmental documents more than five years old are considered out of date.

In December 2008, the Department issued to the General Services Administration a Presidential permit containing an expiration clause for the new border crossing to be built at Otay Mesa East, near San Diego, California.

Dated: April 17, 2009.

**Alex Lee,**

*Director, Office of Mexican Affairs, Department of State.*

[FR Doc. E9–9352 Filed 4–23–09; 8:45 am]

**BILLING CODE 4710–29–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35144]**

### Wisconsin & Southern Railroad Company—Acquisition and Operation Exemption—Union Pacific Railroad Company

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 10902 for the Wisconsin & Southern Railroad Company (WSOR), a Class II rail carrier, to acquire and operate a permanent exclusive freight rail operating easement over approximately 10.95 miles of railroad known as the Kohler Industrial Lead that is currently owned by Union Pacific Railroad Company (UP) and to acquire and operate approximately 1,000 feet of UP spur track, subject to labor protective conditions. The easement extends from a connection with WSOR's north-south Kiel-to-Saukville line at milepost 14.95 at Plymouth, WI, to milepost 4.0 near Kohler, WI. The UP spur track constitutes the lead to the site of the former Cargill Malt Plant at Kohler. This transaction is related to a concurrently filed verified notice of exemption in *Wisconsin & Southern Railroad Co.—Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 35191. In that proceeding, WSOR seeks to acquire from UP and operate 2.8 miles of overhead trackage rights over a line of railroad extending between UP milepost 4.0 in Kohler and UP milepost 1.2 at Kohler Junction near Sheboygan, WI.[1] This transaction is also related to a concurrently filed petition for declaratory order filed in *Wisconsin Department of Transportation—Petition for Declaratory Order—Rail Line in Sheboygan County, WI*, STB Finance Docket No. 35195. In that proceeding, the Wisconsin Department of Transportation seeks a finding that its acquisition of the right-of-way and railroad assets of the 10.95-mile rail line will not render it a rail common carrier. WSOR has requested expedited action in this proceeding.

**DATES:** This exemption will be effective on May 8, 2009. Petitions to stay must be filed by May 4, 2009. Petitions for reconsideration must be filed by May 14, 2009.

**ADDRESSES:** An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35144, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on WSOR's representative: John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 20, 2009.

By the Board, Chairman Mulvey, and Vice Chairman Nottingham.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–9449 Filed 4–23–09; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Notice of the filing was served on February 27, 2009, and published in the **Federal Register** on the same day at 74 FR 9019. WSOR concurrently filed a motion for protective order, which was granted by decision served on March 20, 2009.

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA 2009–0001–N–9]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than June 23, 2009.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130—New." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Jackson at *nakia.jackson@dot.gov*. Please refer to the assigned OMB control number and the title of the information collection in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200

New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public for comment on information collection activities before seeking approval of such activities by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the proposed information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Track Transportation Time Study.

*OMB Control Number:* 2130—New.

*Abstract:* The Rail Safety Improvement Act of 2008 (Pub. L. 110–432) calls for a track inspection time study to be performed by FRA. The information required to develop the report will be at least partially obtained through a series of information gathering surveys which are focused on various aspects of track inspection. Each survey will be customized for a particular segment of the workforce and will include track inspectors, track supervisors or roadmasters, middle management (division engineers), and senior management (chief engineers).

The purpose of the proposed study is to address four issues raised in the Rail Safety Improvement Act: (1) Determine whether the required intervals of track inspections for each class of track should be amended; (2) Determine whether track remedial action requirements should be amended; (3) Determine whether different track inspection and repair priorities or methods should be required; and (4) Determine whether the speed at which railroad track inspection vehicles operate and the scope of the territory they generally cover allow for proper inspection of the track and whether such speed and appropriate scope should be regulated by the Secretary.

*Form Number(s):* N/A.

*Affected Public: Railroad Employees.*

*Respondent Universe:* 500 Individuals.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

| RFEI notice | Respondent universe | Total annual responses | Average time per response (hour(s)) | Total annual burden hours |
|---|---|---|---|---|
| —Track Inspectors—Focus Groups | 20 Individuals | 16 | 20 | 320 |
| —Track Inspectors—Standard Survey | 450 Individuals | 350 | 1 | 350 |
| —Track Supervisors (Roadmasters) | 35 Individuals | 25 | 1 | 25 |
| —RR Middle Management (Div. Engineers) | 10 Individuals | 8 | 1 | 8 |
| —RR Senior Management (Senior Engineers) | 10 Individuals | 8 | 1 | 8 |

*Total Responses:* 407.

*Estimated Total Annual Burden:* 711 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on April 20, 2009.

**Kimberly Orben,**

*Director, Office of Financial Management, Federal Railroad Administration.*

[FR Doc. E9–9371 Filed 4–23–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No. FTA–2009–0020]**

### Notice of Buy America Waiver Request From the Capital Metropolitan Transportation Authority of Austin, TX

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of Buy America waiver request and request for comments.

**SUMMARY:** The Capital Metropolitan Transportation Authority (Capital Metro) of Austin, Texas, has asked the Federal Transit Administration (FTA) to waive its Buy America requirements to permit it to purchase rail car vehicles that will be manufactured by Stadler Bussnang AG (Stadler) in Switzerland. According to Capital Metro, the rail cars are not available from a domestic source. This Notice sets forth Capital Metro's arguments for a non-availability waiver and seeks comment thereon.

**DATES:** Comments must be received by May 1, 2009. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2009–0020. All electronic submissions must be made to the U.S. Government electronic site at *www.regulations.gov*. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001.

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must make reference to the "Federal Transit Administration" and include docket number FTA–2009–0020. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov*. For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 Fed. Reg. 19477), or visit *www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

The purpose of this notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements for six (6) rail car vehicles to be manufactured and assembled in Switzerland by Stadler Bussnang AG (Stadler) for the Capital Metropolitan Transportation Authority (Capital Metro) of Austin, Texas. Because Capital Metro has already awarded a contract to Stadler, it has asked for a post-award waiver.

Capital Metro set forth the grounds for its request in a letter dated February 19, 2009, a copy of which will be placed in the Docket: (1) Capital Metro acted in good faith when in 2006 it planned to use local sales tax revenues to fund its contract with Stadler; (2) Actual sales tax receipts are less than the amount estimated in 2006; and (3) Both offers submitted to Capital Metro proposed to manufacture and assemble the rail cars outside of the United States.

Capital Metro structured the RFP as a locally funded procurement without including many of the standard Federal requirements like Buy America and Cargo Preference. Because of a drop in sales tax revenues, Capital Metro's local revenue source, the feasibility of funding this procurement with local funds has been significantly diminished. For this reason, Capital Metro has decided to utilize Federal funds and to seek a Buy America waiver for this vehicle procurement. FTA notes that Capital Metro did not request, and did not receive, the Buy America certification forms that are required in federally funded procurements.

With certain exceptions, FTA's "Buy America" requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). One such exception is if "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality." 49 U.S.C. 5323(j)(2)(B).

Section 3023(i)(5)(C) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) gave FTA the statutory authority to issue post-award waivers. This authority limits post-award waivers to non-availability waivers only. Consequently, the only post-award waivers granted to date have been on the basis of non-availability in cases in which the contractor has made a certification of compliance with the requirements in good faith but, for reasons not foreseen at the time of the initial RFP, compliance was rendered impossible or impracticable.

"In determining whether the conditions exist to grant a post-award non-availability waiver, [FTA] will consider all appropriate factors on a case-by-case basis." 49 CFR 661.7(c)(3). Such factors will include "the status of other bidders or offerors who are Buy America compliant and can furnish domestic material or products on an FTA-funded project," 72 Fed. Reg. 53,691 (Sept. 20, 2007), and "may include project schedule and budget." 71 Fed. Reg. 69, 415 (Nov. 30, 2006). In addition, FTA will look to "existing precedents in public contracting law and practice." 71 Fed. Reg. 69,416 (Nov. 30, 2006). One such precedent is FTA's recent decision to grant a post-award non-availability waiver to the Regional Transportation Commission of Southern Nevada in circumstances similar to Capital Metro's request.

FTA notes that, unlike with public interest waivers, it is not required to publish a notice in the **Federal Register** before waiving its Buy America requirements on the basis of non-availability. In this instance, however, FTA is proceeding with an abundance of caution, given the unique circumstances by which a prospective FTA grantee issued a request for proposals without the inclusion of the traditional Buy America clause, intending to fully underwrite the contract using exclusively local funding. Therefore, in order to understand completely the facts surrounding Capital Metro's request, FTA seeks comment from all interested parties. A full copy of Capital Metro's petition has been placed in docket number FTA–2009–0020. Please submit comments by May 1, 2009. Late-filed comments will be considered to the extent practicable.

Issued this 20th day of April 2009.

**Scott A. Biehl,**

*Acting Chief Counsel.*

[FR Doc. E9–9467 Filed 4–23–09; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35238]**

### BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement dated January 20, 2009, Union Pacific Railroad Company (UP) has agreed to grant temporary local trackage rights to BNSF Railway Company (BNSF) over UP lines extending between: (1) UP milepost 93.2 at Stockton, CA, on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, CA, on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Elsey, CA, and UP milepost 280.7 at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles.[1]

The transaction is scheduled to be consummated on or after May 9, 2009, the effective date of the exemption (30 days after the exemption is filed).

The trackage rights agreement will permit BNSF to move empty and loaded

[1] BNSF submits that the trackage rights being granted here are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003). Therefore, BNSF concurrently has filed a petition for partial revocation of this exemption in STB Finance Docket No. 35238 (Sub-No. 1), *BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company*, wherein BNSF requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire at midnight on December 31, 2009, as provided in the parties' agreement. The petition will be addressed by the Board in a separate decision.

ballast trains to and from the ballast pit at Elsey, CA, which is adjacent to the UP rail line. The trackage rights are temporary in nature and are scheduled to expire at midnight on December 31, 2009.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by May 1, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term "solid waste" is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35238, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 16, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E9–9192 Filed 4–23–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35240]**

### Muskogee City-County Port Authority—Operation Exemption—A Line of Railroad in Muskogee County, OK

Muskogee City-County Port Authority (the Port), a non-carrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a 4.7-mile rail line extending from milepost 88.80, at or near Davis Field, to milepost 93.50, at or near Shopton, in Muskogee County, OK.

On January 6, 1993, a decision and notice of interim trail use or abandonment (NITU) was served by the Board's predecessor agency, the Interstate Commerce Commission, in *Missouri Pacific Railroad Co. —Abandonment Exemption—In Muskogee, McIntosh and Haskell Counties, OK*, Docket No. AB–3 (Sub-No. 104X), establishing a 180-day period for Missouri Pacific Railroad Company (MP) [1] to negotiate an interim trail use/rail banking agreement under the National Trails System Act, 16 U.S.C. 1247(d) for a 43.0-mile rail line extending from milepost 93.50, at or near Shopton, to milepost 50.50, near Kerr McGee, in Muskogee, McIntosh, and Haskell Counties, OK. Trail negotiations were successful and an agreement for rail banking and interim trail use was reached in the Line Donation Contract (Contract) between MP, the Port, and Indian Nations Recreation Trail (INRT). Pursuant to that agreement, the Port obtained the right to use the 4.7-mile segment described above for rail banking and interim trail use.[2] The Port now wishes to reactivate service over the 4.7 mile line segment.[3]

The Port certifies that its projected annual revenues as a result of this transaction will not result in the Port becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is scheduled to be consummated on May 10, 2009, the effective date of the exemption (30 days after the exemption is filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction. Petitions for stay must be filed no later than May 1, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35240, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, 1920 N Street, NW., Suite 800, Washington, DC 20036–1601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 21, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–9450 Filed 4–23–09; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Union Pacific Railroad is the successor-in-interest to MP.

[2] The NITU governing the rest of the line is not at issue here.

[3] Port simultaneously filed a petition to vacate the NITU issued in *Missouri Pacific Railroad Co. —Abandonment Exemption—In Muskogee, McIntosh and Haskell Counties, OK*, Docket No. AB–3 (Sub-No. 104X) (ICC served Jan. 6, 1993). The petition will be addressed by the Board in a separate decision.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2009–16]**

### 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.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before May 14, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2009–0084 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, DC 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:** For technical questions concerning this notice contact Paul Vause (AFS–340), Federal Aviation Administration, Aircraft Maintenance Division, Repair Station Branch, 950 L'Enfant Plaza, SW. 5th Floor, Washington, DC 20024; telephone (202) 385–6441; facsimile (202) 385–6474, e-mail *paul.w.vause@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 21, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2009–0084.

*Petitioner:* Short Brothers plc (Bombardier).

*Section of 14 CFR Affected:* 14 CFR 145.103(b)

*Description of Relief Sought:* Short Brothers plc requests relief from requirements to provide suitable permanent housing to enclose the largest type and model of aircraft it has listed on its operation specification.

[FR Doc. E9–9427 Filed 4–23–09; 8:45 am]

**BILLING CODE 4910–13–P**

## NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

**[Docket No. NHTSA–2009–0086]**

### Technical Report on the Maintenance and Repair Expenses to the ABS and Underride Guard on Heavy Tractors and Trailers

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for comments on technical report.

**SUMMARY:** This notice announces the publication by NHTSA of an analysis of the costs to repair and maintain the Anti-Lock Brake System (ABS) and Underride Guard (URG) on heavy tractors and trailers. Federal Motor Vehicle Safety Standards 121 and 105 mandate antilock braking systems (ABS) on all air-braked vehicles and hydraulic-braked trucks and buses with a GVWR of 10,000 pounds or greater. FMVSS Nos. 223 and 224 require underride guards (URG) meeting a strength test on trailers with a GVWR of 10,000 pounds or greater.

**DATES:** Comments must be received no later than August 20, 2009.

**ADDRESSES:** *Report:* The technical report is available on the Internet for viewing in PDF format at *http://www-nrd.nhtsa.dot.gov/Pubs/811109.PDF.* You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Kirk Allen (NVS–431), National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

*Comments:* You may submit comments [identified by Docket Number NHTSA–2009–0086] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

You may call Docket Management at 202–366–9826.

Instructions: For detailed instructions on submitting comments, see the Procedural Matters section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Kirk Allen, Statistician, Evaluation Division, NVS–431, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W53–457, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–9308. E-mail: *kirk.allen@dot.gov.*

*For information about NHTSA's evaluations of the effectiveness of existing regulations and programs:* Visit the NHTSA Web site at *http://www.nhtsa.dot.gov* and click "NCSA" near the upper right corner on the home page; then click "Regulatory Evaluation" under "Browse Topics" on the "NCSA" page.

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standards mandate antilock braking systems (ABS) on heavy vehicles and underride guards (URG) on heavy trailers. Repair receipts from in-service vehicles were analyzed to estimate the maintenance and repair expenses to the ABS and URG. The average ABS expenses per month of operation were $0.85 for tractors and $0.25 for trailers. The presence of ABS did not increase expenses to other parts of the brake system. The estimated lifetime maintenance and repair expenses were notably smaller than the cost of equipping new vehicles with ABS. Repairs to the trailer URG averaged $0.16 per month of service. (All values are in 2007 dollars.)

### Procedural Matters

*How can I influence NHTSA's thinking on this subject?*

NHTSA welcomes public review of the technical report. The agency is interested in learning of any additional data that may be useful in the evaluations. The availability of data on later model year tractors and trailers is especially relevant because ABS-equipped vehicles in this analysis could have been at most six years old. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the report.

*How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2009–0086) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary

comments. There is no limit on the length of the attachments.

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) or you may visit *http://regulations.gov.*

Please send two paper copies of your comments to Docket Management, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Kirk Allen, Statistician, Evaluation Division, NVS–431, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue, SE., Washington, DC 20590 (or e-mail them to *kirk.allen@dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit them via the Federal eRulemaking Portal.

*Will the agency consider late comments?*

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

*How can I read the comments submitted by other people?*

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES.** The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

**Authority:** 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

**James F. Simons,**

*Director, Office of Regulatory Analysis and Evaluation.*

[FR Doc. E9–9401 Filed 4–23–09; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 20, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before May 26, 2009 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1961.

*Type of Review:* Extension.

*Form:* 1127.

*Title:* Application for Extension of Time for Payment of Tax.

*Description:* Form 1127 is used by taxpayers to request extension of time to pay taxes. The conditions under which extensions may be granted are stated under Section 6161 of the Internal Revenue Code.

*Respondents:* Individuals or Households.

*Estimated Total Burden Hours:* 833 hours.

*OMB Number:* 1545–2121.

*Type of Review:* Extension.

*Title:* Announcement 2008–103, Exported Coal Refund.

*Description:* This Announcement provides guidance to taxpayers regarding the filing of a claim for refund of the coal tax paid on exported coal. The guidance includes the form on which the claim is to be filed and the additional information needed to substantiate a claim.

*Respondents:* Businesses or other for-profits.

*Estimated Total Burden Hours:* 600 hours.

*Clearance Officer:* R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Celina Elphage,**

*Treasury PRA Clearance Officer.*

[FR Doc. E9–9379 Filed 4–23–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### American Sterling Bank, Sugar Creek, MO; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly

appointed the Federal Deposit Insurance Corporation as sole Receiver for American Sterling Bank, Sugar Creek, Missouri (OTS No. 15909) on April 17, 2009.

Dated: April 20, 2009.

By the Office of Thrift Supervision.

**Sandra E. Evans,**

*Federal Register Liaison.*

[FR Doc. E9–9398 Filed 4–23–09; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Friday,
April 24, 2009

Part II

# Department of Health and Human Services

Centers for Medicare & Medicaid Services

## Medicare Program; Recognition of NAIC Model Standards for Regulation of Medicare Supplemental Insurance; Notice

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**[CMS–4139–N]**

**RIN 0938–AP62**

## Medicare Program; Recognition of NAIC Model Standards for Regulation of Medicare Supplemental Insurance

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces changes made by the Genetic Information Nondiscrimination Act of 2008 (GINA) and the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) to section 1882 of the Social Security Act (the Act), which governs Medicare supplemental insurance. This notice also recognizes that the Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) on September 24, 2008, is considered to be the applicable NAIC Model Regulation for purposes of section 1882 of the Act, subject to our clarifications that are set forth in this notice.

**DATES:** Amendments made by GINA apply to issuers of Medigap policies for policy years beginning on or after May 21, 2009. Each State shall have up to July 1, 2009 to conform its regulatory program to the statutory changes made by GINA, and the revisions to the NAIC Model Regulation that reflect GINA. Amendments made by MIPPA apply to Medigap policies with an effective date on or after June 1, 2010. Each State shall have up to September 24, 2009 to conform its regulatory program to the statutory changes made by MIPPA and the revisions to the NAIC model law and regulations that reflect MIPPA.

**FOR FURTHER INFORMATION CONTACT:** Jay Dobbs, (410) 786–1182 or Adam Shaw, (410) 786–1091.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. The Medicare Program*

The Medicare program was established by the Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical expenses for persons 65 years of age or older, certain disabled individuals, and persons with end-stage renal disease.

Medicare has three types of benefits: The "hospital insurance program" (Part A) covers inpatient care. The "supplementary medical insurance program" (Part B) covers a wide range of medical services, including physicians' services and outpatient hospital services, as well as equipment and supplies, such as prosthetic devices. The "Voluntary prescription drug benefit program" (Part D) covers outpatient prescription drugs not otherwise covered by Part B.

Beneficiaries can get their Part A and B benefits in two ways. Under "Original Medicare," beneficiaries get their Part A and Part B benefits directly from the Federal government. Beneficiaries can also choose to get their Part A and B benefits through private health plans, such as HMOs, that contract with Medicare. Most of these contracts are under Part C of Medicare, the Medicare Advantage Program.

While Medicare provides extensive benefits, it is not designed to cover the total cost of medical care for Medicare beneficiaries. Under Original Medicare, even if the items or services are covered by Medicare, beneficiaries are responsible for various deductible, coinsurance, and in some cases copayment amounts. In addition, there are medical expenses that are not covered by Medicare at all.

1. Deductibles

Under Original Medicare, a beneficiary with Part A is responsible for the Part A inpatient hospital deductible for each "benefit period." A benefit period is the period beginning on the first day of hospitalization and extending until the beneficiary has not been an inpatient of a hospital or skilled nursing facility for 60 consecutive days. The inpatient hospital deductible is updated annually in accordance with a statutory formula. The inpatient hospital deductible for calendar year (CY) 2008 is $1,024. For CY 2009, it is $1,068.

A beneficiary with Part B is responsible for the Part B deductible for each calendar year. The deductible is indexed to the increase in the average cost of Part B services for aged beneficiaries. The Part B deductible is $135.00 for CY 2008 and CY 2009.

2. Coinsurance

As noted above, beneficiaries are generally responsible for paying coinsurance for covered items and services. For example, the coinsurance applicable to physicians' services under Part B is generally 20 percent of the Medicare-approved amount for the service. If a physician or certain other suppliers accept assignment, the beneficiary is only responsible for the coinsurance amount. When beneficiaries receive covered services from physicians or other suppliers who do not accept assignment of their Medicare claims, the beneficiaries may also be responsible for some amounts in excess of the Medicare approved amount ("excess charges").

3. Noncovered Services

Some items and services are not covered under either Part A or Part B; for example, custodial nursing home care, most dental care, eyeglasses, and most prescription drugs.

Because Original Medicare covers many health care services and supplies, but beneficiaries are responsible for the out-of-pocket expenses described above, most people choose to get some type of additional coverage to pay some of the costs not covered by Original Medicare. For people who do not have coverage from a current or previous employer that performs this function, the most common coverage is Medicare supplemental insurance. Some beneficiaries may also try to defray some expenses with hospital indemnity insurance, nursing home or long term care insurance, or specified disease (for example, cancer) insurance.

*B. Medicare Supplemental Insurance*

A Medicare supplemental (Medigap) policy is a health insurance policy sold by private insurance companies specifically to fill "gaps" in Original Medicare coverage. A Medigap policy typically provides coverage for some or all of the deductible and coinsurance amounts applicable to Medicare-covered services, and sometimes covers items and services that are not covered by Medicare.

Section 1882 of the Act sets forth requirements and standards that govern the sale of Medigap policies. It incorporates by reference, as part of the statutory requirements, certain minimum standards established by the National Association of Insurance Commissioners (NAIC). These minimum standards, known as the "NAIC Model Standards," are found in the "Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act" (NAIC Model), initially adopted by the NAIC on June 6, 1979, and revised to reflect subsequent legislative changes.

Under current provisions of section 1882 of the Act, Medigap policies generally may not be sold unless they conform to one of 14 standardized benefit packages that have been defined and designated by the NAIC. The ten original standardized plans were created pursuant to the Omnibus Budget

Reconciliation Act of 1990 (OBRA–90), and designated "A" through "J". The Balanced Budget Act of 1997 (BBA) authorized plans "F" and "J" to have high deductible options that are counted as separate plans, and the Medicare Modernization Act of 2003 (MMA) created new plans "K" and "L", bringing the total to 14. Three States (Massachusetts, Minnesota, and Wisconsin) are permitted by statute to have different standardized Medigap plans and are sometimes referred to in this context as the "waiver" States. There are also policies issued before the OBRA–90 requirements became applicable in 1992 ("prestandardized policies") that are still in effect.

Effective January 1, 2006, Medigap policies can no longer be sold with a prescription drug benefit. Three of the 10 original standardized Medigap plans, "H", "I", and "J," as well as some Medigap policies in the waiver States may still contain coverage for outpatient prescription drugs if the policies were sold before January 1, 2006. In addition, some pre-standardized plans cover drugs. If a beneficiary holding one of these policies enrolls in Medicare Part D prescription drug coverage, the prescription drug coverage is removed from the individual's Medigap policy.

Section 1882(b)(1) of the Act also provides that Medigap policies issued in a State are deemed to meet the Federal requirements if the State's program regulating Medicare supplemental policies provides for the application of standards at least as stringent as those contained in the NAIC Model Regulation, and if the State requirements are equal to or more stringent than those set forth in section 1882 of the Act.

States must amend their regulatory programs to implement all new Federal statutory requirements and applicable changes to the NAIC Model Standards. Thus, States will now be required to implement the statutory changes made by GINA and MIPPA, and the changes to the NAIC Model Standards made to comport with the requirements of GINA and MIPPA. The revised NAIC Model Standards are attached to this notice. While States generally cannot modify the standardized benefit packages set out in the NAIC Model, with respect to other provisions, States retain the authority to enact regulatory provisions that are more stringent than those that are incorporated in the NAIC Model Standards or in the statutory requirements (see section 1882(b)(1)(A) of the Act). States that have received a waiver under section 1882(p)(6) of the Act may continue to authorize the sale of policies that contain different benefits than the 14 standardized benefit packages. However, those States are also required to amend their regulatory programs to implement the new Federal statutory requirements and changes to the NAIC Model Standards as a result of GINA and MIPPA.

## II. Legislative Changes Affecting Medigap Policies and Clarification

### *A. Genetic Information Nondiscrimination Act of 2008 (GINA)*

GINA was enacted on May 21, 2008 (Pub. L. 110–233). Title I of GINA amends the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), the Internal Revenue Code of 1986 (Code), and the Social Security Act (SSA) to prohibit discrimination in health care coverage based on genetic information. Section 104 of GINA applies to Medicare supplemental (Medigap) coverage. The new requirements were added to section 1882 of the Act in new subsections (s)(2)(E), (s)(2)(F), and (x).

In the Medigap market, GINA prohibits issuers from denying or conditioning the issuance or effectiveness of a policy (including the imposition of any exclusion of benefits based on a preexisting condition) or discriminating in the pricing of the policy (including the adjustment of premium rates) based on an individual's genetic information. However, if otherwise permitted under title XVIII of the Act, the issuer can still impose such limitations based on a manifested disease of an individual who is covered under the policy.

GINA also generally prohibits Medigap issuers from requesting or requiring an individual or family member of an individual to undergo a genetic test. There are two exceptions. First, issuers are not precluded from obtaining and using the results of a genetic test to make a determination regarding payment, but they may only use the minimum amount of information necessary.

Second, a health insurance issuer in the Medigap market may request (but not require) an individual or family member to undergo a genetic test solely for research purposes, if specific conditions are met.

Medigap issuers are prohibited from requesting, requiring, or purchasing genetic information for underwriting purposes (as defined in GINA, see below) or prior to an individual's enrollment under a policy. Furthermore, an exception to the prohibition on requesting, requiring, or purchasing genetic information is included for genetic information which is obtained incidental to the request, requirement, or purchase of other information concerning an individual, provided it is not used for underwriting purposes.

GINA defines genetic information with respect to any individual as information about that individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual. The term genetic information also includes an individual's request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, but does not include information about the sex or age of any individual.

Genetic services are further defined as a genetic test, genetic counseling (which includes obtaining, interpreting, or assessing genetic information), or genetic education. A genetic test is defined as an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. The term does not include an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that a health care professional with appropriate training and expertise could reasonably detect.

The term "family member" is defined to include first-degree through fourth-degree relatives of an individual. Underwriting purposes are defined to include rules for, or determination of, eligibility for benefits, computation of premiums, application of pre-existing condition exclusions, and other activities related to the creation, renewal, or replacement of a policy. The statute also clarifies that references to genetic information concerning an individual include the genetic information of a fetus carried by a pregnant woman and of an embryo legally held by an individual utilizing an assisted reproductive technology.

The provisions of GINA are effective with respect to health insurance issuers in the Medigap market for policy years beginning on or after May 21, 2009. States generally must incorporate the GINA provisions into their regulatory programs no later than July 1, 2009. The GINA requirements are enumerated in Section 24 of the new September 24, 2008 Model regulation.

*B. Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)*

MIPPA was enacted on July 15, 2008 (Pub. L. 110–275). Section 104(a) of MIPAA requires the Secretary of HHS to provide for implementation of the changes in the NAIC Model #651 (Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act) approved by the NAIC on March 11, 2007. The changes, outlined below in subsection C, are effective for Medigap policies with effective dates on or after June 1, 2010. The States have until September 24, 2009 (one year past the date the changes to the Model were adopted by the NAIC) to conform their regulatory programs to the changes to the Model made pursuant to MIPPA.

Section 104(b) of MIPAA amended section 1882(o) of the Act to require issuers of Medigap policies to make available at least Medicare supplemental policies with benefit packages classified as "C" or "F" if they wish to offer other Medigap plans in addition to the core benefit plan "A". Finally, section 104(c) of MIPPA provides a clarification that policies that cover out-of-pocket costs under Medicare Advantage Plans (established under Medicare Part C) must comply with the requirements of section 1882(o) of the Act. These two provisions were reflected in the Model adopted by the NAIC on September 24, 2008.

*C. Changes to the NAIC Model #651 (Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act) Approved by the NAIC on March 11, 2007*

Responding to a statement in the conference report for the MMA regarding the benefits of modernizing the Medigap market, the NAIC formulated a task force consisting of State regulators, consumer advocates, industry representatives, and CMS staff to draft changes to the Medigap standardized plan structure with the intent of streamlining and updating the benefits in the plans. The changes drafted by the task force were approved by the NAIC on March 11, 2007, and were authorized by MIPPA as indicated above. The new Model (with the approved changes) was adopted by the NAIC on September 24, 2008. The changes apply to Medigap plans with policy years beginning on or after June 1, 2010.

The following are the changes to the standardized Medigap plans:

- Added Hospice coverage as a Basic "Core" benefit to all plans, as similar coverage was added as a basic benefit in plans "K" and "L".
- Deleted coverage for Preventive and At-Home Recovery. The NAIC concluded that Medicare Part B has changed to cover many more preventive benefits, and the usefulness of this benefit in a Medigap policy was significantly reduced, covering only part of an annual physical after Medicare covered the beneficiaries' initial physical. The NAIC also concluded that the At-Home Recovery benefit was confusing and difficult to understand and administer, and changes to Medicare had made this benefit less meaningful.
- Created a new plan D, which is identical to the current plan D except that the At-Home Recovery benefit was deleted.
- Created a new plan G, which is identical to the current plan G except that the 80% Medicare Part B Excess charge benefit would be replaced by a 100% Medicare Part B Excess charge benefit, and the At-Home Recovery benefit was deleted.
- Eliminated the current "E", "H", "I" and "J" plans as they duplicated existing Plans.
- Created a new plan "M", which duplicates plan D but with a 50% coinsurance on the Part A deductible.
- Created a new plan "N" which duplicates plan D with the Part B co-insurance being paid at 100%, less a $20 co-pay per physician visit and a co-pay of $50 per emergency room visit, unless the beneficiary was admitted to the hospital.

As a result of these changes, the new Model has two sets of standardized plans: Sections 8 and 9 of the Model outline the current benefits for standardized plans with an effective date of coverage prior to June 1, 2010 (we will refer to these as the "1990 standardized plans"); and Section 8.1 and 9.1 spell out the benefits for the standardized plans with an effective date for coverage on or after June 1, 2010 (referred to as the "2010 standardized plans").

*D. Clarification-Upon Exhaustive Benefit*

Section 8.B. of the revised NAIC Model describes the standards for basic benefits common to plans "A" through "J". Section 8.D.(1) describes the standards for benefits common to plans "K" through "L". Section 8.B.(3) and section 8.D.(1)(c) describe what is commonly referred to as the "upon exhaustion" benefit. Medicare provides inpatient hospital benefits for up to 90 days in a benefit period, plus any of the 60 "lifetime reserve days" that have not already been used. After a beneficiary exhausts this coverage, including the lifetime reserve days, all Medigap policies cover 100 percent of Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of 365 days. We note that the last sentence of section 8.B.(3) and of section 8.D.(1)(c) is not part of the benefit description of the "upon exhaustion" benefit. Therefore, a State's failure to include this language in its regulatory program does not affect the State's compliance with Federal Medigap standards and requirements. Similarly, section 17.D(4) of the Model sets forth all the outlines of coverage for plans "A" through "K". Each outline contains, at the bottom of its first page, a "Notice" to prospective purchasers. The final sentence of this notice is not part of the benefit description, and therefore a State's failure to include this language in the outlines of coverage does not affect the State's compliance with Federal Medigap standards and requirements.

**III. Standardized Benefit Packages**

The following is a list of the standardized Medigap benefit packages, with a cross-reference to the sections of the attached NAIC Model where the packages are described in detail. The Model Regulation, adopted by the NAIC on September 24, 2008, is reprinted at the end of this notice. The NAIC has granted permission for the NAIC Model Regulation to be published and reproduced. Under 1 CFR 2.6, there is no restriction on the republication of material as it appears in the **Federal Register.**

*1990 Standardized Plans With an Effective Date of Coverage Prior to June 1, 2010.*

- Plan "A" (Core Benefit Plan) (NAIC Model Section 9.E.(1))
- Plan "B" (NAIC Model Section 9.E.(2))
- Plan "C" (NAIC Model Section 9.E.(3))
- Plan "D" (NAIC Model Section 9.E.(4))
- Plan "E" (NAIC Model Section 9.E.(5))
- Plan "F" (NAIC Model Section 9.E.(6))
- Plan "F" High Deductible (NAIC Model Section 9.E.(7))
- Plan "G" (NAIC Model Section 9.E.(8))
- Plan "H" (NAIC Model Section 9.E.(9))
- Plan "I" (NAIC Model Section 9.E.(10))
- Plan "J" (NAIC Model Section 9.E.(11))
- Plan "J" High Deductible (NAIC Model Section 9.E.(12))
- Plan "K" (NAIC Model Section 9.F.(1))
- Plan "L" (NAIC Model Section 9.F.(2))

*2010 Standardized Plans With an Effective Date of Coverage On or After June 1, 2010.*

- Plan "A" (Core Benefit Plan) (NAIC Model Section 9.1.E.(1))
- Plan "B" (NAIC Model Section 9.1.E.(2))
- Plan "C" (NAIC Model Section 9.1.E.(3))
- Plan "D" (NAIC Model Section 9.1.E.(4))
- Plan "F" (NAIC Model Section 9.1.E.(5))
- Plan "F" High Deductible (NAIC Model Section 9.1.E.(6))
- Plan "G" (NAIC Model Section 9.1.E.(7))
- Plan "K" (NAIC Model Section 9.1.E.(8))
- Plan "L" (NAIC Model Section 9.1.E.(9))
- Plan "M" (NAIC Model Section 9.1.E.(10))
- Plan "N" High Deductible (NAIC Model Section 9.1.E.(11))

**Authority:** Sections 1882(s)(2)(E), 1882(s)(2)(F) and 1882(x) of the Social Security Act (42 U.S.C. 1395ss(s)(x)), Section 104 of Public Law 110–275.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 9, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: March 25, 2009.

**Charles E. Johnson,**

*Acting Secretary.*

*Revisions to Model 651*

As adopted by the NAIC, September 24, 2008.

## MODEL REGULATION TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

**Table of Contents**



### Section 1. Purpose

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

### Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner under [cite appropriate section of state law providing authority for minimum benefit standards regulations or the NAIC Medicare Supplement Insurance Minimum Standards Model Act].

**Editor's Note:** Wherever the term "commissioner" appears, the title of the chief insurance regulatory official of the state should be inserted.

### Section 3. Applicability and Scope

A. Except as otherwise specifically provided in Sections 7, 13, 14, 17 and 22, this regulation shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

### Section 4. Definitions

For purposes of this regulation:

A. "Applicant" means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificate holder.

B. "Bankruptcy" means when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

D. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

E. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

F.(1) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(a) A group health plan;

(b) Health insurance coverage;

(c) Part A or Part B of Title XVIII of the Social Security Act (Medicare);

(d) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928;

(e) Chapter 55 of Title 10 United States Code (CHAMPUS);

(f) A medical care program of the Indian Health Service or of a tribal organization;

(g) A state health benefits risk pool;

(h) A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(i) A public health plan as defined in federal regulation; and

(j) A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

(2) "Creditable coverage" shall not include one or more, or any combination of, the following:

(a) Coverage only for accident or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for on-site medical clinics; and

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(a) Limited scope dental or vision benefits;

(b) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(c) Such other similar, limited benefits as are specified in federal regulations.

(4) "Creditable coverage" shall not include the following benefits if offered as independent, non-coordinated benefits:

(a) Coverage only for a specified disease or illness; and

(b) Hospital indemnity or other fixed indemnity insurance.

(5) "Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(a) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(b) Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(c) Similar supplemental coverage provided to coverage under a group health plan.

**Drafting Note:** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) specifically addresses separate, non-coordinated benefits in the group market at PHSA § 2721(d)(2) and the individual market at § 2791(c)(3). HIPAA also references excepted benefits at PHSA §§ 2701(c)(1), 2721(d), 2763(b) and 2791(c). In addition, creditable coverage has been addressed in an interim final rule (62 FR at 16960–16962 (April 8, 1997)) issued by the Secretary pursuant to HIPAA, and may be addressed in subsequent regulations.

G. "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).

H. "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

**Drafting Note:** If the state law definition of insolvency differs from the above definition, please insert the state law definition.

I. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

J. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

K. "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in [refer to definition of Medicare Advantage plan in 42 U.S.C. 1395w–28(b)(1)], and includes:

(1) Coordinated care plans that provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(2) Medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and

(3) Medicare Advantage private fee-for-service plans.

**Drafting Note:** The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) redesignates "Medicare + Choice" as "Medicare Advantage" effective January 1, 2004.

L. "Medicare supplement policy" means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations], other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 *et seq.*) or an issued policy under a demonstration project specified in 42 U.S.C. 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. "Medicare supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under § 1833(a)(1)(A) of the Social Security Act.

**Drafting Note:** Under § 104(c) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), policies that are advertised, marketed or designed primarily to cover out-of-pocket costs under Medicare Advantage Plans (established under Medicare Part C) must comply with the Medicare supplement requirements of § 1882(o) of the Social Security Act.

M. "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to [insert effective date on which the state made its revisions to conform to the Omnibus Budget Reconciliation Act of 1990].

N. "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan" or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after [insert effective date of 1990 plan] and prior to June 1, 2010 and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

O. "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan" or "2010 plan" means a group or individual policy of Medicare supplement insurance issued on or after June 1, 2010.

P. "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Q. "Secretary" means the Secretary of the United States Department of Health and Human Services.

**Section 5. Policy Definitions and Terms**

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to the requirements of this section.

A. "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

D. "Health care expenses" means, for purposes of Section 14, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89–97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

**Section 6. Policy Provisions**

A. Except for permitted preexisting condition clauses as described in Section 7A(1), Section 8A(1), and Section 8.1A(1) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.

D. (1) Subject to Sections 7A(4), (5) and (7), and 8A(4) and (5) of this regulation, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(2) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(3) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan and;

(b) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

**Drafting Note:** After December 31, 2005, MMA prohibits issuers of Medicare supplement policies from renewing outpatient prescription drug benefits for both pre-standardized and standardized Medicare supplement policyholders who enroll in Medicare Part D. Before May 15, 2006, these beneficiaries have two options: Retain their current plan with outpatient prescription drug coverage removed and premiums adjusted appropriately; or enroll in a different policy as guaranteed for beneficiaries affected by these changes mandated by MMA and outlined in Section 12, "Guaranteed Issue for Eligible Persons." After May 15, 2006 however, these beneficiaries will only retain a right to keep their original policies, stripped of outpatient prescription drug coverage, and lose the right to guaranteed issue of the plans described in Section 12.

**Section 7. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to [insert effective date adopted by state]**

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

**Drafting Note:** This section has been retained for transitional purposes. The purpose of this section is to govern all policies issued prior to the date a state makes its revisions to conform to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

**Drafting Note:** States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

**Drafting Note:** This provision was prepared so that premium changes can be made based upon the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision so as to coincide with their particular authority.

(4) A "non-cancellable," "guaranteed renewable," or "non-cancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) Be cancelled or non-renewed by the issuer solely on the grounds of deterioration of health.

(5)(a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor non-renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (5)(d), the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8.1B of this regulation.

**Drafting Note:** Group contracts in force prior to the effective date of the Omnibus Budget Reconciliation Act (OBRA) of 1990 may have existing contractual obligations to continue benefits contained in the group contract. This section is not intended to impair such obligations.

(c) If membership in a group is terminated, the issuer shall:

(i) Offer the certificate holder the conversion opportunities described in Subparagraph (b); or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

**Drafting Note:** Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

B. Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [$100];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

**Section 8. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued or Delivered on or After [insert effective date adopted by state] and Prior to June 1, 2010**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after [insert effective date] and prior to June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

**Drafting Note:** This Section has been retained for transitional purposes. The purpose of this section is to govern policies issued subsequent to the adoption of 1990 Standardized benefit plans and prior to June 1, 2010. Standards for 2010 Standardized benefit plans issued for effective dates on or after June 1, 2010 are included in Section 8.1 of this regulation.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than

six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

**Drafting Note:** States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

**Drafting Note:** This provision was prepared so that premium changes can be made based on the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision to conform to their particular authority.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or non-renew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or non-renew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8A(5)(e), the issuer shall offer certificate holders an individual Medicare supplement policy which (at the option of the certificate holder)

(i) Provides for continuation of the benefits contained in the group policy, or

(ii) Provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall

(i) Offer the certificate holder the conversion opportunity described in Section 8A(5)(c), or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

**Drafting Note:** Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss.

**Drafting Note:** The Ticket to Work and Work Incentives Improvement Act failed to provide for payment of the policy premiums in order to reinstitute coverage retroactively. States should consider adding the following language at the end of the last sentence in Subparagraph (c): "and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan." This addition will clarify that issuers are entitled to collect the premium in this situation, as they are under Subparagraph (b). Also, the Ticket to Work and Work Incentives Improvement Act of 1999 does not specify the period of time that a policy may be suspended under Section 8A(7)(c). In the event that the Centers for Medicare & Medicaid Services (CMS) provides states with guidance on this issue, the phrase "for any period that may be provided by federal law" has been inserted into this provision in parentheses so that any time period prescribed is incorporated by reference.

(d) Reinstitution of coverages as described in Subparagraphs (b) and (c):

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare

Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(8) If an issuer makes a written offer to the Medicare Supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from his or her [1990 Standardized plan] (as described in Section 9 of this regulation) to a [2010 Standardized plan] (as described in Section 9.1 of this regulation), the offer and subsequent exchange shall comply with the following requirements:

(a) An issuer need not provide justification to the [commissioner] if the insured replaces a [1990 Standardized] policy or certificate with an issue age rated [2010 Standardized] policy or certificate at the insured's original issue age [and duration]. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an issuer must be filed with the commissioner [—according to the state's rate filing procedure —].

(b) The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

(c) An issuer may not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged [1990 Standardized] policy or certificate of the insured, but may apply pre-existing condition limitations of no more than six (6) months to any added benefits contained in the new [2010 Standardized] policy or certificate not contained in the exchanged policy.

(d) The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except where the offer or issue would be in violation of state or federal law.

**Drafting Note:** The options an issuer may offer its policyholders or certificate holders may be (a) to only selected existing Plans or (b) to only certain new Plans for a particular existing Plan. For example, an exchange of a new Plan F for an old Plan F is an acceptable option. An offer to only policyholders with existing Plans with no reduction in benefits is also acceptable.

B. Standards for Basic (Core) Benefits Common to Benefit Plans A to J. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

**Drafting Note:** The issuer is required to pay whatever amount Medicare would have paid as if Medicare was covering the hospitalization. The "or other appropriate Medicare standard of payment" provision means the manner in which Medicare would have paid. The issuer stands in the place of Medicare, and so the provider must accept the issuer's payment as payment in full. The Outline of Coverage specifies that the beneficiary will pay "$0," and the provider cannot balance bill the insured.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

**Drafting Note:** In all cases involving hospital outpatient department services paid under a prospective payment system, the issuer is required to pay the co-payment amount established by CMS, which will be either the amount established for the Ambulatory Payment Classification (APC) group, or a provider-elected reduced co-payment amount.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this regulation.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty Percent (80%) of the Medicare Part B Excess Charges: Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for

eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9)(a) Preventive Medical Care Benefit: Coverage for the following preventive health services not covered by Medicare:

(i) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (b) and patient education to address preventive health care measures;

(ii) Preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

(b) Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations.

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of $40 per visit;

(III) $1,600 per calendar year;

(IV) Seven (7) visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in this section;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

**Drafting Note:** The Omnibus Budget Reconciliation Act 1990, 42 U.S.C. 1395ss(p)(7), does not prohibit the issuers of Medicare supplement policies, through an arrangement with a vendor for discounts from the vendor, from making available discounts from the vendor to the policyholder or certificate holder for the purchase of items or services not covered under its Medicare supplement policies (for example: discounts on hearing aids or eyeglasses).

**Drafting Note:** The NAIC discussed including inflation protection for at-home recovery benefits, and preventive care benefits. However, because of the lack of an appropriate mechanism for indexing these benefits, NAIC has not included indexing at this point in time. However, NAIC is committed to evaluating the effectiveness of these benefits without inflation protection, and will revisit the issue. NAIC has determined that OBRA does not authorize NAIC to delegate the authority for indexing these benefits to a federal agency without an amendment to federal law.

D. Standards for Plans K and L.

(1) Standardized Medicare supplement benefit plan "K" shall consist of the following:

(a) Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(b) Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph (j);

(e) Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph (j);

(f) Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph (j);

(g) Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket

limitation is met as described in Subparagraph (j);

(h) Except for coverage provided in Subparagraph (i) below, coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph (j) below;

(i) Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(2) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(a) The benefits described in Paragraphs (1)(a), (b), (c) and (i);

(b) The benefit described in Paragraphs (1)(d), (e), (f), (g) and (h), but substituting seventy-five percent (75%) for fifty percent (50%); and

(c) The benefit described in Paragraph (1)(j), but substituting $2000 for $4000.

**Section 8.1 Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After June 1, 2010**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of [—insert proper citation—].

**Drafting Note:** Each state should insert the proper citation(s) to its statutes or rules that govern Medicare supplement insurance policies and certificates issued prior to the June 1, 2010 effective date of 2010 Standardized benefit plan standards found in Sections 8.1 and 9.1 of this regulation. It is recommended that each state's applicable statutes or rules for Medicare supplement policies and certificates issued prior to June 1, 2010 be retained and that this section of the regulation be adopted in its entirety as a new section to govern policies issued on and after June 1, 2010.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

**Drafting Note:** States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this Subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

**Drafting Note:** This provision was prepared so that premium changes can be made based on the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision to conform to their particular authority.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8.1A(5)(e) of this regulation, the issuer shall offer certificate holders an individual Medicare supplement policy which (at the option of the certificate holder):

(i) Provides for continuation of the benefits contained in the group policy; or

(ii) Provides for benefits that otherwise meet the requirements of this Subsection.

(d) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificate holder the conversion opportunity described in Section 8.1A(5)(c) of this regulation; or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

**Drafting Note:** Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but

only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss.

**Drafting Note:** The Ticket to Work and Work Incentives Improvement Act failed to provide for payment of the policy premiums in order to reinstitute coverage retroactively. States should consider adding the following language at the end of the last sentence in Subparagraph (c): "and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan." This addition will clarify that issuers are entitled to collect the premium in this situation, as they are under Subparagraph (b). Also, the Ticket to Work and Work Incentives Improvement Act of 1999 does not specify the period of time that a policy may be suspended under Section 8A(7)(c). In the period that may event that the Centers for Medicare & Medicaid Services (CMS) provides states with guidance on this issue, the phrase "for any be provided by federal law" has been inserted into this provision in parentheses so that any time period prescribed is incorporated by reference.

(d) Reinstitution of coverages as described in Subparagraphs (b) and (c):

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

B. Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, F with High Deductible, G, M and N. Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

**Drafting Note:** The issuer is required to pay whatever amount Medicare would have paid as if Medicare was covering the hospitalization. The "or other appropriate Medicare standard of payment" provision means the manner in which Medicare would have paid. The issuer stands in the place of Medicare, and so the provider must accept the issuer's payment as payment in full. The Outline of Coverage specifies that the beneficiary will pay "$0," and the provider cannot balance bill the insured.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

(6) Hospice Care: Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

**Drafting Note:** In all cases involving hospital outpatient department services paid under a prospective payment system, the issuer is required to pay the co-payment amount established by CMS, which will be either the amount established for the Ambulatory Payment Classification (APC) group, or a provider-elected reduced co-payment amount.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by Section 9.1 of this regulation.

**Drafting Note:** Benefits for Plans K and L are set by The Medicare Prescription Drug, Improvement and Modernization. Act of 2003, and can be found in Sections 9.1E(8) and (9) of this regulation.

(1) Medicare Part A Deductible: Coverage for one hundred percent (100%) of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period.

(3) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(4) Medicare Part B Deductible: Coverage for one hundred percent (100%) of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United

States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

**Drafting Note:** The Omnibus Budget Reconciliation Act 1990, 42 U.S.C. 1395ss(p)(7), does not prohibit the issuers of Medicare supplement policies, through an arrangement with a vendor for discounts from the vendor, from making available discounts from the vendor to the policyholder or certificate holder for the purchase of items or services not covered under its Medicare supplement policies (for example: discounts on hearing aids or eyeglasses).

**Drafting Note:** The descriptions of Plans K and L are contained in Section 9.1E(8) and (9) of this regulation.

**Section 9. Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After [insert effective date adopted by state] and Prior to June 1, 2010**

**Drafting Note:** This section has been retained for transitional purposes. The purpose of this Section is to govern policies issued subsequent to the adoption of 1990 Standardized benefit plans and prior to June 1, 2010. Standards for 2010 Standardized benefit plans issued for effective dates on or after June 1, 2010 are included in Section 9.1 of this regulation.

A. An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Section 8B of this regulation.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Section 9G and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "L" listed in this subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8B and 8C, or 8D and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law.

**Drafting Note:** It is anticipated that if a state determines that it will authorize the sale of only some of these benefit plans, the letter codes used in this regulation will be preserved. The *Guide to Health Insurance for People with Medicare* published jointly by the NAIC and CMS will contain a chart comparing the possible combinations. In order for consumers to compare specific policy choices, it will be important that a uniform "naming" system be used. Thus, if only plans "A," "B," "D," "F (including F with a high deductible)" and "H" (for example) are authorized in a state, these plans should retain these alphabetical designations. However, an issuer may use, in addition to these alphabetical designations, other designations as provided in Section 9D of this regulation.

E. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as defined in Section 8B of this regulation.

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible as defined in Section 8C(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: The core benefit (as defined in Section 8B of this regulation), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in an foreign country and the at-home recovery benefit as defined in Sections 8C(1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Sections 8C(1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100 percent) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (3), (5) and (8) respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Sections 8C(1), (2), (4), (8) and (10) respectively.

(9) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (6) and (8) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(10) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The core

benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Sections 8C(1), (2), (5), (6), (8) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(11) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Sections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(12) Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: 100 percent of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Sections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

F. Make-up of two Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA);

(1) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Section 8D(1).

(2) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Section 8D(2).

G. New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

**Drafting Note:** Use of new or innovative benefits may be appropriate to add coverage or access if they offer uniquely different or significantly expanded coverage.

**Drafting Note** A state may determine by statute or regulation which of the above benefit plans may be sold in that state. The core benefit plan must be made available by all issuers. Therefore, the core benefit plan must be one of the authorized benefit plans adopted by a state. In no event, however, may a state authorize the sale of more than 10 standardized Medicare supplement benefit plans (that is, 9 plus the core policy), plus the two (2) high deductible plans, and the two (2) benefit plans K and L, mandated by MMA at the same time. Further, the modified versions of plans H, I, J as required by MMA after December 31, 2005 will not count as additional plans toward the limitations on the total number of plans discussed above.

**Drafting Note:** The Omnibus Budget Reconciliation Act of 1990 preempts state mandated benefits in Medicare supplement policies or certificates, except for those states which have been granted a waiver for non-standardized plans.

**Drafting Note:** After December 31, 2005, MMA prohibits Medicare supplement issuers from offering policies with outpatient prescription drug coverage, and from renewing outpatient prescription drug coverage for insureds enrolled in Medicare Part D. Consequently, plans with an outpatient prescription drug benefit will not be offered to new enrollees after that time.

**Drafting Note:** Pursuant to the enactment of MMA, two new benefit packages, called K and L, were added to plans A through J. The two new packages have higher co-payments and coinsurance contributions from the Medicare beneficiary.

**Section 9.1 Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After June 1, 2010**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of [ -insert proper citation- ].

**Drafting Note.** Each state should insert the proper citation(s) to its statutes or rules that govern Medicare supplement insurance policies and certificates issued prior to the June 1, 2010 effective date of the 2010 Standardized benefit plan standards found in Sections 8.1 and 9.1 of this regulation. It is recommended that each state's applicable statutes or rules for Medicare supplement benefit plans for policies and certificates issued prior to June 1, 2010 be retained and that this section of the Model be adopted in its entirety as a new section to govern policies and certificates issued on and after June 1, 2010. (The benefit plan standards of the Medicare Supplement Model Regulation for policies issued prior to June 1, 2010 are found in Section 9 of this regulation.)

A. (1) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as defined in Section 8.1B of this regulation.

(2) If an issuer makes available any of the additional benefits described in Section 8.1C, or offers standardized benefit Plans K or L (as described in Sections 9.1E(8) and (9) of this regulation), then the issuer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in subsection A(1) above, a policy form or certificate form containing either standardized benefit Plan C (as described in Section 9.1E(3) of this regulation) or standardized benefit Plan F (as described in 9.1E(5) of this regulation).

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this Section shall be offered for sale in this state, except as may be permitted in Section 9.1F and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans listed in this Subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8.1B and 8.1C of this regulation; or, in the case of plans K or L, in Sections 9.1E(8) or (9) of this regulation and list the benefits in the order shown. For purposes of this Section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. In addition to the benefit plan designations required in Subsection C of this section, an issuer may use other designations to the extent permitted by law.

**Drafting Note:** It is anticipated that if a state determines that it will authorize the sale of only some of these benefit plans, the letter codes used in this regulation will be preserved. The *Guide to Health Insurance for People with Medicare* published jointly by the NAIC and CMS will contain a chart comparing the possible combinations. In order for consumers to compare specific policy choices, it will be important that a uniform "naming" system be used. Thus, if only Plans A, B, D, F, F with High Deductible, and K (for example) are authorized in a state, these plans must retain their alphabetical designations. An issuer may use, in addition to these alphabetical designations, other designations as provided in Section 9.1D of this regulation.

E. Make-up of 2010 Standardized Benefit Plans:

(1) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as defined in Section 8.1B of this regulation.

(2) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as defined in Section 8.1B of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible as defined in Section 8.1C(1) of this regulation.

(3) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as defined in Section 8.1B of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Sections 8.1C(1), (3), (4), and (6) of this regulation, respectively.

(4) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit (as defined in Section 8.1B of this regulation), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Sections 8.1C(1), (3), and (6) of this regulation, respectively.

(5) Standardized Medicare supplement [regular] Plan F shall include only the following: The basic (core) benefit as defined in Section 8.1B of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, the skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8.1C(1), (3), (4), (5), and (6), respectively.

(6) Standardized Medicare supplement Plan F With High Deductible shall include only the following: one hundred percent (100%) of covered expenses following the payment of the annual deductible set forth in Subparagraph (b).

(a) The basic (core) benefit as defined in Section 8.1B of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8.1C(1), (3), (4), (5), and (6) of this regulation, respectively.

(b) The annual deductible in Plan F With High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by [regular] Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10).

(7) Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as defined in Section 8.1B of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8.1C(1), (3), (5), and (6), respectively.

(8) Standardized Medicare supplement Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(a) Part A Hospital Coinsurance 61st through 90th days: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(b) Part A Hospital Coinsurance, 91st through 150th days: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(c) Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph (j);

(e) Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph (j);

(f) Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph (j);

(g) Blood: Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket

limitation is met as described in Subparagraph (j);

(h) Part B Cost Sharing: Except for coverage provided in Subparagraph (i), coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph (j);

(i) Part B Preventive Services: Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Cost Sharing After Out-of-Pocket Limits: Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(9) Standardized Medicare supplement Plan L is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(a) The benefits described in Paragraphs 9.1E(8)(a), (b), (c) and (i);

(b) The benefit described in Paragraphs 9.1E(8)(d), (e), (f), (g) and (h), but substituting seventy-five percent (75%) for fifty percent (50%); and

(c) The benefit described in Paragraph 9.1E(8)(j), but substituting $2000 for $4000.

(10) Standardized Medicare supplement Plan M shall include only the following: The basic (core) benefit as defined in Section 8.1B of this regulation, plus fifty percent (50%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Sections 8.1C(2), (3) and (6) of this regulation, respectively.

(11) Standardized Medicare supplement Plan N shall include only the following: The basic (core) benefit as defined in Section 8.1B of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Sections 8.1C(1), (3) and (6) of this regulation, respectively, with co-payments in the following amounts:

(a) the lesser of twenty dollars ($20) or the Medicare Part B coinsurance or co-payment for each covered health care provider office visit (including visits to medical specialists); and

(b) the lesser of fifty dollars ($50) or the Medicare Part B coinsurance or co-payment for each covered emergency room visit, however, this co-payment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

**Drafting Note:** The NAIC expects to periodically review the co-payment levels for Medicare supplement Plan N and make adjustments to this regulation as necessary.

F. New or Innovative Benefits: An issuer may, with the prior approval of the [commissioner], offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

**Drafting Note:** Recognizing the challenge in maintaining standardization while ensuring availability of new or innovative benefits, the drafters have included additional guidance to states in the NAIC Medicare Supplement Insurance Model Regulation Compliance Manual. This guidance includes a recommendation that states consider making publicly available all approved new or innovative benefits, and requests states to report the approval of all new or innovative benefits to the NAIC Senior Issues Task Force, who will maintain a record of these benefits for use by regulators and others. The Senior Issues Task Force will periodically review state approved benefits and consider whether to recommend that they be made part of standard benefit plan designs in this regulation.

**Drafting Note:** A state may determine by statute or regulation which of the above benefit plans may be sold in that state. Plan A, which consists of the basic (core) benefits must be made available by all issuers. Therefore, Plan A must be one of the authorized benefit plans adopted by a state. If an issuer offers any benefit plan in addition to Plan A, then the issuer must also offer either Plan C or Plan F. Therefore, if any benefit plan is authorized by a state other than Plan A, then either Plan C or Plan F must be among the authorized benefit plans adopted by a state. Except where a new or innovative benefit is approved by the [commissioner] for sale in a state, a state may not authorize the sale of any Medicare supplement plan other than the standardized Medicare supplement benefit plans (that is, Plans A, B, C, D, F, F With High Deductible, G, K, L, M and N) set forth in this regulation.

**Drafting Note:** The Omnibus Budget Reconciliation Act of 1990 preempts state mandated benefits in Medicare supplement policies or certificates, except for those states which have been granted a waiver for non-standardized plans.

**Section 10. Medicare Select Policies and Certificates**

A. (1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

**Drafting Note:** This section should be adopted by all states approving Medicare Select policies.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(e) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) The formal organizational structure;

(b) The written criteria for selection, retention and removal of network providers; and

(c) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection I.

(7) Any other information requested by the commissioner.

F. (1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after thirty (30) days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) It is not reasonable to obtain services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) Other Medicare supplement policies or certificates offered by the issuer; and

(b) Other Medicare Select policies or certificates.

(2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M. (1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and

which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

**Section 11. Open Enrollment**

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

B. (1) If an applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

**Drafting Note:** The Secretary has developed regulations pursuant to HIPAA regarding methods of counting creditable coverage, which govern the way the reduction is to be applied in Section 11B(2).

C. Except as provided in Subsection B and Sections 12 and 23, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

**Section 12. Guaranteed Issue for Eligible Persons**

A. Guaranteed Issue.

(1) Eligible persons are those individuals described in Subsection B who seek to enroll under the policy during the period specified in Subsection C, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection E that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons. An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

**Drafting Note:** Paragraph (1) above uses the federal legislative language from the Balanced Budget Act of 1997 (Pub L. 105–33) that defines an eligible person as an individual with respect to whom an employee welfare benefit plan terminates, or ceases to provide "all" health benefits that supplement Medicare. There was protracted discussion among the drafters about the interpretation of "all" in this context: if the employer drops some supplemental benefits, but not all such benefits, from its welfare plan, should the individual be eligible for a guaranteed issue Medicare supplement product? This question may become crucial to certain individuals depending on the benefits dropped by the employer. Federal legislative history appears to indicate the intention that the word "all" be strictly construed so as to require termination or cessation of all supplemental health benefits. States, however, can provide greater protections to beneficiaries and may wish to include, as eligible persons, individuals who have lost "some or all" or "substantially all" of their supplemental health benefits, to encompass situations where a change is made in an employee welfare benefit plan that reduces the amount of supplemental health benefits available to the individual. States that consider alternative language are reminded to consider the impact of issues such as plan changes that result in adverse selection, duplicate coverage, triggering the requirement for plan administrator notice (see Section 12D) and other issues.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social

Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(a) The certification of the organization or plan has been terminated;

(b) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(c) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area;

(d) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(e) The individual meets such other exceptional conditions as the Secretary may provide.

(3)(a) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Section 12B(2).

**Drafting Note:** Paragraph (3)(a)(iv) above is not required if there is a provision in state law or regulation that provides for the continuation or conversion of Medicare Select policies or certificates.

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a)(i) Of the insolvency of the issuer or bankruptcy of the non-issuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy;

(b) The issuer of the policy substantially violated a material provision of the policy; or

(c) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

**Drafting Note:** The reference to "insolvency of the issuer" in Paragraph 4(a) above is not required if there is a provision in state law or regulation that provides for the continuation or conversion of Medicare supplement policies or certificates.

(5)(a) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(b) The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment.

(7) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection E(4).

**Drafting Note:** Federal law provides a guaranteed issue right to a Medicare supplement insurance product to individuals who enroll in Medicare Part B at age 65. States may wish to consider extending this right to other classes of individuals, such as those who postpone enrollment in Medicare Part B until after age 65 because they are working and are enrolled in a group health insurance plan.

**Drafting Note:** Paragraph (7) does not preclude an individual from applying for a new Medigap policy without drug coverage while still enrolled in the policy with drug coverage. The issuer will terminate the drug policy when it issues the new policy without drug coverage.

C. Guaranteed Issue Time Periods.

(1) In the case of an individual described in Subsection B(1), the guaranteed issue period begins on the later of: (i) the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or (ii) the date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter;

(2) In the case of an individual described in Subsection B(2), B(3), B(5) or B(6) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

(3) In the case of an individual described in Subsection B(4)(a), the guaranteed issue period begins on the earlier of: (i) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and (ii) the date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated;

(4) In the case of an individual described in Subsection B(2), B(4)(b), B(4)(c), B(5) or B(6) who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date;

(5) In the case of an individual described in Subsection B(7), the

guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and

(6) In the case of an individual described in Subsection B but not described in the preceding provisions of this Subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date.

D. Extended Medigap Access for Interrupted Trial Periods.

(1) In the case of an individual described in Subsection B(5) (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in Subsection B(5)(a) is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 12B(5);

(2) In the case of an individual described in Subsection B(6) (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in Subsection B(6) is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 12B(6); and

(3) For purposes of Subsections B(5) and B(6), no enrollment of an individual with an organization or provider described in Subsection B(5)(a), or with a plan or in a program described in Subsection B(6), may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

E. Products to Which Eligible Persons Are Entitled. The Medicare supplement policy to which eligible persons are entitled under:

(1) Section 12B(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L offered by any issuer.

(2)(a) Subject to Subparagraph (b), Section 12B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Paragraph (1);

(b) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is:

(i) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(iii) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer;

(3) Section 12B(6) shall include any Medicare supplement policy offered by any issuer;

(4) Section 12B(7) is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

**Drafting Note:** Under federal law, for states that have an alternative form of standardization under a federal waiver and offer benefit packages other than Plans A, B, C, D, F, F with High Deductible, G, K, L, M and N, the references to benefit packages above are deemed references to comparable benefit packages offered in that state. Those states should amend the language accordingly.

F. Notification provisions.

(1) At the time of an event described in Subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 12A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

**Drafting Note:** States should ensure that educational and public information materials it develops related to Medicare include a thorough description of the rights outlined in Section 12F.

**Section 13. Standards for Claims Payment**

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. No. 100–203) by:

(1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) Paying the participating physician or supplier directly;

(4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

**Section 14. Loss Ratio Standards and Refund or Credit of Premium**

A. Loss Ratio Standards.

(1) (a) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(i) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or

(ii) At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies;

(b) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:

(i) Home office and overhead costs;

(ii) Advertising costs;

(iii) Commissions and other acquisition costs;

(iv) Taxes;

(v) Capital costs;

(vi) Administrative costs; and

(vii) Claims processing costs.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying Subsection A(1) of this section and Subsection C(3) of Section 15 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

**Drafting Note:** Subsection A(3) replicates language contained in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–508). It allows direct mail group policies sold on an individual basis to meet the minimum loss ratio required of individual business (65%) rather than that required of group business (75%). The NAIC eliminated this concept from this regulation in 1987 (I *Proceedings of the NAIC*, pp. 651, 673 (1988)). At that time, NAIC required direct mail group business to meet the same loss ratio requirement as other group business, regardless of whether the business was sold on an individual basis. The NAIC encourages states to apply the 75% loss ratio to all group business. Although NAIC is restricted from making revisions to its models that are not in conformance with OBRA 1990, states are free to impose more stringent requirements than OBRA.

(4) For policies issued prior to [insert effective date from Section 26 of this model, the effective date of the states regulation implementing the requirements of OBRA 1990], expected claims in relation to premiums shall meet:

(a) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) when combined with actual experience beginning with [insert effective date of this revision] to date; and

(c) The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

**Drafting Note:** The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) for all group policies subject to an individual loss ratio standard when issued is 65 percent. States may amend Section 13A(4) to permit or require aggregation of closed blocks of business upon approval of CMS.

B. Refund or Credit Calculation.

(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to [insert effective date from Section 26 of this model, the effective date of the states regulation implementing the requirements of OBRA 1990], the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after the [insert effective date of this amendment]. The first report shall be due by May 31, [insert (effective year + 2) of this amendment].

**Drafting Note:** Subsection B(3) implements the requirements of Section 171 of the Social Security Act Amendments of 1994 that require a refund or credit calculation for pre-standardized Medicare supplement policies, but only for experience subsequent to the date the state amends its regulation.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a *de minimis* level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of Premium Rates. An issuer of Medicare supplement policies and certificates issued before or after the effective date of [insert citation to state's regulation] in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(1)(a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy

other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings. The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of [insert citation to state's regulation] if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

**Drafting Note:** This section does not in any way restrict a commissioner's statutory authority, elsewhere granted, to approve or disapprove rates.

**Section 15. Filing and Approval of Policies and Certificates and Premium Rates**

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

C. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

D. (1) Except as provided in Paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) The inclusion of new or innovative benefits;

(b) The addition of either direct response or agent marketing methods;

(c) The addition of either guaranteed issue or underwritten coverage;

(d) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

**Drafting Note:** As a result of MMA, issuers now may have H, I, and J (including J with a high deductible) both with and without outpatient prescription drug coverage. The language in Subsection D is flexible enough to allow the issuer and regulator to incorporate this factor to allow for additional policy forms.

**Drafting Note:** The filing of 2010 Standardized plans policy forms to take the place of 1990 Standardized plans policy forms prior to the actual withdrawal of the 1990 standardized plans policy forms should be permitted.

E. (1) Except as provided in Paragraph (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

F. (1) Except as provided in Paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in [insert citation to Section 14 of NAIC Medicare Supplement Insurance Model Regulation].

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

**Drafting Note:** It has come to the attention of the NAIC that the use of attained age rating in the determination of rates in Medicare supplement policies may result in situations to which a regulatory response is desirable. States should assess their Medicare supplement marketplace to determine whether a regulatory response is needed. The following provisions may be included as a new subsection to Section 15. The first option prohibits insurers from attained age rating as a methodology for setting rates. The second option does not prohibit the use of attained age rating but requires Medicare supplement insurers who do use attained age rating as a rate setting methodology to apply the age component to its rates annually. The effective date of the regulation should

provide sufficient time for insurers to re-rate approved policy forms in accordance with Section 15A and for the insurance department to approve (according to its rate filing practices and procedures), such re-ratings prior to the effective date of the regulation.

Option 1

G. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon attained age rating as a structure or methodology.

Option 2

G. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.

**Drafting Note:** State insurance regulators are encouraged to consider whether it is necessary to require issuers to file new forms where the only changes in the forms reflect year-to-year modifications in Medicare deductible and coinsurance amounts.

**Section 16. Permitted Compensation Arrangements**

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.

C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

**Section 17. Required Disclosure Provisions**

A. General Rules.

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6)(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a *Guide to Health Insurance for People with Medicare* in the form developed jointly by the National Association of Insurance Commissioners and CMS and in a type size no smaller than 12 point type. Delivery of the *Guide* shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the *Guide* shall be made to the applicant at the time of application and acknowledgement of receipt of the *Guide* shall be obtained by the issuer. Direct response issuers shall deliver the *Guide* to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements.

(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(b) Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

C. MMA Notice Requirements. Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

D. Outline of Coverage Requirements for Medicare Supplement Policies.

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an

acknowledgement of receipt of the outline from the applicant; and

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

**Notice:** "Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated

(4) The following items shall be included in the outline of coverage in the order prescribed below.

BILLING CODE 4120–01–P

**Benefit Chart of Medicare Supplement Plans Sold on or After June 1, 2010**

This chart shows the benefits included in each of the standard Medicare supplement plans. Every company must make Plan "A" available. Some plans may not be available in your state.

Plans E, H, I, and J are no longer available for sale. [This sentence shall not appear after June 1, 2011.]

**Basic Benefits:**

- **Hospitalization** –Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
- **Medical Expenses** –Part B coinsurance (generally 20% of Medicare-approved expenses) or co-payments for hospital outpatient services. Plans K, L and N require insureds to pay a portion of Part B coinsurance or co-payments.
- **Blood** –First three pints of blood each year.
- **Hospice**— Part A coinsurance

| A | B | C | D | F | F* | G |
|---|---|---|---|---|---|---|
| Basic, including 100% Part B coinsurance | Basic, including 100% Part B coinsurance | Basic, including 100% Part B coinsurance | Basic, including 100% Part B coinsurance | Basic, including 100% Part B coinsurance* | | Basic, including 100% Part B coinsurance |
| | | Skilled Nursing Facility Coinsurance | Skilled Nursing Facility Coinsurance | Skilled Nursing Facility Coinsurance | | Skilled Nursing Facility Coinsurance |
| | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible | | Part A Deductible |
| | | Part B Deductible | | Part B Deductible | | |
| | | | | Part B Excess (100%) | | Part B Excess (100%) |
| | | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency | | Foreign Travel Emergency |

| K | L | M | N |
|---|---|---|---|
| Hospitalization and preventive care paid at 100%; other basic benefits paid at 50% | Hospitalization and preventive care paid at 100%; other basic benefits paid at 75%. | Basic, including 100% Part B coinsurance | Basic, including 100% Part B coinsurance, except up to $20 copayment for office visit, and up to $50 copayment for ER |
| 50% Skilled Nursing Facility Coinsurance | 75% Skilled Nursing Facility Coinsurance | Skilled Nursing Facility Coinsurance | Skilled Nursing Facility Coinsurance |
| 50% Part A Deductible | 75% Part A Deductible | 50% Part A Deductible | Part A Deductible |
| | | | |
| | | | |
| | | Foreign Travel Emergency | Foreign Travel Emergency |
| Out-of-pocket limit $[4620]; paid at 100% after limit reached | Out-of-pocket limit $[2310]; paid at 100% after limit reached | | |

***Plan F also has an option called a high deductible plan F. This high deductible plan pays the same benefits as Plan F after one has paid a calendar year [$2000] deductible. Benefits from high deductible plan F will not begin until out-of-pocket expenses exceed [$2000]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include the plan's separate foreign travel emergency deductible.**

**PREMIUM INFORMATION** [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

**DISCLOSURES** [Boldface Type]

Use this outline to compare benefits and premiums among policies.

**This outline shows benefits and premiums of policies sold for effective dates on or after June 1, 2010. Policies sold for effective dates prior to June 1, 2010 have different benefits and premiums. Plans E, H, I, and J are no longer available for sale.** [This paragraph shall not appear after June 1, 2011.]

**READ YOUR POLICY VERY CAREFULLY** [Boldface Type]

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

**RIGHT TO RETURN POLICY** [Boldface Type]

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

**POLICY REPLACEMENT** [Boldface Type]

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

**NOTICE** [Boldface Type]

This policy may not fully cover all of your medical costs.

[for agents:]
Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]
[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult *Medicare and You* for more details.

**COMPLETE ANSWERS ARE VERY IMPORTANT** [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 9.1D of this regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

PLAN A

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOSPITALIZATION*** Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $0 | $[1068](Part A deductible) |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: | | | |
| —While using 60 lifetime reserve days | All but $[534] a day | $[534] a day | $0 |
| —Once lifetime reserve days are used: | $0 | 100% of Medicare eligible expenses | $0** All costs |
| —Additional 365 days | $0 | $0 | |
| —Beyond the additional 365 days | | | |
| **SKILLED NURSING FACILITY CARE*** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility | All approved amounts | $0 | $0 |
| Within 30 days after leaving the hospital | | | |
| First 20 days | All but $[133.50] a day | $0 | Up to $[133.50] a day |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **BLOOD**<br>First 3 pints<br><br>Additional amounts | $0<br><br>100% | 3 pints<br><br>$0 | $0<br><br>$0 |
| **HOSPICE CARE**<br>You must meet Medicare's requirements, including a doctor's certification of terminal illness. | All but very limited co-payment/ coinsurance for out-patient drugs and inpatient respite care | Medicare co-payment/ coinsurance | $0 |

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN A**

**MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

* Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **MEDICAL EXPENSES—**<br>IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,<br>First $[135] of Medicare Approved Amounts*<br><br>Remainder of Medicare Approved Amounts | $0<br><br>Generally 80% | $0<br><br>Generally 20% | $[135] (Part B deductible)<br><br>$0 |
| **Part B Excess Charges**<br>(Above Medicare Approved Amounts) | $0 | $0 | All costs |

| | | | |
|---|---|---|---|
| **BLOOD**<br>First 3 pints | $0 | All costs | $0 |
| Next $[135] of Medicare Approved Amounts* | $0 | $0 | $[135] (Part B deductible) |
| Remainder of Medicare Approved Amounts | 80% | 20% | $0 |
| **CLINICAL LABORATORY SERVICES**—TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

**PARTS A & B**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOME HEALTH CARE**<br>MEDICARE APPROVED SERVICES<br>Medically necessary skilled care services and medical supplies<br>—Durable medical equipment<br>First $[135] of Medicare Approved Amounts*<br>Remainder of Medicare Approved Amounts | 100%<br>$0<br><br>80% | $0<br>$0<br><br>20% | $0<br>$[135] (Part B deductible)<br><br>$0 |

**PLAN B**

**MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD**

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOSPITALIZATION*** Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $[1068](Part A deductible) | $0 |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: | | | |
| —While using 60 lifetime reserve days | All but $[534] a day | $[534] a day | $0 |
| —Once lifetime reserve days are used: | $0 | 100% of Medicare eligible expenses | $0** |
| —Additional 365 days | $0 | $0 | All costs |
| —Beyond the additional 365 days | | | |
| **SKILLED NURSING FACILITY CARE*** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | All approved amounts | $0 | $0 |
| First 20 days | All but $[133.50] a day | $0 | Up to $[133.50] a day |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **BLOOD**<br>First 3 pints<br><br>Additional amounts | $0<br><br>100% | 3 pints<br><br>$0 | $0<br><br>$0 |
| **HOSPICE CARE**<br>You must meet Medicare's requirements, including a doctor's certification of terminal illness | All but very limited co-payment/ coinsurance for out-patient drugs and inpatient respite care | Medicare co-payment/ coinsurance | $0 |

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN B**

**MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

* Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **MEDICAL EXPENSES—**<br>IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, F<br>First $[135] of Medicare Approved Amounts*<br><br>Remainder of Medicare Approved Amounts | $0<br><br>Generally 80% | $0<br><br>Generally 20% | $[135] (Part B deductible)<br><br>$0 |
| **Part B Excess Charges**<br>(Above Medicare Approved Amounts) | $0 | $0 | All costs |
| **BLOOD**<br>First 3 pints<br><br>Next $[135] of Medicare Approved Amounts*<br><br>Remainder of Medicare Approved Amounts | $0<br><br>$0<br><br>80% | All costs<br><br>$0<br><br>20% | $0<br><br>$[135] (Part B deductible)<br><br>$0 |

| | | | |
|---|---|---|---|
| **CLINICAL LABORATORY SERVICES**—TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

**PARTS A & B**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOME HEALTH CARE** MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies | 100% | $0 | $0 |
| —Durable medical equipment | $0 | $0 | $[135] (Part B deductible) |
| First $[135] of Medicare Approved Amounts* | 80% | 20% | $0 |
| Remainder of Medicare Approved Amounts | | | |

**PLAN C**

**MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD**

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOSPITALIZATION*** Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $[1068](Part A deductible) | $0 |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: | | $[534] a day | $0 |
| —While using 60 lifetime reserve days | All but $[534] a day | | $0** |
| —Once lifetime reserve days are used: | | 100% of Medicare eligible expenses | All costs |
| Additional 365 days | $0 | $0 | |
| —Beyond the additional 365 days | $0 | | |
| **SKILLED NURSING FACILITY CARE*** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | All approved amounts | $0 | $0 |
| First 20 days | All but $[133.50] a day | Up to $[133.50] a day | $0 |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **BLOOD**<br>First 3 pints<br><br>Additional amounts | $0<br><br>100% | 3 pints<br><br>$0 | $0<br><br>$0 |
| **HOSPICE CARE**<br>You must meet Medicare's requirements, including a doctor's certification of terminal illness. | All but very limited co-payment/ coinsurance for out-patient drugs and inpatient respite care | Medicare co-payment/ coinsurance | $0 |

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN C**

**MEDICAL (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

* Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **MEDICAL EXPENSES—**<br>IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,<br>First $[135] of Medicare<br><br>Approved Amounts*<br><br>Remainder of Medicare Approved Amounts | $0<br><br>Generally 80% | $[135] (Part B deductible)<br><br>Generally 20% | $0<br><br>$0 |
| **Part B Excess Charges**<br>(Above Medicare Approved Amounts) | $0 | $0 | All costs |

| | | | |
|---|---|---|---|
| **BLOOD** | | | |
| First 3 pints | $0 | All costs | $0 |
| Next $[135] of Medicare Approved Amounts* | $0 | $[135] (Part B deductible) | $0 |
| Remainder of Medicare Approved Amounts | 80% | 20% | $0 |
| **CLINICAL LABORATORY SERVICES**—TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

**PARTS A & B**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOME HEALTH CARE** MEDICARE APPROVED SERVICES | | | |
| Medically necessary skilled care services and medical supplies | 100% | $0 | $0 |
| —Durable medical equipment | $0 | $[135](PartB deductible) | $0 |
| First $[135] of Medicare Approved Amounts* | 80% | 20% | $0 |
| Remainder of Medicare Approved Amounts | | | |

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

| | | | |
|---|---|---|---|
| **FOREIGN TRAVEL**—NOT COVERED BY MEDICARE | | | |
| Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | | | |
| First $250 each calendar year | $0 | $0 | $250 |
| Remainder of Charges | $0 | 80% to a lifetime maxi-mum benefit of $50,000 | 20% and amounts over the $50,000 lifetime maximum |

**PLAN D**

**MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD**

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOSPITALIZATION*** Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $[1068] (Part A deductible) | $0 |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: —While using 60 lifetime reserve days | All but $[534] a day | $[534] a day $0 | $0 |
| —Once lifetime reserve days are used: | $0 | 100% of Medicare eligible expenses | $0** |
| Additional 365 days —Beyond the additional 365 days | $0 | $0 | All costs |
| **SKILLED NURSING FACILITY CARE*** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | All approved amounts | $0 | $0 |
| First 20 days | All but $[133.50] a day | Up to $[133.50] a day | $0 |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **BLOOD**<br>First 3 pints<br><br>Additional amounts | $0<br><br>100% | 3 pints<br><br>$0 | $0<br><br>$0 |
| **HOSPICE CARE**<br>You must meet Medicare's requirements, including a doctor's certification of terminal illness | All but very limited co-payment/ coinsurance for out-patient drugs and inpatient respite care | Medicare co-payment/ coinsurance | $0 |

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN D

**MEDICAL (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

* Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **MEDICAL EXPENSES—**<br>IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,<br>First $[135] of Medicare Approved Amounts*<br><br>Remainder of Medicare Approved Amounts | $0<br><br>Generally 80% | $0<br><br>Generally 20% | $[135] (Part B deductible)<br><br>$0 |
| **Part B Excess Charges**,<br>(Above Medicare Approved Amounts) | $0 | $0 | All costs |
| **BLOOD**<br>First 3 pints<br><br>Next $[135] of Medicare Approved Amounts*<br><br>Remainder of Medicare Approved Amounts | $0<br><br>$0<br><br>80% | All costs<br><br>$0<br><br>20% | $0<br><br>$[135] (Part B deductible)<br><br>$0 |

| | | | |
|---|---|---|---|
| **CLINICAL LABORATORY SERVICES**—TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

(continued)

**PLAN D**

**PARTS A & B**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOME HEALTH CARE** MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies | 100% | $0 | $0 |
| —Durable medical equipment | $0 | $0 | $[135] (Part B deductible) |
| First $[135] of Medicare Approved Amounts* | 80% | 20% | $0 |
| Remainder of Medicare Approved Amounts | | | |

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **FOREIGN TRAVEL—NOT COVERED BY MEDICARE** Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | $0 | $0 | $250 |
| First $250 each calendar year | $0 | 80% to a lifetime maxi-mum benefit of $50,000 | 20% and amounts over the $50,000 lifetime maximum |
| Remainder of charges | | | |

**PLAN F or HIGH DEDUCTIBLE PLAN F**

**MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

- A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
-

**[**This high deductible plan pays the same benefits as Plan F after one has paid a calendar year [$2000] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are [$2000]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

| SERVICES | MEDICARE PAYS | [AFTER YOU PAY $[2000] DEDUCTIBLE,* *] PLAN PAYS | [IN ADDITION TO $[2000] DEDUCTIBLE,* *] YOU PAY |
|---|---|---|---|
| **HOSPITALIZATION*** Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days | All but $[1068] | $[1068] (Part A deductible) | $0 |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: —While using 60 Lifetime reserve days | All but $[534] a day | $[534] a day | $0 |
| Once lifetime reserve days are used: —Additional 365 days | $0 | 100% of Medicare eligible expenses | $0*** |
| Beyond the additional 365 days | $0 | $0 | All costs |

| SERVICES | MEDICARE PAYS | [AFTER YOU PAY $[2000] DEDUCTIBLE, **] PLAN PAYS | [IN ADDITION TO $[2000] DEDUCTIBLE,**] YOU PAY |
|---|---|---|---|
| **SKILLED NURSING FACILITY CARE*** | | | |
| You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility | | | |
| within 30 days after leaving the hospital | All approved amounts | $0 | $0 |
| First 20 days | All but $[133.50] a day | Up to $[133.50] a day | $0 |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |
| **BLOOD** | | | |
| First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | $0 | $0 |
| **HOSPICE CARE** | | | |
| You must meet Medicare's requirements, including a doctor's certification of terminal illness. | All but very limited co-payment/ coinsurance for out-patient drugs and inpatient respite care | Medicare co-payment/coinsurance | $0 |

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN F or HIGH DEDUCTIBLE PLAN F**

**MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

*Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

**[**This high deductible plan pays the same benefits as Plan F after one has paid a calendar year [$2000] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are [$2000]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

| SERVICES | MEDICARE PAYS | [AFTER YOU PAY $[2000] DEDUCTIBLE,** ] PLAN PAYS | [IN ADDITION TO $[2000] DEDUCTIBLE,** ] YOU PAY |
|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| **MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT,** Such as physician's Services, inpatient and Outpatient medical and Surgical services and Supplies, physical and Speech therapy, Diagnostic tests, Durable medical Equipment, First $[135] of Medicare Approved amounts* | $0 | $[135] (Part B deductible) | $0 | |
| | Generally 80% | Generally 20% | $0 | |
| Remainder of Medicare Approved amounts | | | | |
| **Part B excess charges** (Above Medicare Approved Amounts) | $0 | 100% | $0 | |
| **BLOOD** First 3 pints | $0 | All costs | $0 | |
| Next $[135] of Medicare Approved amounts* | $0 | $[135] (Part B deductible) | $0 | |
| | 80% | 20% | $0 | |
| Remainder of Medicare Approved amounts | | | | |

**PLAN F or HIGH DEDUCTIBLE PLAN F**

| SERVICES | MEDICARE PAYS | [AFTER YOU PAY $[2000] DEDUCTIBLE,**] PLAN PAYS | [IN ADDITION TO $[2000] DEDUCTIBLE,**] YOU PAY |
|---|---|---|---|
| **CLINICAL LABORATORY SERVICES**—TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

**PARTS A & B**

| SERVICES | MEDICARE PAYS | AFTER YOU PAY $[2000] DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO $[2000] DEDUCTIBLE,** YOU PAY |
|---|---|---|---|
| **HOME HEALTH CARE** MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies —Durable medical equipment | 100% | $0 | $0 |
| First $[135] of Medicare Approved Amounts* | $0 | $[135] (Part B deductible) | $0 |
| | 80% | 20% | $0 |
| Remainder of Medicare — Approved Amounts | | | |

**OTHER BENEFITS - NOT COVERED BY MEDICARE**

| SERVICES | MEDICARE PAYS | AFTER YOU PAY $[2000] DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO $[2000] DEDUCTIBLE,** YOU PAY |
|---|---|---|---|
| **FOREIGN TRAVEL - NOT COVERED BY MEDICARE** | | | |
| Medically necessary Emergency care services Beginning during the first 60 days of each trip outside the USA | | | |
| First $250 each calendar year | $0 | $0 | $250 |
| Remainder of charges | $0 | 80% to a lifetime maximum benefit of $50,000 | 20% and amounts over the $50,000 lifetime maximum |

**PLAN G**

**MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD**

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOSPITALIZATION*** Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $[1068] (Part A deductible) | $0 |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: —While using 60 lifetime reserve days | All but $[534] a day | $[534] a day | $0 |
| —Once lifetime reserve days are used: | $0 | 100% of Medicare eligible expenses | $0** |
| —Additional 365 days | $0 | $0 | All costs |
| —Beyond the additional 365 days | | | |

| | | | |
|---|---|---|---|
| **SKILLED NURSING FACILITY CARE*** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | All approved amounts | $0 | $0 |
| First 20 days | All but $[133.50] a day | Up to $[133.50] a day | $0 |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |
| **BLOOD** First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | $0 | $0 |
| **SERVICES** | **MEDICARE PAYS** | **PLAN PAYS** | **YOU PAY** |
| **HOSPICE CARE** You must meet Medicare's requirements, including a doctor's certification of terminal illness | All but very limited co-payment/ coinsurance for out-patient drugs and inpatient respite care | Medicare co-payment/ coinsurance | $0 |

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN G**

**MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

* Once you have been billed $[133.50] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **MEDICAL EXPENSES**—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, | $0 | $0 | $[135] (Part B deductible) |
| First $[135] of Medicare Approved Amounts* | Generally 80% | Generally 20% | $0 |
| Remainder of Medicare Approved Amounts | | | |
| **Part B Excess Charges** (Above Medicare Approved Amounts) | $0 | 100% | $0 |

| | | | |
|---|---|---|---|
| **BLOOD** | | | |
| First 3 pints | $0 | All costs | $0 |
| Next $[135] of Medicare Approved Amounts* | $0 | $0 | $[135] (Part B deductible) |
| Remainder of Medicare Approved Amounts | 80% | 20% | $0 |
| **CLINICAL LABORATORY SERVICES**—TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

(continued)

**PLAN G**

**PARTS A & B**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOME HEALTH CARE** MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies | 100% | $0 | $0 |
| —Durable medical equipment | $0 | $0 | $[135] (Part B deductible) |
| First $[135] of Medicare Approved Amounts* | 80% | 20% | $0 |
| Remainder of Medicare Approved Amounts | | | |

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|

| | | | |
|---|---|---|---|
| **FOREIGN TRAVEL—NOT COVERED BY MEDICARE** | | | |
| Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | $0 | $0 | $250 |
| First $250 each calendar year | $0 | 80% to a lifetime maxi-mum benefit of $50,000 | 20% and amounts over the $50,000 lifetime maximum |
| Remainder of Charges | | | |

**PLAN K**

* You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[4620] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare co-payment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

**MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD**

** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY* |
|---|---|---|---|

| | | | |
|---|---|---|---|
| **HOSPITALIZATION**** | | | |
| Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $[534](50% of Part A deductible) | $[534](50% of Part A deductible)♦ |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: | All but $[534] a day | $[534] a day | $0 |
| —While using 60 lifetime reserve days | $0 | 100% of Medicare eligible expenses | $0*** |
| —Once lifetime reserve days are used: | | $0 | All costs |
| —Additional 365 days | $0 | | |
| —Beyond the additional 365 days | | | |

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY* |
|---|---|---|---|
| **SKILLED NURSING FACILITY CARE**** | | | |
| You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility | | | |
| Within 30 days after leaving the hospital | All approved amounts. | $0 | $0 |
| First 20 days | All but $[133.50] a day | Up to $[66.75] a day | Up to $[66.75] a day ♦ |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |
| **BLOOD** | | | |
| First 3 pints | $0 | 50% | 50%♦ |
| Additional amounts | 100% | $0 | $0 |
| **HOSPICE CARE** | | | |
| You must meet Medicare's requirements, including a doctor's certification of terminal illness. | All but very limited co-payment/ coinsurance for outpatient drugs and inpatient respite care | 50% of co-payment/ coinsurance | 50% of Medicare co-payment/coinsurance♦ |

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN K**

**MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

**** Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY* |
|---|---|---|---|
| **MEDICAL EXPENSES—** IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, | $0 | $0 | $[135] (Part B deductible)**** ♦ |
| First $[135] of Medicare Approved Amounts**** | Generally 75% or more of Medicare approved amounts | Remainder of Medicare approved amounts | All costs above Medicare approved amounts |
| Preventive Benefits for Medicare covered services | Generally 80% | Generally 10% | Generally 10% ♦ |
| Remainder of Medicare Approved Amounts | | | |
| **Part B Excess Charges** (Above Medicare Approved Amounts) | $0 | $0 | All costs (and they do not count toward annual out-of-pocket limit of [$4620])* |
| **BLOOD** First 3 pints | $0 | 50% | 50%♦ |
| Next $[135] of Medicare Approved Amounts**** | $0 | $0 | $[135] (Part B deductible)**** ♦ |
| Remainder of Medicare Approved Amounts | Generally 80% | Generally 10% | Generally 10% ♦ |
| **CLINICAL LABORATORY SERVICES—**TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

(continued)

*** This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[4620] per year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

## PLAN K

### PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY* |
|---|---|---|---|
| **HOME HEALTH CARE** MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies | 100% | $0 | $0 |
| —Durable medical equipment | $0 | $0 | $[135] (Part B deductible) ♦ |
| First $[135] of Medicare Approved Amounts***** | 80% | 10% | 10%♦ |
| Remainder of Medicare Approved Amounts | | | |

*****Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

## PLAN L

* You will pay one-fourth of the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[2310] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY* |
|---|---|---|---|
| **HOSPITALIZATION**** Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $[808.50] (75% of Part A deductible) | $[267] (25% of Part A deductible)♦ |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: | | $[534] a day | |
| —While using 60 lifetime reserve days | All but $[534] a day | | $0 |
| —Once lifetime reserve days are used: | | 100% of Medicare eligible expenses | $0*** |
| —Additional 365 days | $0 | $0 | |
| —Beyond the additional 365 days | $0 | | All costs |

| | | | |
|---|---|---|---|
| **SKILLED NURSING FACILITY CARE**** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility<br>Within 30 days after leaving the hospital<br>First 20 days<br><br>21st thru 100th day<br><br>101st day and after | <br><br>All approved amounts<br><br>All but $[133.50] a day<br><br>$0 | <br><br>$0<br><br>Up to $[100.13] a day<br><br>$0 | <br><br>$0<br><br>Up to $[33.38] a day♦<br><br>All costs |
| **SERVICES** | **MEDICARE PAYS** | **PLAN PAYS** | **YOU PAY*** |
| **BLOOD**<br>First 3 pints<br><br>Additional amounts | $0<br><br>100% | 75%<br><br>$0 | 25%♦<br><br>$0 |
| **HOSPICE CARE**<br>You must meet Medicare's requirements, including a doctor's certification of terminal illness. | All but very limited co-payment/ coinsurance for outpatient drugs and inpatient respite care | 75% of co-payment/ coinsurance | 25% of co-payment/ coinsurance ♦ |

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN L**

**MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

**** Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY* |
|---|---|---|---|
| **MEDICAL EXPENSES—**<br>IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,<br>irst $[135] of Medicare Approved Amounts****<br><br>Preventive Benefits for Medicare covered services<br><br>Remainder of Medicare Approved Amounts | <br><br>$0<br><br>Generally 75% or more of Medicare approved amounts<br><br>Generally 80% | <br><br>$0<br><br>Remainder of Medicare approved amounts<br><br>Generally 15% | <br><br>$[135] (Part B deductible)**** ♦<br><br>All costs above Medicare approved amounts<br><br>Generally 5% ♦ |
| **Part B Excess Charges**<br>(Above Medicare Approved Amounts) | $0 | $0 | All costs (and they do not count toward annual out-of-pocket limit of [$2310])* |

| | | | |
|---|---|---|---|
| **BLOOD**<br>First 3 pints | $0 | 75% | 25%♦ |
| Next $[135] of Medicare Approved Amounts**** | $0 | $0 | $[135] (Part B deductible) ♦ |
| Remainder of Medicare Approved Amounts | Generally 80% | Generally 15% | Generally 5%♦ |
| **CLINICAL LABORATORY SERVICES**—TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

(continued)

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[2310] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

**PLAN L**

**PARTS A & B**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY* |
|---|---|---|---|
| **HOME HEALTH CARE**<br>MEDICARE APPROVED SERVICES<br>Medically necessary skilled | | | |
| care services and medical | 100% | $0 | $0 |
| supplies | $0 | $0 | $[135] (Part B deductible) ♦ |
| —Durable medical equipment | 80% | 15% | 5% ♦ |
| First $[135] of Medicare Approved Amounts***** | | | |
| Remainder of Medicare Approved Amounts | | | |

*****Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

**PLAN M**

**MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD**

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOSPITALIZATION*** Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $[534](50% of Part A deductible) | $[534](50% of Part A deductible) |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: | | $[534] a day | |
| —While using 60 lifetime reserve days | All but $[534] a day | | $0 |
| —Once lifetime reserve days are used: | | 100% of Medicare eligible expenses | $0** |
| —Additional 365 days | $0 | $0 | |
| —Beyond the additional 365 days | $0 | | All costs |
| **SKILLED NURSING FACILITY CARE*** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | All approved amounts | $0 | $0 |
| First 20 days | All but $[133.50] a day | Up to $[133.50] a day | $0 |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |

| | | | |
|---|---|---|---|
| **BLOOD**<br>First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | $0 | $0 |

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOSPICE CARE**<br>You must meet Medicare's requirements, including a doctor's certification of terminal illness | All but very limited co-payment/ coinsurance for outpatient drugs and inpatient respite care | Medicare co-payment/ coinsurance | $0 |

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN M**

**MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

* Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **MEDICAL EXPENSES—** IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment | $0 | $0 | $[135] (Part B deductible) |
| —First $[135] of Medicare Approved Amounts* | Generally 80% | Generally 20% | $0 |
| Remainder of Medicare Approved Amounts | | | |
| **Part B Excess Charges** (Above Medicare Approved Amounts) | $0 | $0 | All costs |
| **BLOOD** First 3 pints | $0 | All costs | $0 |
| Next $[135] of Medicare Approved Amounts* | $0 | $0 | $[135] (Part B deductible) |
| Remainder of Medicare Approved Amounts | 80% | 20% | $0 |
| **CLINICAL LABORATORY SERVICES—**TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

**PARTS A & B**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOME HEALTH CARE** MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies —Durable medical equipment | 100% $0 | $0 $0 | $0 $[135](PartB deductible) |
| First $[135] of Medicare Approved Amounts* | 80% | 20% | $0 |
| Remainder of Medicare Approved Amounts | | | |

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **FOREIGN TRAVEL—** NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | $0 | $0 | $250 |
| First $250 each calendar year | $0 | 80% to a lifetime maxi-mum benefit of $50,000 | 20% and amounts over the $50,000 lifetime maximum |
| Remainder of Charges | | | |

**PLAN N**

**MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD**

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|

| | | | |
|---|---|---|---|
| **HOSPITALIZATION*** Semiprivate room and board, general nursing and miscellaneous services and supplies | | | |
| First 60 days | All but $[1068] | $[1068](Part A deductible) | $0 |
| 61st thru 90th day | All but $[267] a day | $[267] a day | $0 |
| 91st day and after: | | $[534] a day | $0 |
| —While using 60 lifetime reserve days | All but $[534] a day | | |
| —Once lifetime reserve days are used: | $0 | 100% of Medicare eligible expenses | $0** |
| —Additional 365 days | | $0 | All costs |
| —Beyond the additional 365 days | $0 | | |
| **SKILLED NURSING FACILITY CARE*** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | All approved amounts | $0 | $0 |
| First 20 days | All but $[133.50] a day | Up to $[133.50] a day | $0 |
| 21st thru 100th day | $0 | $0 | All costs |
| 101st day and after | | | |

| | | | |
|---|---|---|---|
| **BLOOD** | | | |
| First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | $0 | $0 |

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOSPICE CARE**<br>You must meet Medicare's requirements, including a doctor's certification of terminal illness | All but very limited co-payment/ coinsurance for outpatient drugs and inpatient respite care | Medicare co-payment/ coinsurance | $0 |

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN N**

**MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

* Once you have been billed $[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **MEDICAL EXPENSES—**<br>IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment<br>First $[135] of Medicare Approved Amounts*<br><br>Remainder of Medicare Approved Amounts | $0<br><br>Generally 80% | $0<br><br>Balance, other than up to [$20] per office visit and up to [$50] per emergency room visit. The co-payment of up to [$50] is waived if the insured is admitted to any hospital and the emergency visit is covered as a Medicare Part A expense. | $[135] (Part B deductible)<br><br>up to [$20] per office visit and up to [$50] per emergency room visit. The co-payment of up to [$50] is waived if the insured is admitted to any hospital and the emergency visit is covered as a Medicare Part A expense. |

| | | | |
|---|---|---|---|
| **Part B Excess Charges** (Above Medicare Approved Amounts) | $0 | $0 | All costs |
| **BLOOD** | | | |
| First 3 pints | $0 | All costs | $0 |
| Next $[135] of Medicare Approved Amounts* | $0 | $0 | $[135] (Part B deductible) |
| Remainder of Medicare Approved Amounts | 80% | 20% | $0 |
| **CLINICAL LABORATORY SERVICES**—TESTS FOR DIAGNOSTIC SERVICES | 100% | $0 | $0 |

**PARTS A & B**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **HOME HEALTH CARE** MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies | 100% | $0 | $0 |
| —Durable medical equipment | $0 | $0 | $[135] (Part B deductible) |
| First $[135] of Medicare Approved Amounts* | 80% | 20% | $0 |
| Remainder of Medicare Approved Amounts | | | |

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---|---|---|---|
| **FOREIGN TRAVEL**—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | | | |
| First $250 each calendar year | $0 | $0 | $250 |
| Remainder of Charges | $0 | 80% to a lifetime maxi-mum benefit of $50,000 | 20% and amounts over the $50,000 lifetime maximum |

E. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. § 1395 et seq.), disability income policy; or other policy identified in Section 3B of this regulation, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

**Section 18. Requirements for Application Forms and Replacement Coverage**

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

**[Statements]**

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(5) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state

Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

**[Questions]**

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.
[Please mark Yes or No below with an "X"]

To the best of your knowledge,

(1) (a) Did you turn age 65 in the last 6 months?

Yes____ No____

(b) Did you enroll in Medicare Part B in the last 6 months?

Yes____ No____

(c) If yes, what is the effective date? _____

(2) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes____ No____

If yes,

(a) Will Medicaid pay your premiums for this Medicare supplement policy?

Yes____ No____

(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes____ No____

(3) (a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START __/__/__ END __/__/__

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes____ No____

(c) Was this your first time in this type of Medicare plan?

Yes____ No____

(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes____ No____

(4) (a) Do you have another Medicare supplement policy in force?

Yes____ No____

(b) If so, with what company, and what plan do you have [optional for Direct Mailers]?

_____

(c) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes____ No____

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)

Yes____ No____

(a) If so, with what company and what kind of policy?

_____

_____

_____

_____

(b) What are your dates of coverage under the other policy?

START __/__/__ END __/__/__

(If you are still covered under the other policy, leave "END" blank.)

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five (5) years that are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

**NOTICE TO APPLICANT REGARDING REPLACMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE**

[Insurance company's name and address]

**SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.**

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement or Medicare Advantage insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check one):

___ Additional benefits.

___ No change in benefits, but lower premiums.

___ Fewer benefits and lower premiums.

___ My plan has outpatient prescription drug coverage and I am enrolling in Part D.

___ Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. [optional only for Direct Mailers. ]

___ Other. (please specify) _____

1. **Note:** If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to statement 2 below. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

_____

(Signature of Agent, Broker or Other Representative)*

[Typed Name and Address of Issuer, Agent or Broker]

_____

(Applicant's Signature

_____

(Date)

*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

**Section 19. Filing Requirements for Advertising**

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of Insurance of this state for review or approval by the commissioner to the extent it may be required under state law.

**Drafting Note:** States should examine their existing laws regarding the filing of advertisements to determine the extent to which review or approval is required.

**Section 20. Standards for Marketing**

A. An issuer, directly or through its producers, shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

**"Notice to buyer: This policy may not cover all of your medical expenses."**

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(5) Establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in [insert citation to state unfair trade practices act], the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

**Drafting Note:** Remember that the Unfair Trade Practice Act in your state applies to Medicare supplement insurance policies and certificates.

**Section 21. Appropriateness of Recommended Purchase and Excessive Insurance**

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

C. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

**Section 22. Reporting of Multiple Policies**

A. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

(1) Policy and certificate number; and

(2) Date of issuance.

B. The items set forth above must be grouped by individual policyholder.

**Editor's Note:** Appendix B contains a reporting form for compliance with this section.

**Section 23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates**

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

**Drafting Note:** Although NAIC is restricted from making revisions to its models that do not conform to the Omnibus Budget Reconciliation Act of 1990, states are encouraged to consider deletion of the words "for similar benefits" in Subsection A and the words "for benefits similar to those contained in the original policy or certificate" in Subsection B. States should eliminate Paragraphs (1) and (2) (applicable to preexisting conditions) of the replacement notice required by Section 16E.

**Section 24. Prohibition Against Use of Genetic Information and Requests for Genetic Testing**

This Section applies to all policies with policy years beginning on or after May 21, 2009.

A. An issuer of a Medicare supplement policy or certificate;

1. shall not deny or condition the issuance or effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) on the basis of the genetic information with respect to such individual; and

2. shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual.

B. Nothing in Subsection A shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from

1. Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

2. Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group).

C. An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

D. Subsection C shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) and consistent with Subsection A.

E. For purposes of carrying out Subsection D, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

F. Notwithstanding Subsection C, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

(1) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(2) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that –

(a) compliance with the request is voluntary; and

(b) non-compliance will have no effect on enrollment status or premium or contribution amounts.

(3) No genetic information collected or acquired under this Subsection shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(4) The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this Subsection, including a description of the activities conducted.

(5) The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this Subsection.

G. An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

H. An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

I. If an issuer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of Subsection H if such request, requirement, or purchase is not in violation of Subsection G.

J. For the purposes of this Section only:

(1) "Issuer of a Medicare supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer.

**Drafting Note:** Not all states currently regulate third-party administrators. However, the Genetic Information Nondiscrimination Act of 2008 requires that third-party administrators be included in the definition of an issuer of a Medicare supplement policy or certificate.

(2) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

(3) "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual.

(4) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(5) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(6) "Underwriting purposes" means,

(a) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

(b) the computation of premium or contribution amounts under the policy;

(c) the application of any pre-existing condition exclusion under the policy; and

(d) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

**Section 25. Separability**

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

**Section 26. Effective Date**

This regulation shall be effective on [insert date].

*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*1980 Proc. II 22, 26, 588, 591, 593, 595-603 (adopted).*
*1981 Proc. I 47, 51, 420, 422, 424, 466-447, 470-481 (amended and reprinted).*
*1988 Proc. I 9, 20-21, 629-630, 652-654, 668-677 (amended and reprinted).*
*1988 Proc. II 5, 13, 568, 601, 604, 615-624 (amended and reprinted).*
*1989 Proc. I 14, 813-814, 836, 4-836.26 (amended at special plenary session September 1988).*
*1989 Proc. I 9, 25, 703, 753-754, 757-760 (appendices amended at regular plenary session).*
*1990 Proc. I 6, 27-28, 477, 574-576, 580-599 (amended and reprinted).*
*1990 Proc. II 7, 16, 599, 656, 657 (adopted reporting form).*
*1992 Proc. I 12, 16-75, 1084-1085 (amended at special plenary session in July 1991).*
*1995 Proc. 1st Quarter 7, 12, 501, 575, 586, 592-615 (amended and most of model reprinted).*
*1998 Proc. 1st Quarter 769, 772-799, 905 (amended).*
*1998 Proc. 3rd Quarter 15, 576, 697, 701, 702-717 (amended).*
*2000 Proc. 2nd Quarter 21-22, 162, 273, 275-288 (amended).*
*2001 Proc. 2nd Quarter 13, 14, 118, 171, 176, 181-187 (amended).*
*2004 Proc. 3rd Quarter 84, 679-681, 747, 748-866 (amended and reprinted).*
*2008 Proc. 3rd Quarter (amended and reprinted).*

**APPENDIX A**

**MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR_____**

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

| Line | | (a) Earned Premium[3] | (b) Incurred Claims[4] |
|---|---|---|---|
| 1. | Current Year's Experience | | |
| | a. Total (all policy years) | | |
| | b. Current year's issues[5] | | |
| | c. Net (for reporting purposes = 1a–1b | | |
| 2. | Past Years' Experience (all policy years) | | |
| 3. | Total Experience (Net Current Year + Past Year) | | |

| | | |
|---|---|---|
| 4. | Refunds Last Year (Excluding Interest) | |
| 5. | Previous Since Inception (Excluding Interest) | |
| 6. | Refunds Since Inception (Excluding Interest) | |
| 7. | Benchmark Ratio Since Inception (*see worksheet for Ratio 1*) | |
| 8. | Experienced Ratio Since Inception (*Ratio 2*)<br>Total Actual Incurred Claims (line 3, col. b)<br>Total Earned Prem. (line 3, col. a)–Refunds Since Inception (line 6) | |
| 9. | Life Years Exposed Since Inception<br>If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund. | |
| 10. | Tolerance Permitted (obtained from credibility table) | |

Medicare Supplement Credibility Table

| Life Years Exposed Since Inception | Tolerance |
|---|---|
| 10,000 + | 0.0% |

| | |
|---|---|
| 5,000 -9,999 | 5.0% |
| 2,500 -4,999 | 7.5% |
| 1,000 -2,499 | 10.0% |
| 500 - 999 | 15.0% |
| If less than 500, no credibility. | |

1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.
2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans.
3 Includes Modal Loadings and Fees Charged
4 Excludes Active Life Reserves
5 This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

**MEDICARE SUPPLEMENT REFUND CALCULATION FORM**
**FOR CALENDAR YEAR_____**

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

| | | |
|---|---|---|
| 11. | Adjustment to Incurred Claims for Credibility<br>Ratio 3 = Ratio 2 + Tolerance | |

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required.
If Ratio 3 is less than the Benchmark Ratio, then proceed.

| | | |
|---|---|---|
| 12. | Adjusted Incurred Claims<br>[Total Earned Premiums (line 3, col. a)–Refunds Since Inception (line 6)] x Ratio 3 (line 11) | |
| 13. | Refund =<br>Total Earned Premiums (line 3, col. a)–Refunds Since Inception (line 6)<br>–[Adjusted Incurred Claims (line 12)/Benchmark Ratio (Ratio 1)] | |

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund or credit against premiums to be used must be attached to this form.

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____
Signature

_____
Name - Please Type

_____
Title - Please Type

_____
Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

| (a)[3] | (b)[4] | (c) | (d) | (e) | (f) | (g) | (h) | (i) | (j) | (o)[5] |
|---|---|---|---|---|---|---|---|---|---|---|
| Year | Earned Premium | Factor | (b)x(c) | Cumulative Loss Ratio | (d)x(e) | Factor | (b)x(g) | Cumulative Loss Ratio | (h)x(i) | Policy Year Loss Ratio |
| 1 | | 2.770 | | 0.507 | | 0.000 | | 0.000 | | 0.48 |
| 2 | | 4.175 | | 0.567 | | 0.000 | | 0.000 | | 0.83 |
| 3 | | 4.175 | | 0.567 | | 1.194 | | 0.759 | | 0.75 |
| 4 | | 4.175 | | 0.567 | | 2.245 | | 0.771 | | 0.77 |
| 5 | | 4.175 | | 0.567 | | 3.170 | | 0.782 | | 0.80 |
| 6 | | 4.175 | | 0.567 | | 3.998 | | 0.792 | | 0.82 |
| 7 | | 4.175 | | 0.567 | | 4.754 | | 0.802 | | 0.84 |
| 8 | | 4.175 | | 0.567 | | 5.445 | | 0.811 | | 0.87 |
| 9 | | 4.175 | | 0.567 | | 6.075 | | 0.818 | | 0.88 |
| 10 | | 4.175 | | 0.567 | | 6.650 | | 0.824 | | 0.88 |
| 11 | | 4.175 | | 0.567 | | 7.178 | | 0.828 | | 0.88 |
| 12 | | 4.175 | | 0.567 | | 7.855 | | 0.831 | | 0.88 |
| 13 | | 4.175 | | 0.567 | | 8.093 | | 0.834 | | 0.89 |
| 14 | | 4.175 | | 0.567 | | 8.493 | | 0.837 | | 0.89 |
| 15+[6] | | 4.175 | | 0.567 | | 8.884 | | 0.838 | | 0.89 |
| Total: | | | (k): | | (l): | | (m): | | (n): | |

Benchmark Ratio Since Inception: (l + n)/(k + m): _____

1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

3 Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

4 For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

5 These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

6 To include the earned premium for all years prior to as well as the 15th year prior to the current year.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code_____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

| (a)[3] | (b)[4] | (c) | (d) | (e) | (f) | (g) | (h) | (i) | (j) | (o)[5] |
|---|---|---|---|---|---|---|---|---|---|---|
| Year | Earned Premium | Factor | (b)x(c) | Cumulative Loss Ratio | (d)x(e) | Factor | (b)x(g) | Cumulative Loss Ratio | (h)x(i) | Policy Year Loss Ratio |
| 1 | | 2.770 | | 0.442 | | 0.000 | | 0.000 | | 0.40 |
| 2 | | 4.175 | | 0.493 | | 0.000 | | 0.000 | | 0.55 |
| 3 | | 4.175 | | 0.493 | | 1.194 | | 0.659 | | 0.65 |
| 4 | | 4.175 | | 0.493 | | 2.245 | | 0.669 | | 0.67 |
| 5 | | 4.175 | | 0.493 | | 3.170 | | 0.678 | | 0.69 |
| 6 | | 4.175 | | 0.493 | | 3.998 | | 0.686 | | 0.71 |
| 7 | | 4.175 | | 0.493 | | 4.754 | | 0.695 | | 0.73 |
| 8 | | 4.175 | | 0.493 | | 5.445 | | 0.702 | | 0.75 |
| 9 | | 4.175 | | 0.493 | | 6.075 | | 0.708 | | 0.76 |
| 10 | | 4.175 | | 0.493 | | 6.650 | | 0.713 | | 0.76 |
| 11 | | 4.175 | | 0.493 | | 7.176 | | 0.717 | | 0.76 |
| 12 | | 4.175 | | 0.493 | | 7.655 | | 0.720 | | 0.77 |
| 13 | | 4.175 | | 0.493 | | 8.093 | | 0.723 | | 0.77 |
| 14 | | 4.175 | | 0.493 | | 8.493 | | 0.725 | | 0.77 |
| 15+[6] | | 4.175 | | 0.493 | | 8.684 | | 0.725 | | 0.77 |
| Total: | | | (k): | | (l): | | (m): | | (n): | |

Benchmark Ratio Since Inception: (l + n)/(k + m): _____

1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

3 Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

4 For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

5 These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

6 To include the earned premium for all years prior to as well as the 15th year prior to the current year.

**APPENDIX B**

**FORM FOR REPORTING**
**MEDICARE SUPPLEMENT POLICIES**

Company Name: _____

Address: _____

_____

Phone Number: _____

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

| Policy and Certificate # | Date of Issuance |
|---|---|
| | |
| | |
| | |
| | |

_____
Signature

_____
Name and Title (please type)

_____
Date

**APPENDIX C**

**DISCLOSURE STATEMENTS**

**Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare**

1. Section 1882 (d) of the federal Social Security Act [42 U.S.C. 1395ss] prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.
2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).
3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement policy.
4. Property/casualty and life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. Long-term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.
7. The federal law does not preempt state laws that are more stringent than the federal requirements.
8. The federal law does not preempt existing state form filing requirements.
9. Section 1882 of the federal Social Security Act was amended in Subsection (d)(3)(A) to allow for alternative disclosure statements. The disclosure statements already in Appendix C remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

[Original disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE**
**THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

- hospital or medical expenses up to the maximum stated in the policy

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

**Before You Buy This Insurance**

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

**Drafting Note:** Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for policies that provide benefits for specified limited services.]

**Important Notice to Persons on Medicare**

**THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- any of the services covered by the policy are also covered by Medicare

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

**Before You Buy This Insurance**

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

**Drafting Note:** Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

Important Notice to Persons on Medicare

**THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

- hospital or medical expenses up to the maximum stated in the policy

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

**Drafting Note:** Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

Important Notice to Persons on Medicare

**THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

**Drafting Note:** Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

Important Notice to Persons on Medicare

**THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- any expenses or services covered by the policy are also covered by Medicare

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

**Drafting Note**: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

Important Notice to Persons on Medicare

**THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- any expenses or services covered by the policy are also covered by Medicare; or,
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice care
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items & services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

**Drafting Note**: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

Important Notice to Persons on Medicare

THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

- the benefits stated in the policy and coverage for the same event is provided by Medicare

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

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[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

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[Alternative disclosure statement for policies that provide benefits for specified limited services.]

Important Notice to Persons on Medicare

THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

**Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.**

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
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IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
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Important Notice to Persons on Medicare

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**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.**

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

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- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
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√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
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**[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]**

Important Notice to Persons on Medicare

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**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.**

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
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**[Alternative disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]**

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This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

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**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice care
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items & services

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√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

Drafting Note: **Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.**

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BILLING CODE 4120–01–C

Federal Register

Friday,
April 24, 2009

Part III

# Environmental Protection Agency

40 CFR Chapter 1

**Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Chapter 1**

**[EPA–HQ–OAR–2009–0171; FRL–8895–5]**

**RIN 2060–ZA14**

## Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Today the Administrator is proposing to find that greenhouse gases in the atmosphere endanger the public health and welfare of current and future generations. Concentrations of greenhouse gases are at unprecedented levels compared to the recent and distant past. These high atmospheric levels are the unambiguous result of human emissions, and are very likely the cause of the observed increase in average temperatures and other climatic changes. The effects of climate change observed to date and projected to occur in the future—including but not limited to the increased likelihood of more frequent and intense heat waves, more wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems—are effects on public health and welfare within the meaning of the Clean Air Act. In light of the likelihood that greenhouse gases cause these effects, and the magnitude of the effects that are occurring and are very likely to occur in the future, the Administrator proposes to find that atmospheric concentrations of greenhouse gases endanger public health and welfare within the meaning of Section 202(a) of the Clean Air Act. She proposes to make this finding specifically with respect to six greenhouse gases that together constitute the root of the climate change problem: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

The Administrator is also proposing to find that the combined emissions of carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles and new motor vehicle engines are contributing to this mix of greenhouse gases in the atmosphere. Thus, she proposes to find that the emissions of these substances from new motor vehicles and new motor vehicle engines are contributing to air pollution which is endangering public health and welfare under section 202(a) of the Clean Air Act.

**DATES:** Comments on this proposed action must be received on or before June 23, 2009. If you submitted comments on the issues raised by this proposal in dockets for other Agency efforts (e.g., the Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gases under the Clean Air Act), you must still submit your comments to the docket for this action (EPA–HQ–OAR–2009–0171) by the deadline if you want them to be considered.

There will be two public hearings. One hearing will be held on May 18, 2009 in Arlington, VA. The other hearing will be on May 21, 2009 in Seattle, WA. To obtain information about the public hearings or to register to speak at the hearings, *please see* the **SUPPLEMENTARY INFORMATION** section below or go to *http://www.epa.gov/climatechange/endangerment.html.*

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0171, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: GHG–Endangerment-Docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2009–0171, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. 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–OAR–2009–0171. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://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 *http://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.

*Docket:* All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility 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:** Jeremy Martinich, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9927; *fax number:* (202) 343–2202; *e-mail address: ghgendangerment@epa.gov.* Please use this contact information for general questions only. Official comments must be submitted using the instructions above.

**SUPPLEMENTARY INFORMATION:**

*Additional Information on Public Hearings:* The two public hearings will be held on May 18 in Arlington, VA, and on May 21, 2009, in Seattle, WA. Both hearings will begin at 9 a.m. and end at 8 p.m., respective local times.

*Addresses:* The hearings will be held at the following locations:

1. *Arlington, VA:* One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202.

2. *Seattle, WA:* Bell Harbor International Conference Center, 2211 Alaskan Way, Pier 66, Seattle, WA 98121.

The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed findings. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be received by the last day of the comment period, as specified in the proposal.

To obtain additional information about the public hearings or to register to speak at the hearings, please go to: *http://www.epa.gov/climatechange/endangerment.html.* Alternatively, contact Jeremy Martinich at 202–343–9927. Verbatim transcripts of the hearings and written statements will be included in the rulemaking docket.

**What Should I Consider as I Prepare My Comments for EPA?**

*1. Submitting CBI*

Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be confidential business information (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:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

**Table of Contents**



## I. Introduction

### A. Summary

Pursuant to section 202(a) of the Clean Air Act (CAA or Act), the Administrator proposes to find that the mix of six key greenhouse gases in the atmosphere may reasonably be anticipated to endanger public health and welfare. Specifically, the Administrator is proposing to define the "air pollution" referred to in section

202(a) of the CAA to be the mix of six key directly emitted and long-lived greenhouse gases: Carbon dioxide ($CO_2$), methane ($CH_4$), nitrous oxide ($N_2O$), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride ($SF_6$). It is the Administrator's judgment that the total body of scientific evidence compellingly supports a positive endangerment finding for both public health and welfare. The Administrator reached this judgment by considering both observed and projected future effects, and by considering the full range of risks and impacts to public health and welfare occurring within the U.S., which by itself warrants this judgment. In addition, the scientific evidence concerning risks and impacts occurring outside the U.S., including risks and impacts that can affect people in the U.S., provides further support for this finding.[1]

Under section 202(a) of the CAA, the Administrator is to determine whether emissions of any air pollutant from new motor vehicles and their engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. The Administrator further proposes to find that combined emissions from new motor vehicles and new motor vehicle engines of four of these greenhouse gases—carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons—contribute to this air pollution. The other greenhouse gases that are the subject of this proposal (perfluorocarbons and sulfur hexafluoride) are not emitted by motor vehicles.

The Administrator's proposed findings come in response to the Supreme Court's decision in *Massachusetts* v. *EPA*, 549 U.S. 497 (2007). That case involved a petition submitted by the International Center for Technology Assessment and 18 other environmental and renewable energy industry organizations requesting that EPA issue standards under section 202(a) of the Act for the emissions of carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles and engines. The proposed findings are in response to this petition and are for purposes of section 202(a). EPA is not proposing or taking action under any other provision of the Clean Air Act.

*B. Background Information Helpful to Understanding This Proposal*

1. Greenhouse Gases and Their Effects

Greenhouse gases are gases that effectively trap some of the Earth's heat that would otherwise escape to space. Greenhouse gases are both naturally occurring and anthropogenic. The primary greenhouse gases of concern directly emitted by human activities include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Of these six gases, four (carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons) are emitted by motor vehicles.

These six gases, once emitted, remain in the atmosphere for decades to centuries. Thus, they become well mixed globally in the atmosphere and their concentrations accumulate when emissions exceed the rate at which natural processes remove greenhouse gases from the atmosphere. The heating effect caused by the human-induced buildup of greenhouse gases in the atmosphere is very likely [2] the cause of most of the observed global warming over the last 50 years. A detailed explanation of climate change and its impact on health, society, and the environment is included in EPA's technical support document (docket #OAR–2009–0171) and discussed in the context of the Administrator's finding in Section III.

The U.S. transportation sector is a significant contributor to total U.S. and global anthropogenic emissions of greenhouse gases. Transportation sources subject to regulation under section 202(a) of the Act are the second largest greenhouse gas-emitting sector in the U.S., after electricity generation, and accounted for 24 percent of total U.S. greenhouse gas emissions in 2006 (see table 1 in section IV below) (these emissions are compared on carbon dioxide equivalent basis; see footnote 18 for an explanation). Detailed information on past, present, and projected greenhouse gas concentrations and emissions is provided in the Technical Support Document, and summarized in Sections III and IV, respectively.

2. Statutory Basis for This Proposal

Section 202(a)(1) of the CAA states that "The Administrator shall by regulation prescribe (and from time to time revise) * * * standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [her] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."

Before the Administrator may issue standards addressing emissions of greenhouse gases from new motor vehicles or engines under section 202(a), the Administrator must satisfy a two-step test. First, the Administrator must decide whether, in her judgment, the air pollution under consideration may reasonably be anticipated to endanger public health or welfare. Second, the Administrator must decide whether, in her judgment, emissions of an air pollutant from new motor vehicles or engines cause or contribute to this air pollution.[3] If the Administrator answers both questions in the affirmative, she must issue standards under section 202(a). *Massachusetts* v. *EPA*, 549 U.S. at 533.

Typically, the endangerment and cause or contribute findings have been proposed concurrently with proposed standards under various sections of the CAA, including section 202(a). Comment has been taken on these proposed findings as part of the notice and comment process for the emission standards. *See, e.g.*, Rulemaking for non-road compression-ignition engines under section 213(a)(4) of the CAA, Proposed Rule 58 FR 28809, 28813–14 (May 17, 1993), Final Rule 59 FR 31306, 31318 (June 17, 1994); Rulemaking for highway heavy duty diesel engines and diesel sulfur fuel under sections 202(a) and 211(c) of the CAA, Proposed Rule 65 FR 35430 (June 2, 2000), Final Rule 66 FR 5002 (Jan. 18, 2001). However, there is no requirement that the Administrator propose the endangerment and cause or contribute findings with proposed standards. The Administrator is moving forward with this proposed endangerment finding and a cause or contribute determination

[1] As discussed later, EPA does not need to determine, and is not determining, whether impacts occurring outside the U.S. would be sufficient by themselves to justify the proposed endangerment finding. Instead the impacts occurring outside the U.S. are considered as providing additional support for the proposed finding, in a situation where, as here, the impacts occurring within the U.S. are sufficient on their own to warrant the proposed finding. Thus, the Administrator does not now take a position on the legal question whether international effects, on their own, would be sufficient to support an endangerment finding under the Clean Air Act.

[2] According to Intergovernmental Panel on Climate Change (IPCC) terminology, "very likely" conveys a 90 to 99 percent probability of occurrence. "Virtually certain" conveys a greater than 99 percent probability, "likely" conveys a 66 to 90 percent probability, and "about as likely as not" conveys a 33 to 66 percent probability.

[3] To clarify the distinction between air pollution and air pollutant, the air pollution is the atmospheric concentrations and can be thought of as the total, cumulative stock problem of greenhouse gases in the atmosphere. The air pollutants, on the other hand, are the emissions of greenhouse gases and can be thought of as the flow that changes the size of the total stock.

while developing proposed standards under section 202(a).

The Administrator is applying the rulemaking provisions of CAA section 307(d) to this action.[4] Thus, these proposed findings will be subject to the same rulemaking requirements that would apply if the proposed findings were part of the standard-setting rulemaking. Any standard setting rulemaking under section 202(a) will also be subject to these notice and comment rulemaking procedures.

3. The Supreme Court's Decision in *Massachusetts* v. *EPA*

a. The Petition of the International Center for Technology Assessment

On October 20, 1999, the International Center for Technology Assessment and 18 other environmental and renewable energy industry organizations filed a "Petition for Rulemaking and Collateral Relief Seeking the Regulation of Greenhouse Gas Emissions from New Motor Vehicles under Section 202(a) of the Clean Air Act." The thrust of the petition was that four greenhouse gases—carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons—are air pollutants as defined in CAA section 302(g), that emissions of these greenhouse gases contribute to air pollution which is reasonably anticipated to endanger public health or welfare, that these greenhouse gases are emitted by new motor vehicles, and therefore that EPA has a mandatory duty to issue regulations under CAA section 202(a) addressing these greenhouse gases.

After an opportunity for public comment, EPA denied the petition in a notice issued on August 8, 2003. The Agency concluded that it lacked authority under the CAA to regulate greenhouse gases for purposes of global climate change, and that even if it did have the authority to set greenhouse gas emission standards for new motor vehicles, it would be unwise to do so at that time. The federal appeals court in Washington, DC, upheld EPA's denial of the petition.

[4] Commenters on the Advanced Notice of Proposed Rulemaking on Regulating Greenhouse Gases under the Clean Air Act, 73 FR 44354 (2007), see Section I.B.4 below, argued that EPA is required to follow notice and comment requirements for the endangerment and cause or contribute findings. Without agreeing or disagreeing with the reasoning set forth in those comments, the Administrator is applying the rulemaking requirements of CAA section 307(d), including notice and comment, to today's action. *See, e.g.*, CAA sections 307(d)(1)(K) (applying 307(d) requirements to the promulgation or revisions of regulations under section 202), 307(d)(1)(V) (the provisions of section 307(d) apply to "such other actions as the Administrator may determine.").

b. The Supreme Court's Decision

In *Massachusetts* v. *EPA*, the Supreme Court reversed the lower court's decision and held that EPA had improperly denied the petition. 549 U.S. 497 (2007). The Court held that greenhouse gases are air pollutants under the CAA, and that the alternative grounds EPA gave for denying the petition were "divorced from the statutory text" and hence improper.

Specifically, the Court held that carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons fit the CAA's "sweeping definition of 'air pollutant' " since they are "without a doubt 'physical [and] chemical * * * substances which [are] emitted into * * * the ambient air.' The statute is unambiguous." *Id.* at 529. The Court also rejected the argument that post-enactment legislative developments even "remotely suggest[ed] that Congress meant to curtail [EPA's] power to treat greenhouse gases as air pollutants." *Id.*

The Court further rejected the argument that EPA could not regulate motor vehicle emissions of the chief greenhouse gas, carbon dioxide, because doing so would essentially require control of vehicle fuel economy, and Congress delegated that authority to the Department of Transportation in the Energy Policy and Conservation Act. The Court held that the fact "that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public's 'health' and 'welfare,' 42 U.S.C. 7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency." *Id.* at 532 (citation omitted). The two obligations may overlap "but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." *Id.*

Turning to EPA's alternative grounds for denial, the Court held that EPA's decision on whether or not to grant the petition must relate to "whether an air pollutant 'causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.' " *Id.* at 532–33. Thus, "[u]nder the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do." *Id.* at 533. The Court held that three of the four reasons EPA advanced as alternative grounds for denying the petition were unrelated to whether greenhouse gas emissions from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Thus, EPA had failed to offer a reasoned explanation for its action. For example, the Court held that concerns related to foreign policy objectives had "nothing to do with whether greenhouse gas emissions contribute to climate change" and hence could not justify the denial. *Id.* The Court further held that EPA's generalized concerns about scientific uncertainty were likewise insufficient unless "the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming," in which case EPA must so find. *Id.* at 534.

The Supreme Court was careful to note that it was not dictating EPA's action on remand, and was not deciding whether or not EPA must find that greenhouse gases endanger public health or welfare. Nor did the Court rule on "whether policy concerns can inform EPA's actions in the event that it makes such a finding." *Id.* at 534–35. The Court also observed that under CAA section 202(a), "EPA no doubt has significant latitude as to the manner, timing, content, and coordination of its regulations with those of other agencies." *Id.* at 533. Nonetheless, any EPA decisions concerning the endangerment and cause or contribute criteria must be grounded in the requirements of CAA section 202(a).

Since the Supreme Court's decision in April 2007, some stakeholders have taken the position, including in comments on the Advance Notice of Proposed Rulemaking discussed below, that the Supreme Court did not foreclose EPA's ability to deny the petition without addressing the endangerment question. For example, one industry group argued that EPA could deny the rulemaking petition based on statutory factors besides scientific uncertainty and those already rejected by the Court, but did not describe what those additional statutory factors may be or how they would support a denial of the ICTA petition.

EPA does not agree with these interpretations of the Supreme Court's decision. Moreover, commenters have not provided examples of additional statutory factors that they believe would justify denying the petition without addressing the endangerment and cause or contribute criteria. Today the Administrator is addressing these criteria, and is proposing to find that the mix of six key greenhouse gases in the atmosphere may reasonably be anticipated to endanger public health

and welfare due overwhelmingly to the effects of climate change. Furthermore, the Administrator is proposing to find that emissions of greenhouse gases by motor vehicles collectively contribute to the air pollution that endangers public health and welfare.

4. EPA's Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gases Under the Clean Air Act

On July 30, 2008, EPA published an Advance Notice of Proposed Rulemaking on "Regulating Greenhouse Gas Emissions under the Clean Air Act" (73 FR 44354) (ANPR). The ANPR presented information relevant to, and solicited public comment on, a wide variety of issues regarding the potential regulation of greenhouse gases under the CAA, including EPA's response to the Supreme Court's decision in *Massachusetts* v. *EPA*. Section V of the ANPR contained an earlier version of much of the material in this proposal, including the legal framework, a summary of the science of climate change, and an illustration of how the Administrator could analyze the cause or contribute element using information regarding the greenhouse gas emissions of the portion of the U.S. transportation sector covered by section 202(a). A July 2008 version of the Technical Support Document (TSD) for this proposal was also in the docket for the ANPR (EPA–HQ–OAR–2008–0318).

The ANPR also contained a summary of much of the work EPA had done in 2007 regarding draft greenhouse gas emission standards for light duty vehicles and trucks under section 202(a) of the Act. As noted earlier, EPA is currently developing proposed emissions standards related to today's proposal. EPA expects that these proposed standards will be ready to propose for public comment several months from now.

Finally, the ANPR also discussed pending petitions under various sections of the Act requesting that EPA regulate greenhouse gas emissions from other mobile sources, as well as stationary source rulemakings (recently completed, ongoing or remanded) in which commenters suggested EPA regulate greenhouse gas emissions. EPA is continuing to evaluate its response to those other pending petitions and rulemakings and will address them in later actions.

*C. Solicitation of Comments*

The Administrator requests comments on all aspects of this action. She requests comment on the data on which the proposed findings are based, the methodology used in obtaining and analyzing the data, and the major legal interpretations and policy considerations underlying the proposed findings.

## II. Legal Framework for This Action

Two provisions of the CAA govern today's proposal. Section 202(a) sets forth a two-part predicate for regulatory action under that provision: endangerment and cause or contribute. Section 302 of the Act contains definitions of the terms air pollutant and welfare used in section 202(a). These statutory provisions are discussed below.

*A. Section 202(a)—Endangerment and Cause or Contribute*

As noted above, section 202(a) of the CAA calls for the Administrator to exercise her judgment and make two separate determinations: first, whether air pollution may reasonably be anticipated to endanger public health or welfare, and second whether emissions of any air pollutant from new motor vehicles or engines cause or contribute to this air pollution.

Based on the text of this provision and its legislative history, the Administrator interprets the two-part test as follows. First, the Administrator is required to protect public health and welfare. She is not asked to wait until harm has occurred but instead must be ready to take regulatory action to prevent harm before it occurs. The Administrator is thus to consider both current and future risks. Second, the Administrator is to exercise judgment by weighing risks, assessing potential harms, and making reasonable projections of future trends and possibilities. It follows that when exercising her judgment the Administrator balances the likelihood and severity of effects. This balance involves a sliding scale; on one end the severity of the effects may be significant, but the likelihood low, while on the other end the severity may be less significant, but the likelihood high. Under either scenario, the Administrator is permitted to find endangerment. If the harm would be catastrophic, the Administrator is permitted to find endangerment even if the likelihood is small. In the context of climate change, for example, the Administrator should take account of the most catastrophic scenarios and their probabilities. As explained below, however, it is not necessary to rely on low-probability outcomes in order to find endangerment here.[5]

Because scientific knowledge is constantly evolving, the Administrator may be called upon to make decisions while recognizing the uncertainties and limitations of the data or information available, as risks to public health or welfare may involve the frontiers of scientific or medical knowledge. At the same time, the Administrator must exercise reasoned decision making, and avoid speculative or crystal ball inquiries. Third, the Administrator is to consider the cumulative impact of sources of a pollutant in assessing the risks from air pollution, and is not to look only at the risks attributable to a single source or class of sources. Fourth, the Administrator is to consider the risks to all parts of our population, including those who are at greater risk for reasons such as increased susceptibility to adverse health effects. If vulnerable subpopulations are especially at risk, the Administrator is entitled to take that point into account in deciding the question of endangerment. Here too, both likelihood and severity of adverse effects are relevant, and here too, catastrophic scenarios and their probabilities should be considered. As explained below, vulnerable subpopulations face serious health risks as a result of climate change.

This framework recognizes that regulatory agencies such as EPA must be able to deal with the reality that "[m]an's ability to alter his environment has developed far more rapidly than his ability to foresee with certainty the effects of his alterations." *See Ethyl Corp* v. *EPA*, 541 F.2d 1, 6 (D.C. Cir.), cert. denied 426 U.S. 941 (1976). Both "the Clean Air Act 'and common sense * * * demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable.'" *See Massachusetts* v. *EPA*, 549 U.S. at 506, n.7 (citing Ethyl Corp.). To be sure, the concept of "expected value" has its limitations in this context, but it is useful insofar as it suggests that when severe risks to the public health and welfare are involved, the Administrator need not wait as evidence continues to accumulate.

The Administrator recognizes that the context for this action is unique. There is a very large and comprehensive base of scientific information that has been

[5] Cf. *Massachusetts* v. *EPA*, 549 U.S. at 525 n.23, citing *Mountain States Legal Foundation* v. *Glickman*, 92 F.3d 1228, 1234 (D.C. Cir. 1996) ("The more drastic the injury that government action makes more likely, the lesser the increment in probability to establish standing"); *Village of Elk Grove Village* v. *Evans*, 997 F.2d 328, 329 (7th Cir. 1993) ("[E]ven a small probability of injury is sufficient to create a case or controversy—to take a suit out of the category of the hypothetical—provided of course that the relief sought would, if granted, reduce the probability.").

developed over many years through a global consensus process involving numerous scientists from many countries and representing many disciplines. She also recognizes that there are varying degrees of uncertainty across many of these scientific issues. It is in this context that she is exercising her judgment and applying the statutory framework. Further discussion of the language in section 202(a) and its legislative history is provided below, to explain more fully the basis for this interpretation.

1. The Statutory Language

The interpretation described above flows from the statutory language itself. The phrase "may reasonably be anticipated" and the term "endanger" authorize, if not require, the Administrator to act to prevent harm and to act in conditions of uncertainty. They do not limit her to merely reacting to harm or to acting only when certainty has been achieved; indeed, the references to anticipation and to endangerment imply that to fail to look to the future or to less than certain risks would be to abjure the Administrator's statutory responsibilities. Moreover, by instructing the Administrator to consider whether emissions of an air pollutant cause or contribute to air pollution, the statute is clear that she need not find that emissions from any one sector or group of sources are the sole or even the major part of an air pollution problem. The use of the term contribute clearly indicates that a lower threshold than a finding that such emissions are the sole or major cause is a sufficient basis to make the required finding. Finally, the phrase "in [her] judgment" authorizes the Administrator to weigh risks and to consider projections of future possibilities, while also recognizing uncertainties and extrapolating from existing data. When exercising her judgment the Administrator balances the likelihood and severity of effects. Notably, the phrase "in [her] judgment" modifies both "may reasonably be anticipated" and "cause or contribute."

2. Origin of the Current Statutory Language

When Congress revised section 202(a) and other provisions of the CAA as part of the 1977 amendments to the CAA, it was responding to an opinion issued by the D.C. Circuit regarding the pre-1977 version of section 211(c) of the Act. The legislative history of those amendments, particularly the report by the House Committee on Interstate and Foreign Commerce, demonstrate that EPA's interpretation is fully consistent with Congress' intention in crafting this a provision *See* H.R. Rep. 95–294 (1977), as reprinted in 4 A Legislative History of the Clean Air Act Amendments of 1977 (1978) at 2465 (hereinafter "LH").

a. Ethyl Corp. v. EPA

In revising the statutory language, Congress relied heavily on the en banc decision in *Ethyl Corp.* v. *EPA*, which reversed a 3-judge panel opinion regarding an EPA rule restricting the content of lead in leaded gasoline.[6] After reviewing the relevant facts and law, the full court evaluated the statutory language at issue to see what level of "certainty [was] required by the Clean Air Act before EPA may act." *Id.* at 7.

The petitioners argued that the statutory language "will endanger" required proof of actual harm, and that the actual harm had to come from emissions from the fuels in and of themselves. *Id.* at 12, 29. The en banc court rejected this approach, finding that the term "endanger" allowed the Administrator to act when harm is threatened, and did not require proof of actual harm. *Id.* at 13. "A statute allowing for regulation in the face of danger is, necessarily, a precautionary statute." *Id.* Optimally, the court held, regulatory action would not only precede, but prevent, a perceived threat. *Id.*

The court also rejected petitioner's argument that any threatened harm must be "probable" before regulation was authorized. Specifically, the court recognized that danger "is set not by a fixed probability of harm, but rather is composed of reciprocal elements of risk and harm, or probability and severity." *Id.* at 18. Next, the court held that EPA's evaluation of risk is necessarily an exercise of judgment, and that the statute did not require a factual finding. *Id.* at 24. Thus, ultimately, the Administrator must "act, in part on 'factual issues,' but largely 'on choices of policy, on an assessment of risks, [and] on predictions dealing with matters on the frontiers of scientific knowledge * * *.'" *Id.* at 29 (citations omitted). Finally, the en banc court agreed with EPA that even without the language in section 202(a) regarding "cause or contribute to," it was appropriate for EPA to consider the cumulative impact of lead from numerous sources, not just the fuels being regulated under section 211(c). *Id.* at 29–31.

b. The 1977 Clean Air Act Amendments

The dissent in the original *Ethyl Corp.* decision and the en banc opinion were of "critical importance" to the House Committee which proposed the revisions to the endangerment language in the 1977 amendments to the CAA. H.R. Rep. 95–294 at 48, 4 LH at 2515. In particular, the Committee believed the *Ethyl Corp.* decision posed several "crucial policy questions" regarding the protection of public health and welfare." *Id.*[7] The Committee addressed those questions with the language that now appears in section 202(a) and several other CAA provisions—"emission of any air pollutant * * *, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."

The legislative history clearly indicates that the Committee intended the language to serve several purposes consistent with the en banc decision in *Ethyl Corp.* In particular, the language (1) emphasizes the preventive or precautionary nature of the CAA[8]; (2) authorizes the Administrator to reasonably project into the future and weigh risks; (3) assures the consideration of the cumulative impact of all sources; (4) instructs that the health of susceptible individuals, as well as healthy adults, should be part of the analysis; and (5) indicates an awareness of the uncertainties and limitations in information available to the Administrator. H.R. Rep. 95–294 at 49–50, 4 LH at 2516–17.[9]

As noted above, the phrase "in [her] judgment" calls for the Administrator to make a comparative assessment of risks and projections of future possibilities, consider uncertainties, and extrapolate from limited data. Thus, the Administrator must balance the likelihood of effects with the severity of

[6] At the time of the 1973 rules requiring the reduction of lead in leaded gasoline, section 211(c)(1)(A) of the CAA stated that the Administrator may promulgate regulations that: "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine (A) if any emissions product of such fuel or fuel additive will *endanger the public health or welfare* * * *." CAA 211(c)(1)(A) (1970) (emphasis added). The italicized language in the above quote is the relevant language revised by the 1977 amendments.

[7] The Supreme Court recognized that the current language in section 202(a)(1) is "more-protective" than the 1970 version that was similar to the section 211 language before the DC Circuit in *Ethyl Corp. Massachusetts* v. *EPA*, 549 U.S. at 506, fn 7.

[8] *See* H.R. Rep. 95–294 at 49, 4 LH at 2516 ("To emphasize the preventive or precautionary nature of the Act, i.e. to assure that regulatory action can effectively prevent harm before it occurs").

[9] Congress also standardized this language across the various sections of the CAA which address emissions from both stationary and mobile sources. H.R. Rep. 95–294 at 50, 4 LH at 2517; Section 401 of CAA Amendments of 1977.

the effects in reaching her judgment. The Committee emphasized that "judgment" is different from a factual "finding." [10] The Administrator may make projections, assessments and estimates that are reasonable, as compared to a "'crystal ball' inquiry." Moreover, procedural safeguards apply to the exercise of judgment, and final decisions are subject to judicial review. Also, the phrase "in [her] judgment" modifies both the phrases "cause and contribute" and "may reasonably be anticipated," as discussed below. H.R. Rep. 95–294 at 50–51, 4 LH at 2517–18.

As the Committee further explained, the phrase "may reasonably be anticipated" points the Administrator in the direction of assessing current and future risks rather than waiting for proof of actual harm. This phrase is also intended to instruct the Administrator to consider the limitations and difficulties inherent in information on public health and welfare. H.R. Rep. 95–294 at 51, 4 LH at 2518.[11]

Finally, the phrase "cause or contribute" ensures that all sources of the contaminant which contribute to air pollution are considered in the endangerment analysis (e.g., not a single source or category of sources). It is also intended to require the Administrator to consider all sources of exposure to a pollutant (for example, food, water, and air) when determining risk. *Id.*

3. Additional Considerations for the Cause or Contribute Analysis

By instructing the Administrator to consider whether emissions of an air pollutant cause or contribute to air pollution, the statute is clear that she need not find that emissions from any one sector or group of sources are the sole or even the major part of an air pollution problem. The use of the term contribute clearly indicates a lower threshold than the sole or major cause. Moreover, the statutory language in section 202(a) does not contain a modifier on its use of the term contribute. Unlike other CAA provisions, it does not require "significant" contribution. *See, e.g.*, CAA sections 111(b); 213(a)(2), (4). Congress made it clear that the Administrator is to exercise her judgment in determining contribution, and authorized regulatory controls to address air pollution even if the air pollution problem results from a wide variety of sources. While the endangerment test looks at the entire air pollution problem and the risks it poses, the cause or contribute test is designed to authorize EPA to identify and then address what may well be many different sectors or groups of sources that are each part of the problem.

The DC Circuit Court of Appeals has discussed the concept of contribution in the context of CAA section 213 and rules for nonroad vehicles. In *Bluewater Network* v. *EPA*, 370 F.3d 1 (DC Cir. 2004), industry argued that section 213(a)(3) requires a finding of a significant contribution before EPA can regulate, while EPA's view was that the CAA requires a finding only of contribution. *Id.* at 13. Section 213(a)(3), like section 202(a), is triggered by a finding that certain sources "cause, or contribute to," air pollution, while an adjacent provision, section 213(a)(2), is triggered by a finding of a "significant" contribution. The court looked at the "ordinary meaning of 'contribute' " when upholding EPA's reading. After referencing dictionary definitions of contribute, the court also noted that "[s]tanding alone, the term has no inherent connotation as to the magnitude or importance of the relevant 'share' in the effect; certainly it does not incorporate any 'significance' requirement." 370 F.3d at 13.[12] The court found that the bare "contribute" language invests the Administrator with discretion to exercise judgment regarding what constitutes a sufficient contribution for the purpose of making an endangerment finding. *Id.* at 14.[13]

Like section 213(a)(3), section 202(a) refers to contribution and does not specify that the contribution must be significant before an affirmative finding can be made. To be sure, any finding of a "contribution" requires some threshold to be met; a truly trivial or *de minimis* "contribution" might not count as such. The Administrator therefore has ample discretion in exercising her reasonable judgment and determining whether, under the circumstances presented, the cause or contribute criterion has been met.[14] In the past, the Administrator has evaluated the emissions of the source or sources in different ways, based on the particular circumstances involved. For instance, in some mobile source rulemakings, the Administrator has used the percent of emissions from the regulated mobile source category compared to the total mobile source inventory for that air pollutant as the best way to evaluate contribution. *See*, e.g., 66 FR 5001 (2001) (heavy duty engine and diesel sulfur rule). In other instances the Administrator has looked at the percent of emissions compared to the total nonattainment area inventory of the air pollution at issue. *See*, e.g., 67 FR 68,242 (2002) (snowmobile rule). EPA has found that air pollutant emissions that amount to 1.2 percent of the total inventory "contribute." *Bluewater Network*, 370 F.3d at 15 ("For Fairbanks, this contribution was equivalent to 1.2 percent of the total daily CO inventory for 2001.").

While these prior actions are instructive, they do not establish bright line emission levels above which a positive contribution determination must be made, or below which a contribution determination could not be made. The Administrator may determine that emissions at a certain level or percentage contribute to air pollution in one set of circumstances, while also judging that the same level or percentage of another air pollutant in a different circumstances and involving different air pollution does not contribute. When exercising her judgment, the Administrator not only considers the cumulative impact, but also looks at the totality of the circumstances (e.g., the air pollutant, the air pollution, the nature of the endangerment, the type of source category, the number of sources in the source category, and the number and type of other source categories that may emit the air pollutant) when determining whether the emissions "justify regulation" under the CAA. Further discussion of this issue can be found in Section IV.

[10] Throughout this Notice the judgments on endangerment and cause or contribute are described as a finding or findings. This is for ease of reference only, and is not intended to imply that the Administrator's exercise of judgment in applying the scientific information to the statutory criteria is solely a factual finding; while grounded squarely in the science of climate change, these judgments also embody policy considerations.

[11] Thus, contrary to the position set forth by at least one commenter on the Greenhouse Gas ANPR, the statutory language does not require that EPA prove the effects of climate change "beyond a reasonable doubt." Indeed, such an approach is inconsistent with the concepts of reasonable anticipation and endangerment embedded in the statute.

[12] Specifically, the decision noted that "'contribute' means simply 'to have a share in any act or effect,' WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 496 (1993), or 'to have a part or share in producing,' 3 OXFORD ENGLISH DICTIONARY 849 (2d ed. 1989)." Id. at 13.

[13] The court explained, "[t]he repeated use of the term 'significant' to modify the contribution required for all nonroad vehicles, coupled with the omission of this modifier from the 'cause, or contribute to' finding required for individual categories of new nonroad vehicles, indicates that Congress did not intend to require a finding of 'significant contribution' for individual vehicle categories." Id. at 13.

[14] Section IV discusses the evidence in this case that supports the proposed finding of contribution. EPA need not determine at this time the circumstances in which emissions would be trivial or de minimis and would not warrant a finding of contribution.

4. Comments on Elements of the Endangerment and Cause or Contribute Tests Made During the ANPR Public Comment Period

Certain comments submitted on the ANPR [15] argued that when evaluating endangerment and cause or contribute, the Administrator is limited to considering only those impacts that can be traced to the amount of air pollution directly attributable to the greenhouse gases emitted by new motor vehicles and engines. Such an approach collapses the two prongs of the test by requiring that any climate change impacts upon which an endangerment determination is made result solely from the greenhouse gas emissions of motor vehicles. It essentially eliminates the "contribute" part of the "cause or contribute" portion of the test. This approach was clearly rejected by the en banc court in *Ethyl Corp.* 541 F.2d at 29 (rejecting the argument that the emissions of the fuel additive to be regulated must "in and of itself, i.e. considered in isolation, endanger[s] public health."). Moreover, it conflicts with an enumerated purpose of the 1977 CAA Amendments: "To assure consideration of the cumulative impact of all sources of a pollutant in setting ambient and emission standards, not just the extent of the risk from the emissions from a single source or class of sources of the pollutant; * * *" H.R. Rep. 95–294 at 49–50, 4 LH at 2516–17.

Nor does EPA agree with comments that argue the Administrator cannot make a positive endangerment or contribution determination unless the emissions reductions required by the resulting standards would "effectively mitigate" or "fruitfully attack" the impacts underlying the endangerment determination. Again, such an approach fails to appreciate the holistic approach that Congress adopted in 1977. Moreover, as the Supreme Court recognized, "[a]gencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop." *Massachusetts* v. *EPA*, 549 U.S. at 524 (citations omitted).[16] The threshold endangerment and cause or contribute criteria are separate and distinct from the standard setting criteria that apply if the threshold findings are met, and they serve a different purpose. Indeed, the more serious the endangerment to public health and welfare, the more important it may be that action be taken to address the actual or potential harm even if no one action alone can solve the problem, and a series of actions is called for.

Importantly, these various narrow approaches to the endangerment and cause or contribute criteria would effectively preclude the Administrator from ever making a positive finding for a global phenomenon like climate change because the regulatory actions would always be limited to just part of the picture. Indeed, they would preclude the Administrator from making a positive finding for any complex pollution problem that cannot be solved by one regulatory action alone. This is contrary to Congress' direction that the Administrator consider the whole picture when exercising her judgment about the critical issues of cause or contribute and endangerment to public health and welfare.

*B. Air Pollutant, Public Health and Welfare*

The CAA defines both "air pollutant" and "welfare." Air pollutant is defined as: "Any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used." CAA section 302(g). Greenhouse gases fit well within this capacious definition. See *Massachusetts* v. *EPA*, 549 U.S. at 532. They are "without a doubt" physical chemical substances emitted into the ambient air. *Id.* at 529. Section IV below contains further discussion on today's proposed definition of "air pollutant" for purposes of the contribution finding.

Regarding "welfare", the CAA states that "[a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants." CAA section 302(h). This definition is quite broad. Importantly, it is not an exclusive list due to the use of the term "includes, but is not limited to, * * *." Effects other than those listed here may also be considered effects on welfare.

Moreover, the terms contained within the definition are themselves expansive. For example, deterioration to property could include damage caused by extreme weather events. Effects on vegetation can include impacts from changes in temperature and precipitation as well as from the spreading of invasive species or insects. Prior welfare effects evaluated by EPA include impacts on vegetation generally, and changes in crop and forestry specifically, as well as reduced visibility, changes in nutrient balance and acidity of the environment, soiling of buildings and statues, and erosion of building materials. *See, e.g.*, Final National Ambient Air Quality Standard for Ozone, 73 FR 16436 (2007); Control of Emissions from Nonroad Large Spark Ignition Engines and Recreational Engines (Marine and Land-Based), 67 FR 68242 (2002); Final Heavy-Duty Engine and Vehicle Standards and Highway Diesel Sulfur Control Requirements, 66 FR 5002 (2001).

There is no definition of public health in the Clean Air Act. The Supreme Court has discussed the concept in the context of whether costs can be considered when setting National Ambient Air Quality Standards. *Whitman* v. *American Trucking Ass'n*, 531 U.S. 457 (2001). In *Whitman*, the Court imbued the term with its most natural meaning: "the health of the public." *Id.* at 466.

When considering public health, EPA has looked at morbidity, such as

[15] Numerous comments on the ANPR discussed the endangerment and cause or contribute findings, and set forth how various stakeholders believe EPA is compelled to make those findings. EPA has reviewed the comments on the ANPR, and EPA appreciates the work that went into them. While we are not responding to every comment received in today's proposal, the Agency is taking this opportunity to respond to a few key comments related to the test that some stakeholders believe guides the Administrator when undertaking an endangerment analysis and cause or contribute evaluation. As noted above, commenters should submit to the docket for today's action any comments they want EPA to consider as it makes a decision on this proposed determination.

[16] EPA also rejects the comment that EPA has defined "contribute" as resulting in a "humanly perceptible" difference. See Regional Haze Regulations and Guidelines for Best Available Retrofit Technology [BART] Determinations, 70 FR 39104 (2005). In that rule, EPA noted that a 1.0 deciview change in visibility is humanly perceptible in virtually all situations. Based on this, EPA concluded that for a state making a contribution finding for an individual source under section 169A(b)(2)(A), it would be unreasonable to determine that a source emitting pollution that resulted in a 0.5 deciview change in visibility did not "contribute" to visibility impairment. Id. at 39120. In fact, EPA noted that "[i]f 'causing' visibility impairment means causing a humanly perceptible change in visibility, * * * then 'contributing' to visibility impairment must mean having some lesser impact * * * that need not rise to the level of human perception." *Id.* at 39120, fn 32. The Agency did not establish a test that required human perception before contribution could be found.

impairment of lung function, aggravation of respiratory and cardiovascular disease, and other acute and chronic health effects, as well as mortality. *See,* e.g., Final National Ambient Air Quality Standard for Ozone, 73 FR 16436 (2007).

## III. The Administrator's Proposed Endangerment Finding

This section describes the basis for the proposed endangerment finding, by laying out the scientific evidence and the Administrator's rationale for reaching this judgment. The first section describes the approach EPA has taken in gathering and synthesizing the best available scientific information to inform the Administrator's judgment, the next section describes the proposed definition of the air pollution, and the third section discusses the scientific evidence and the Administrator's reasons for judging that the air pollution is reasonably anticipated to endanger both public health and public welfare.

### *A. Approach in Utilizing the Best Available Scientific Information*

EPA has developed a technical support document (TSD) which synthesizes major findings from the best available scientific assessments that have gone through rigorous and transparent peer review. The TSD therefore relies most heavily on the major assessment reports of both the Intergovernmental Panel on Climate Change (IPCC) and the U.S. Climate Change Science Program (CCSP). EPA took this approach rather than conducting a new assessment of the scientific literature. The IPCC and CCSP assessments base their findings on the large body of many individual, peer-reviewed studies in the literature, and then the IPCC and CCSP assessments themselves go through a transparent peer-review process. The TSD was in turn reviewed by a dozen federal government scientists, who have contributed significantly to the body of climate change literature, and indeed to our common understanding of this problem. The information in the TSD has therefore been developed and prepared in a manner that is consistent with EPA's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency.*[17] Furthermore, relying most heavily on the assessment reports that reflect the scientific literature more broadly guards against an overreliance on and narrow consideration of individual studies.

An earlier version of this TSD was publicly released on July 30, 2008, to accompany the ANPR. The July 2008 version of the TSD has been updated to reflect the findings of 11 additional CCSP reports that have since been published, and to incorporate more recent climate data from U.S. federal agencies. This addresses a number of concerns raised by commenters about the July 2008 version of the TSD, arguing that it relied too heavily on the IPCC Fourth Assessment Report (published 2007), which some argued was either not current enough or not specific enough to U.S. conditions. We note that the IPCC North American chapter (of the Working Group II volume) on impacts, adaptation and vulnerability covers the U.S. and Canada (not Mexico) and that the general findings in that chapter (drawn from many individual studies for the U.S.) are indeed applicable to U.S. conditions. Even with more recent information available, the IPCC Fourth Assessment Report remains a standard reference, essentially serving as the benchmark against which new findings over the next few years will be compared. Therefore it also serves as a robust and valuable reference for purposes of this proposal. The TSD has also been edited or updated in a number of places to reflect specific comments received on the July 2008 version, and to reflect comments from an additional round of review by the federal scientists following the incorporation of the more recent scientific findings.

Regarding the scope of the relevant scientific findings, EPA took the approach that the timeframe under consideration should be consistent with the timeframe over which greenhouse gases may influence the climate (i.e., observed effects and projected effects over the next several decades and indeed at least for the remainder of this century). Moreover, the analysis was not restricted to only those climate and public health or welfare effects which may be attributable solely to greenhouse gas emissions from section 202(a) sources under the Act. In addition, although the primary focus for evaluation of risks and impacts to public health or welfare was on the U.S., careful consideration was also given to the global context.

Finally, climate policy or societal responses to any known or perceived risks and impacts to public health or welfare, which may or may not be implemented in the future—whether through planned adaptation or greenhouse gas mitigation measures—were not explicitly assessed in the endangerment analysis. Some observed and projected effects or risks due to climate change reported in the TSD and summarized below do have embedded within them assumptions about autonomous behavioral or management changes to cope with climate change. We have noted these situations in the TSD. However, it is the Administrator's position that the purpose of the endangerment analysis is to assess the risks posed to public health and welfare, rather than to estimate how various adaptation and greenhouse gas mitigation policies may ameliorate or exacerbate any endangerment that exists. Indeed, the presumed need for adaptation and greenhouse gas mitigation to occur to avoid, lessen or delay the risks and impacts associated with human-induced climate change presupposes that there is endangerment to public health or welfare. The Administrator therefore disagrees with commenters on the ANPR who argue that when considering whether the atmospheric concentration of greenhouse gases may reasonably be anticipated to endanger public health or welfare, she must consider the impact from the regulation of greenhouse gases under the CAA following an endangerment finding. The Administrator also believes it is inappropriate, in considering whether greenhouse gases endanger public health or welfare, to consider potential private behavior aimed at alleviating some of the effects of climate change. Just as the Administrator would not consider, for example, the availability of asthma medication in determining whether criteria air pollutants endanger public health, so the Administrator will not consider private behavior in the endangerment determination at hand. On the contrary, ameliorative steps of that kind would attest to the fact of endangerment.

To be sure, private adaptation might be considered as a relevant factor in deciding on the proper regulatory approach, although the Administrator need not decide that here. Determining whether there are adverse public health and welfare impacts due to the existence of air pollution is a separate matter from considering the appropriate approaches for responding to any such impacts and the possible repercussions of those approaches. The proposed approach suggested by commenters essentially would insert extra-statutory considerations into the endangerment analysis.

[17] U.S. EPA (2002), EPA/260R–02–008 *http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf.*

*B. The Air Pollution*

In applying the endangerment test to greenhouse gases under section 202(a), the Administrator must define the scope and nature of the relevant air pollution that must be evaluated. For this action, the Administrator is proposing that the air pollution be defined as the combined mix of six key directly-emitted and long-lived greenhouse gases which together constitute the root cause of human-induced climate change: carbon dioxide ($CO_2$), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The Administrator acknowledges that there are other anthropogenic climate forcers which play a role in climate change (discussed below), but that for today's action these other climate forcers are not the priority and may need to be evaluated further. What follows is a summary of key scientific findings from the TSD and the Administrator's rationale for the proposed definition of air pollution.

1. Common Features of the Six Key Greenhouse Gases

There are a number of scientific and policy reasons why the Administrator is proposing that the air pollution for this endangerment finding be defined as the combination of the six greenhouse gases. These six greenhouse gases are well studied by and have been the primary focus of climate change research, and are therefore the Administrator's first priority in addressing endangerment for greenhouse gases. These six greenhouse gases share common physical properties relevant to the climate change problem: all are long-lived [18] in the atmosphere; all become globally well mixed in the atmosphere regardless of where the emissions occur; all trap outgoing heat that would otherwise escape to space; and all are directly emitted as greenhouse gases rather than forming as a greenhouse gas in the atmosphere after emission of a precursor gas. Because of these properties, the climate effects of these greenhouse gases are generally better understood than the climate effects associated with most other climate-forcing agents (described in more detail in subsection 4 below).

As discussed above, carbon dioxide is the most important greenhouse gas directly emitted by human activities in terms of its total additional heating effect being exerted on the climate. However, the other greenhouse gases are stronger heat-trapping gases compared to carbon dioxide on a per mass basis, [19] and are responsible for a sizable fraction of the total anthropogenic climatic heating effect caused to date. Collectively, increased atmospheric concentrations of methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride have exerted an additional heating effect on the global climate since pre-industrial times that is about 40 percent as large as the additional carbon dioxide heating effect, according to the IPCC. Of these non-$CO_2$ greenhouse gases, methane is the most important in terms of its total additional heating effect. Under all future scenarios, carbon dioxide is projected to remain the dominant driver of climate change for the remainder of this century.

Because these six greenhouse gases share common properties and are the key driver of human-induced climate change, they have been the common focus of climate change science and policy to date. The United Nations Framework Convention on Climate Change (UNFCCC) addresses these six long-lived, well-mixed greenhouse gases not controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer. The IPCC scientific assessments focus primarily on these six greenhouse gases and their effects on climate.

Treating the air pollution as the mix of the six greenhouse gases is consistent with other provisions of the Act and previous EPA practice under the Act, where separate air pollutants from different sources but with common properties may be treated as a class (e.g., Class I and Class II substances under Title VI). This approach addresses the cumulative effect that the elevated concentrations of the six greenhouse gases have on climate, and thus on different elements of health, society and the environment.[20]

The scientific literature that assesses the potential risks and end-point impacts of human-induced climate change does not typically assess these impacts on a gas-by-gas basis. It is true that estimates are available for how individual greenhouse gases and other climate-forcing agents are contributing to the anthropogenic heating (or cooling) effect being exerted on the global climate. However, as one moves farther down the causal chain towards end-point risks and impacts to human health, society and the environment, such impacts, whether observed or projected, are typically not attributed to the temperature increase or other climatic change due to the elevated atmospheric concentration of just one of the greenhouse gases.

2. Evidence That the Six Greenhouse Gases Are at Unprecedented Levels in the Atmosphere

Given the long atmospheric lifetime and global mixing of greenhouse gases, global average atmospheric concentrations are an important metric by which to measure changes in atmospheric composition. Current atmospheric greenhouse gas concentrations are now at elevated levels as a result of both historic and current anthropogenic emissions. The global atmospheric carbon dioxide concentration has increased about 38 percent from pre-industrial levels to 2009, and almost all of the increase is due to anthropogenic emissions. The current (year 2009) carbon dioxide concentration is 386 parts per million (ppm) and has recently been increasing by about 2.0 ppm per year. The global atmospheric concentration of methane has increased by 149 percent since pre-industrial levels (through 2007), and the nitrous oxide concentration has increased 23 percent (through 2007). The observed concentration increase in these gases can also be attributed primarily to anthropogenic emissions. The industrial fluorinated gases, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, are almost entirely anthropogenic in origin, and have relatively low atmospheric concentrations but are increasing rapidly; concentrations of many of these gases have increased by large factors

[18] We use "long-lived" here to mean that the gas has a lifetime in the atmosphere sufficient to become globally well mixed throughout the entire atmosphere, which requires a minimum atmospheric lifetime of about one year. IPCC also refers to these six greenhouse gases as long-lived. Methane has an atmospheric lifetime of roughly a decade. One of the most commonly used hydrofluorocarbons (HFC–134a) has a lifetime of 14 years. Nitrous oxide has a lifetime of 114 years; sulfur hexafluoride over 3,000 years; and some PFCs up to 10,000 to 50,000 years. Carbon dioxide is generally thought to have a lifetime of roughly 100 years, but for a given amount of carbon dioxide emitted some fraction is quickly absorbed by the oceans and terrestrial vegetation and the remainder will only slowly decay in the atmosphere after several years, and indeed some portion will remain in the atmosphere for many centuries.

[19] Global warming potentials (GWPs) for each greenhouse gas have been estimated by IPCC so that emissions of these gases can be compared to one another on a $CO_2$-equivalent basis. The GWP represents the cumulative heating effect of a gas over a specified timeframe in the atmosphere (100 years), relative the heating effect caused by carbon dioxide, the reference gas. Carbon dioxide is assigned a GWP of 1, whereas methane has a GWP of 21. The GWP of sulfur hexafluoride is 23,900.

[20] Due to the cumulative purpose of the statutory language, even if the Administrator were to look at the atmospheric concentration of each greenhouse gas individually, she would still consider the impact of the concentration of a single greenhouse gas in combination with that caused by the other greenhouse gases.

(between 4.3 and 1.3) between 1998 and 2005.

Historic data that go back many thousands of years show that current atmospheric concentrations of the two most important directly emitted, long-lived greenhouse gases (carbon dioxide and methane) are well above the natural range of atmospheric concentrations compared to the last 650,000 years. Atmospheric greenhouse gas concentrations have been increasing because human emissions have been outpacing the ability of the natural environment to remove greenhouse gases from the atmosphere over timescales of decades to centuries.

The Administrator recognizes these scientific findings that the current global atmospheric concentrations of the six greenhouse gases are now at unprecedented and record-high levels compared to both the recent and distant past. It is also unambiguous that the current elevated greenhouse gas concentrations are the primary result of human activities.

Total concentrations of these greenhouse gases are projected to continue climbing, and thus to continue pushing unprecedented levels upwards for the foreseeable future under different plausible assumptions of U.S. and global greenhouse gas-emitting activities. Given the long atmospheric lifetime of the six greenhouse gases, significant changes in total greenhouse gas global atmospheric concentrations do not come about quickly (i.e., within a few years). Future atmospheric greenhouse gas concentrations—not only for the remainder of the current century but indeed for decades and in some cases centuries well beyond 2100—will be influenced by our present and near-term greenhouse gas emissions. Consideration of future plausible scenarios, and how our current greenhouse gas emissions essentially commit present and future generations to cope with an altered atmosphere and climate, reinforces the Administrator's judgment that it is appropriate to define the combination of the six key greenhouse gases as the air pollution.

3. Evidence That Elevated Atmospheric Concentrations of the Six Greenhouse Gases Are the Root Cause of Observed Climate Change

The scientific evidence is compelling that elevated concentrations of heat-trapping greenhouse gases are the root cause of recently observed climate change. This is different from historic drivers of climate change, such as cyclical changes in the Earth's orbit, which have occurred over thousands of years.

The global average net effect of the increase in atmospheric greenhouse gas concentrations, plus other human activities (e.g., land use change and aerosol emissions), on the global energy balance since 1750 has been one of warming. This total net heating effect, referred to as forcing, is estimated to be 1.6 Watts per square meter ($W/m^2$), with much of the range surrounding this estimate due to uncertainties about the cooling and warming effects of aerosols. The combined radiative forcing due to the cumulative increase in atmospheric concentrations of carbon dioxide, methane, and nitrous oxide over the period 1750 to 2005 is 2.30 $W/m^2$. The positive radiative forcing due to carbon dioxide is the largest (1.66 $W/m^2$). Methane is the second largest source of positive radiative forcing (0.48 $W/m^2$). Nitrous oxide has a positive radiative forcing of 0.16 $W/m^2$. The rate of increase in forcing due to these three greenhouse gases during the industrial era is, according to IPCC, very likely [21] to have been unprecedented in more than 10,000 years.

Warming of the climate system is now unequivocal, as is evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level. Global mean surface temperatures have risen by 0.74 °C (1.3 °F) over the last 100 years. Eight of the ten warmest years on record have occurred since 2001. Global mean surface temperature was higher during the last few decades of the 20th century than during any comparable period during the preceding four centuries.

Most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations. Global observed temperatures over the last century can be reproduced only when model simulations include both natural and anthropogenic forcings, that is, simulations that remove anthropogenic forcings are unable to reproduce observed temperature changes. Thus, most of the warming cannot be explained by natural variability, such as variations in solar activity.

In addition to attributing recent global warming to anthropogenic greenhouse gas influence at the global scale, both the IPCC and CCSP reports attributed recent North American warming to elevated greenhouse gas concentrations. A 2008 CCSP report [22] found that for North America, "more than half of this warming [for the period 1951–2006] is likely [23] the result of human-caused greenhouse gas forcing of climate change."

Therefore, by defining air pollution as the six greenhouse gases, the Administrator is identifying the fundamental and underlying driver of human-induced climate change, which in turn, as described below, poses risks to human health, society, and the environment. The Administrator believes that the proposed definition of air pollution captures the root of the problem, and addresses the part of the problem that is best understood, scientifically speaking, and that is already the focus of scientists and policy analysts involved in studying climate change. Because the six greenhouse gases are collectively the primary driver of the climate change problem, all current and future risks due to human-induced climate change—whether these risks are associated with increases in temperature, changes in precipitation, a rise in sea levels, changes in the frequency and intensity of weather events, or more directly with the elevated greenhouse gas concentrations themselves—can be associated with this definition of "air pollution." This does not imply that other anthropogenic climate forcers, discussed below, would pose no risks. EPA has considered whether other climate-forcing agents in addition to the six greenhouse gases should be included in this proposed definition of air pollution, and for the reasons discussed below is not proposing to include them in the definition of air pollution for purposes of this proposed endangerment finding.

4. Other Climate Forcers

There are other greenhouse gases and aerosols that have warming (and cooling) effects but are not being included in the proposed definition of air pollution. These include water vapor, chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs),

[21] According to IPCC terminology, "very likely" conveys a 90 to 99 percent probability of occurrence. "Virtually certain" conveys a greater than 99 percent probability, and "likely" conveys a 66 to 90 percent probability.

[22] CCSP (2008) *Reanalysis of Historical Climate Data for Key Atmospheric Features: Implications for Attribution of Causes of Observed Change.* A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research [Randall Dole, Martin Hoerling, and Siegfried Schubert (eds.)]. National Oceanic and Atmospheric Administration, National Climatic Data Center, Asheville, NC, 156 pp.

[23] This CCSP report used likelihood terminology that is consistent with that used by IPCC where "likely" also conveys a 66 to 90 percent probability of occurrence.

halons, tropospheric ozone ($O_3$), black carbon, and other short-lived precursor gases. For each of these substances, there are different scientific and policy reasons why these substances are not being included in the proposed definition of air pollution for purposes of section 202(a).

a. Water Vapor

Water vapor is the most abundant naturally occurring greenhouse gas and therefore makes up a significant share of the natural, background greenhouse effect. However, direct water vapor emissions from human activities have only a negligible effect on atmospheric concentrations of water vapor, whereas direct emissions of the six greenhouse gases have significantly altered the global atmospheric concentrations of those gases, as detailed above. Significant changes to global atmospheric concentrations of water vapor can occur indirectly through human-induced global warming, which then increases the amount of water vapor in the atmosphere because a warmer atmosphere can hold more moisture. Therefore, changes in water vapor concentrations are not an initial driver of climate change, but rather an effect of climate change which then acts as a positive feedback that further enhances warming. For this reason, the IPCC does not list direct emissions of water vapor as an anthropogenic forcing agent of climate change, but does include this water vapor feedback mechanism in response to human-induced warming in all modeling scenarios of future climate change. Based on this recognition that anthropogenic emissions of water vapor are a negligible driver of anthropogenic climate change, EPA's annual *Inventory of U.S. Greenhouse Gas Emissions and Sinks* does not include water vapor, and greenhouse gas inventory reporting guidelines under the UNFCCC do not require data on water vapor emissions.

Water vapor may be an issue of concern when it is emitted by aircraft at high altitudes, where, under certain conditions, it can lead to the formation of condensation trails, referred to as contrails. Similar to high-altitude, thin clouds, contrails have a warming effect. Extensive cirrus clouds can also develop from aviation contrails, and increases in cirrus cloud cover would also have a warming effect. The IPCC Fourth Assessment Report estimated a very small positive heating effect for linear contrails, with a low degree of scientific understanding. Unlike the warming effects associated with the six long-lived, well-mixed greenhouse gases, the warming effects associated with contrails or contrail-induced cirrus cloud cover are more regional and temporal in nature. EPA has received a petition under the Act to consider the regulation of aircraft emissions (water vapor and NOx) that lead to formation of contrails (in addition to aircraft greenhouse gas emissions), and EPA plans to evaluate this issue further. At this time, the Administrator is not proposing to include aircraft-related contrails or emissions that are not greenhouse gases within the definition of air pollution for purposes of section 202(a).

b. The Ozone-Depleting Substances: CFCs, HCFCs and Halons

Chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs) and halons are ozone-depleting substances that have been responsible for the depletion of stratospheric ozone, which prevents harmful forms of ultraviolet radiation from reaching the Earth's surface. The Montreal Protocol on Substances that Deplete the Ozone Layer is an international agreement that controls these substances. In the U.S., these substances are being controlled and phased out under Title VI of the Act. Despite their ozone-depleting properties, which the six greenhouse gases in the definition of air pollution do not share, these substances share other common physical properties with the six greenhouse gases: They are also long-lived in the atmosphere; well mixed throughout the global atmosphere; are directly emitted by anthropogenic sources; and have been responsible for a share of the human-induced heating effect to date. However, these substances have not been a priority for the scientists and policy analysts involved in studying climate change, and they are not a priority for the Administrator for this action. The UNFCCC does not address these substances and instead defers their treatment to the Montreal Protocol. The Administrator is not proposing to include these substances in the definition of air pollution with this action, but will continue to consider these issues.

c. Tropospheric Ozone

Increased concentrations of tropospheric $O_3$ are estimated to be causing a significant anthropogenic warming effect. However, unlike the long-lived six greenhouse gases, tropospheric $O_3$ has a short atmospheric lifetime (hours to weeks) and therefore its concentrations are more variable over space and time. For these reasons, its global heating effect and contribution to climate change tend to entail greater uncertainty compared to the well-mixed, long-lived greenhouse gases. Tropospheric $O_3$ is also not a directly emitted greenhouse gas, but rather undergoes secondary formation in the atmosphere from the emission of precursor gases such as nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs). For these reasons, the Administrator is not including tropospheric $O_3$ in the proposed definition of air pollution with this action.

d. Black Carbon

Black carbon is not a greenhouse gas but an aerosol particle that results from incomplete combustion of the carbon contained in fossil fuels, and remains in the atmosphere for only about a week. Black carbon is a component of particulate matter (PM), which is regulated as a criteria air pollutant under the Act. Scientific studies have found an association between exposure to PM and significant health problems.

Black carbon causes a warming effect by absorbing incoming sunlight (whereas greenhouse gases cause warming by trapping outgoing, infrared heat), and by darkening bright surfaces such as snow and ice, which reduces reflectivity. This latter effect in particular has been raising concerns about the role black carbon may be playing in observed warming and ice melt in the Arctic.

Black carbon is co-emitted with other pollutants, especially organic carbon, which all tend to have a direct cooling effect on climate because they reflect and scatter incoming sunlight. However, black carbon, per unit mass, is a more effective warming agent than organic carbon is a cooling agent. The IPCC Fourth Assessment Report estimated that co-emissions of organic carbon may be offsetting about 40 percent of black carbon's warming effect on a global average. The ratio of black carbon to organic carbon varies by fuel type and by combustion efficiency, such that different emission sources will have different net climate effects; likewise, different emission reduction measures will have different net climate effects. Furthermore, because black carbon is short lived in the atmosphere, the net climate effect of a black carbon emission source will also depend on location; for example, emissions that deposit on snow and ice, or get lofted above cloud surfaces, could have a stronger warming effect. Like other aerosols, black carbon can also affect the reflectivity and lifetime of clouds. How black carbon and other aerosols, such as sulfates, alter cloud properties is a key source of uncertainty in quantifying the total

human influence on the global climate. This total cloud indirect effect caused by all aerosols (e.g., sulfates, black carbon and organic carbon) is estimated to be causing a net cooling effect, with a large range of uncertainty. Given these reasons, there is considerably more uncertainty associated with black carbon's warming effect compared to the estimated warming effect of the six long-lived greenhouse gases.

Given the number of science issues for black carbon that are different than for the six greenhouse gases, the Administrator is not proposing to include black carbon in the definition of air pollution for purposes of section 202(a) with this action. However, EPA is already undertaking work to further evaluate the role of black carbon in climate change, in addition to its role as an element of the already-regulated $PM_{2.5}$. Indeed, a recent study [24] referenced in the TSD estimated that black carbon is having a much stronger direct warming effect (160 percent higher on a global average) compared to IPCC's estimate. EPA has also received petitions to specifically address black carbon emissions under the Act from marine and aviation sources, and EPA plans to respond to these petitions in a separate action.

e. Fluorinated Ethers and Recently Identified Greenhouse Gases

Fluorinated ethers are used in electronics, anesthetics, and as heat transfer fluids. Like the six greenhouse gases included in the proposed definition of air pollution, these fluorinated compounds have heat-trapping properties and can also be long-lived in the atmosphere. In many cases these fluorinated gases are used in expanding industries (e.g., electronics) or as substitutes for hydrofluorocarbons. Also, new compounds that have greenhouse gas attributes continue to be discovered, such as nitrogen trifluoride ($NF_3$). The IPCC has now assigned global warming potentials (GWPs) to both fluorinated ethers and $NF_3$. However, the total global radiative forcing contribution of these compounds is not yet available to compare with the anthropogenic heating effect caused by the six greenhouse gases. The Administrator is not proposing to include these gases in the definition of air pollution with this action.

[24] Ramanathan V. and G. Carmichael (2008) Global and regional climate changes due to black carbon. *Nature Geoscience*, 1: 221–227.

### *C. The Administrator's Proposed Finding That the Air Pollution Endangers Public Health and Welfare*

The scientific evidence clearly indicates that atmospheric levels of the six greenhouse gases are at unprecedented elevated levels due to human activities, and that most of the observed global and continental warming can be attributed to this anthropogenic rise in greenhouse gases. The information presented here builds on these facts that support the proposed definition of air pollution.

Based on the total weight of evidence, which is briefly summarized here and set forth in more detail in the TSD, it is the Administrator's judgment that current and projected levels of the mix of the six greenhouse gases endanger the public health and welfare of current and future generations.

The Administrator's proposed endangerment finding is based on the entire range of observed risks and potential harms to public health and welfare. The Administrator is not basing her proposal on any one impact, but instead is weighing the evidence collectively and determining that as a whole it clearly indicates that the air pollution at issue endangers public health and welfare now and in the future.

Furthermore, the Administrator is taking into account a number of key considerations that provide guidance on how to weigh and interpret the collective body of scientific evidence for today's proposal, namely: The observed record of climate change and our ability to attribute these changes to the observed anthropogenic buildup of greenhouse gases in the atmosphere; plausible future changes in climate over the next several decades and beyond given both the accumulation of greenhouse gases in the atmosphere to date plus expected increases in concentrations under different scenarios of future greenhouse gas emission pathways; the level of certainty with which we can reasonably project both near- and long-term climate change; our ability to identify known risks to public health and welfare, both today and in the future in light of a continually changing climate; the vulnerability of particularly susceptible populations and regions; the likelihood that such risks to both public health and welfare are happening now and will happen in the future; the magnitude of such risks and impacts to public health and welfare; and finally a consideration of how key gaps in our knowledge of current, but especially future, effects factor into an endangerment decision.

The following discussion sets forth the Administrator's rationale for making this proposed endangerment finding, including a description of the supporting scientific findings showing evidence of the effects that elevated greenhouse gas concentrations are having currently and are projected to have in the future, and the implications of these effects for public health and welfare.

1. Evidence of Currently Observed Climatic and Related Effects

There is compelling evidence that a number of climate and physical changes are occurring now that can be attributed to the anthropogenic rise in atmospheric greenhouse gases, and other changes that are consistent with the direction of change expected from warming and human-induced climate change. These observed changes described below can adversely affect and pose risks to both public health and welfare.

The global indicators of change go beyond the well-established surface air temperature rise discussed above. Observational evidence from all continents and most oceans shows that many natural systems are being affected by regional climate changes, particularly temperature increases. Observations show that changes are occurring in the amount, intensity, frequency, and type of precipitation. There is strong evidence that global sea level gradually rose in the 20th century and is currently rising at an increased rate. Widespread changes in extreme temperatures have been observed in the last 50 years. Globally, cold days, cold nights, and frost have become less frequent, while hot days, hot nights, and heat waves have become more frequent.

Satellite data since 1978 show that annual average Arctic sea ice extent has shrunk by 2.7 ± 0.6 percent per decade, with larger decreases in summer of 7.4 ± 2.4 percent per decade. The latest data from NASA indicate Arctic sea ice set a record low in September 2007, 38 percent below the 1979–2007 average. In September 2008, Arctic sea ice reached its second lowest extent on record.

Like global mean temperatures, U.S. air temperatures have warmed during the 20th and into the 21st century. According to official data from NOAA's National Climatic Data Center:

- U.S. average annual temperatures are now approximately 1.25 °F (0.69 °C) warmer than at the start of the 20th century, with an increased rate of warming over the past 30 years. The rate of warming for the entire period of record (1895–2008) is 0.13 °F/decade while the rate of warming increased to

0.58 °F/decade (0.32 °C/decade) for the period from 1979–2008.

- 2005–2007 were exceptionally warm years (among the top 10 warmest on record), while 2008 was slightly warmer than average (the 39th warmest year on record), 0.2 °F (0.1 °C) above the 20th century (1901–2000) mean.
- The last ten 5-year periods (2004–2008, 2003–2007, 2002–2006, 2001–2005, 2000–2004, 1999–2003, 1998–2002, 1997–2001, 1996–2000, and 1995–1999), were the warmest 5-year periods in the 114 years of national records, demonstrating the anomalous warmth of the last 15 years.

Over the contiguous U.S., total annual precipitation increased at an average rate of 6.5 percent over the period 1901–2006. It is likely that there have been increases in the number of heavy precipitation events within many land regions, even in those where there has been a reduction in total precipitation amount, consistent with a warming climate.

Sea level has been rising along most of the U.S. Atlantic and Gulf coasts. In the mid-Atlantic region from New York to North Carolina, tide-gauge observations indicate that relative sea-level rise (the combination of global sea-level rise and land subsidence) rates were higher than the global mean and generally ranged between 2.4 and 4.4 millimeters per year, or about 0.3 meters (1 foot) over the twentieth century.

Climate changes are very likely already affecting U.S. water resources, agriculture, land resources, and biodiversity as a result of climate variability and change. A 2008 CCSP report[25] that examined these observed changes concluded, "[t]he number and frequency of forest fires and insect outbreaks are increasing in the interior West, the Southwest, and Alaska. Precipitation, stream flow, and stream temperatures are increasing in most of the continental U.S. The western U.S. is experiencing reduced snowpack and earlier peaks in spring runoff. The growth of many crops and weeds is being stimulated. Migration of plant and animal species is changing the composition and structure of arid, polar, aquatic, coastal, and other ecosystems."

Regarding observed changes in extreme events, another 2008 CCSP report[26] stated the following: "Many extremes and their associated impacts are now changing. For example, in recent decades most of North America has been experiencing more unusually hot days and nights, fewer unusually cold days and nights, and fewer frost days. Heavy downpours have become more frequent and intense. Droughts are becoming more severe in some regions, though there are no clear trends for North America as a whole. The power and frequency of Atlantic hurricanes have increased substantially in recent decades, though North American mainland land-falling hurricanes do not appear to have increased over the past century. Outside the tropics, storm tracks are shifting northward and the strongest storms are becoming even stronger."

2. Future Projected Climatic and Related Effects

Because atmospheric greenhouse gas concentrations are expected to climb for the foreseeable future, temperatures will continue to rise and the overall rate and magnitude of human-induced climate change will likely increase, such that risks to public health and welfare will likewise grow over time so that future generations will be especially vulnerable; their vulnerability will include potentially catastrophic harms. Projected effects here focus on the next several decades and the timeframe out to 2100.

The majority of future reference-case scenarios (assuming no explicit greenhouse gas mitigation actions beyond those already enacted) project an increase of global greenhouse gas emissions over the century, with climbing greenhouse gas concentrations. Long-lived gas concentrations increase even for those scenarios where annual emissions toward the end of the century are assumed to be lower than current annual emissions. Indeed, for a given amount of $CO_2$ released today, about half will be taken up by the oceans and terrestrial vegetation over the next 30 years, a further 30 percent will be removed over a few centuries, and the remaining 20 percent will only slowly decay over time such that it will take many thousands of years to remove from the atmosphere. Carbon dioxide is expected to remain the dominant anthropogenic driver of climate change over the course of the 21st century. The heating effect associated with the non-$CO_2$ greenhouse gases is still significant and growing over time.

Future warming over the course of the 21st century, even under scenarios of low emissions growth, is very likely to be greater than observed warming over the past century (Figure 1). Through about 2030, the global warming rate is affected little by the choice of different future emission scenarios, according to IPCC. By mid-century, the choice of scenario becomes more important for the magnitude of the projected warming; About a third of that warming is projected to be due to climate change that is already committed. By the end of the century, projected average global warming (compared to average temperature around 1990) varies significantly depending on emissions scenario and climate sensitivity assumptions, ranging from 1.8 to 4.0 °C (3.2 to 7.2 °F), with an uncertainty range of 1.1 to 6.4 °C (2.0 to 11.5 °F), according to the IPCC.

[25] Backlund, P., A. Janetos, D.S. Schimel, J. Hatfield, M.G. Ryan, S.R. Archer, and D. Lettenmaier (2008) Executive Summary. In: *The effects of climate change on agriculture, land resources, water resources, and biodiversity in the United States*. A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research. Washington, DC., USA, 362 pp.

[26] Karl, T.R., G.A. Meehl, T.C. Peterson, K.E. Kunkel, W.J. Gutowski, Jr., D.R. Easterling (2008) *Executive Summary* in Weather and Climate Extremes in a Changing Climate. Regions of Focus: North America, Hawaii, Caribbean, and U.S. Pacific Islands. T.R. Karl, G.A. Meehl, C.D. Miller, S.J. Hassol, A.M. Waple, and W.L. Murray (eds.). A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research, Washington, DC.

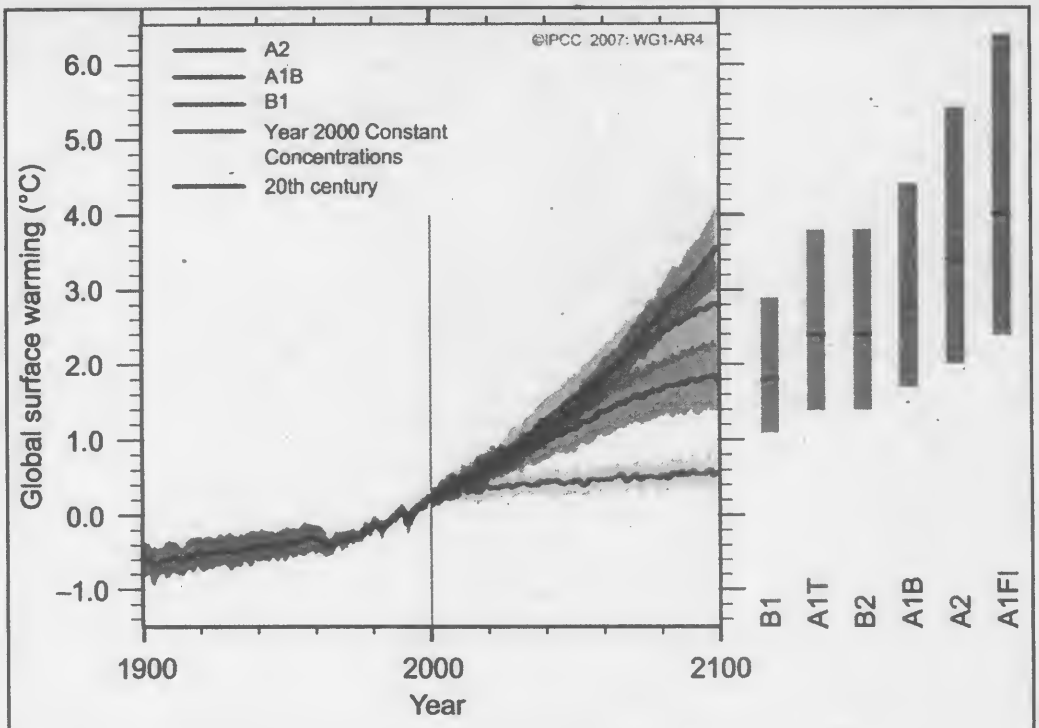


Figure 1. Observed and Projected Global Surface Warming
Source: IPCC Fourth Assessment Report (2007). Solid lines are multi-model global averages of surface warming (relative to 1980-1999) for the scenarios A2, A1B and B1, shown as continuations of the 20th century simulations. Shading denotes the ±1 standard deviation range of individual model annual averages. The bottom line in the 2000-2100 period is for the experiment where concentrations were held constant at year 2000 values. The bars at right indicate the best estimate (solid line within each bar) and the likely range assessed for the six scenarios used by the IPCC.

Global mean precipitation is expected to increase with global warming. However, there are substantial spatial and seasonal variations. Increases in the amount of precipitation are very likely in high latitudes, while decreases are likely in the mid-latitudes and semi-arid low latitudes including much of the already water-stressed southwestern U.S., continuing observed patterns in recent trends. Drought is expected to increase in the western U.S., where water availability to meet demands for agricultural and municipal water needs is already limited. Another projected impact in the western U.S. is decreased water availability due to a range of inter-connected factors. These include: decreased snowpack, earlier snowmelt resulting in peak winter and decreased summer flows, which will disrupt and limit water storage capacity and will create additional challenges for water allocation among competing uses (agricultural, municipal, industrial, ecological). Rising sea levels could lead to salt water intrusion of coastal ground aquifers, which would further reduce freshwater availability for municipal and agricultural use among coastal communities that depend on these aquifers.

By the end of the century, sea level is projected by IPCC to rise between 0.18 and 0.59 meters relative to around 1990 in the absence of increased dynamic ice sheet loss. Recent rapid changes at the edges of the Greenland and West Antarctic ice sheets show acceleration of flow and thinning. While understanding of these ice sheet processes is incomplete, their inclusion in models would likely lead to increased sea-level projections for the end of the 21st century. Sea ice is projected to shrink in the Arctic under all IPCC emission scenarios.

All of the U.S. is very likely to warm during this century, and most areas of the U.S. are expected to warm by more than the global average. The largest warming through 2100 is projected to occur in winter over northern parts of Alaska. In western, central and eastern regions of North America, the projected warming has less seasonal variation and is not as large, especially near the coast, consistent with less warming over the oceans.

The U.S is projected to see an overall average increase in the intensity of precipitation events, which is likely to increase the risk of flood events, though projections for specific regions are very uncertain.

As the climate warms, glaciers will lose mass owing to dominance of summer melting over winter precipitation increases, contributing to sea level rise.

For North American coasts, sea level rise may be similar to the global mean, with slightly higher rates in western Alaska. The projected rate of sea level

rise off the low-lying U.S. South Atlantic and Gulf coasts is also higher than the global average.

Based on a range of models, it is likely that tropical cyclones (tropical storms and hurricanes) will become more intense, with stronger peak winds and more heavy precipitation associated with ongoing increases of tropical sea surface temperatures. Storm surge levels are likely to increase due to projected sea level rise. Frequency changes in hurricanes are currently too uncertain for confident projections.

3. Impacts on Public Health

Many of the observed and projected changes in climate and climate-sensitive systems discussed above pose serious risks to public health. The following discussion outlines specific public health concerns raised by observations and plausible future outcomes, recognizing the statutory requirement that the Administrator consider how sensitive or susceptible populations may be particularly at risk. As our discussion of increasing temperatures suggests, the adverse effects of greenhouse gas emissions are expected to mount over time. The findings of the IPCC, and of many others, indicate that risks to public health will be more severe in 20 years than in ten years, more severe in 30 years than in 20 years, more severe in 40 years than in 30 years, and so forth. There is disagreement about whether and when increases in adverse effects will be linear or nonlinear; on some projections, nonlinear increases in such effects can reasonably be expected at some future point. We believe that existing evidence supports a finding that there are current adverse effects. This evidence also supports a finding that these effects will become more serious over the next several decades, in some cases out to 2100.

To be clear, ambient concentrations of carbon dioxide and the other greenhouse gases, whether at current levels or at projected ambient levels under scenarios of high emissions growth over time, do not cause direct adverse health effects such as respiratory or toxic effects. All public health risks and impacts described here as a result of elevated atmospheric concentrations of greenhouse gases occur via climate change. The pathway or mechanism occurs through changes in climate, but the end result is an adverse effect on the health of the population. Thus these effects from climate change are appropriately denoted public health effects. It is important to acknowledge that effects on "welfare" do not always entail effects on "public health," and the Administrator does not mean to interpret "public health" to include "welfare" effects as such. Today's interpretation does not collapse the two categories—many "welfare" effects do not and cannot involve public health. The Administrator simply means to recognize, with the scientific community, that concentrations of greenhouse gases endanger public health through a wide range of pathways.

As described above, there is evidence that unusually hot days and nights and heat waves have become more frequent in the U.S. Severe heat waves are projected to intensify in magnitude and duration over the portions of the U.S. where these events already occur, with likely increases in mortality and morbidity. The populations most sensitive to hot temperatures are older adults, the chronically sick, the very young, city-dwellers, those taking medications that disrupt thermoregulation, the mentally ill, those lacking access to air conditioning, those working or playing outdoors, and the socially isolated.

The Administrator also acknowledges that warming temperatures may bring about some health benefits. Both extremely cold days and extremely hot days are dangerous to human health. But at least in the short run, modest temperature increases may produce health benefits in the U.S. (and elsewhere). Although the IPCC projects reduced human mortality from cold exposure through 2100, it is currently difficult to ascertain the balance between increased heat-related mortality and decreased cold-related mortality. With respect to health, different regions will be affected in different ways. The Administrator does not believe that it is now possible to quantify the various effects. Because the risks from unusually hot days and nights, and from heat waves, are very serious, it is reasonable to find on balance that these risks support a finding that public health is endangered even if it is also possible that modest temperature increases will have some beneficial health effects.

Increases in regional ozone pollution in the U.S. relative to ozone levels without climate change are expected due to higher temperatures and a modification of meteorological factors. Increases in regional ozone pollution increase the risks of respiratory infection, aggravation of asthma, and premature death. EPA does have in place National Ambient Air Quality Standards (NAAQS) for ozone, which are premised on the harmfulness of ozone to public health and welfare. These standards and their accompanying regulatory regime have helped to reduce the dangers from ozone in the U.S. Substantial challenges remain with respect to achieving the air quality protection promised by the NAAQS for ozone. These challenges will be exacerbated by climate change.

There will likely be an increase in the spread of several food and water-borne pathogens (e.g., Salmonella, Vibrio) among susceptible populations depending on the pathogens' survival, persistence, habitat range and transmission under changing climate and environmental conditions. The primary climate-related factors that affect these pathogens include temperature, precipitation, extreme weather events, and shifts in their ecological regimes.

Climate change, including the direct changes in carbon dioxide concentrations themselves, could impact the production, distribution, dispersion and allergenicity of aeroallergens and the growth and distribution of weeds, grasses and trees that produce them. These changes in aeroallergens and subsequent human exposures could affect the prevalence and severity of allergy symptoms. However, the scientific literature does not provide definitive data or conclusions on how climate change might impact aeroallergens and subsequently the prevalence of allergenic illnesses in the U.S.

The IPCC reports with very high confidence[27] that climate change impacts on human health in U.S. cities will be compounded by population growth and an aging population. The CCSP reports that climate change has the potential to accentuate the disparities already evident in the American health care systems as many of the expected health effects are likely to fall disproportionately on the poor, the elderly, the disabled, and the uninsured.

Within settlements experiencing climate change stressors, certain parts of the population may be especially vulnerable based on their circumstances. These include the poor, the elderly, the very young, those already in poor health, the disabled, those living alone, those with limited rights and power (such as recent immigrants with limited English skills), and/or indigenous populations dependent on one or a few resources.

[27] According to the IPCC lexicon, "very high confidence" conveys at least a 9 out of 10 chance of being correct. "High confidence" conveys an 8 out of 10 chance of being correct, and "medium confidence" a 5 out of 10 chance.

These potential impacts of climate change have taken on added meaning in light of the risk that hurricanes are likely to become more severe with climate change, and in light of our heightened awareness about how vulnerable the U.S. Gulf Coast can be.

Some have argued that a positive endangerment finding for public health cannot be made because the health effects associated with elevated atmospheric concentrations of greenhouse gases occur via climate change, and not directly through inhalation or other exposure to the greenhouse gases themselves. These commenters argue that because "climate" is included in the definition of welfare, the Act requires that all effects which may flow from a welfare effect must themselves be considered a welfare effect. The Administrator disagrees with this narrow view of the endangerment criteria. Mortality and morbidity that result from the effects of climate change are clearly public health problems. It would be anomalous to argue that a person who is injured or dies from heat exhaustion or increased exposure to a pathogen has not suffered a health impact. In addition, tropospheric ozone is already regulated under the Act as a criteria air pollutant in part due to its adverse impacts on public health. It is estimated that climate change can exacerbate tropospheric ozone levels in some parts of the U.S. The Administrator rejects a position that would treat the adverse effects on the health of individuals caused by tropospheric ozone as something other than a public health threat because they are exacerbated by climate change.

4. Impacts on Public Welfare

The Act defines "effects on welfare" as including, but not limited to, "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being * * *" CAA Section 302(h). It is clear that current and projected levels of greenhouse gases and resultant climate change are already adversely affecting, and will continue to adversely affect, public welfare within the meaning of the Act. As noted, the adverse effects of greenhouse gases are expected to increase over time with growing temperatures. This point holds for welfare as it does for health. In the future, the adverse effects will increase and perhaps accelerate; projected risks focus on the next several decades and out to 2100.

As heavy rainfall events are expected to become more intense, there is an increased risk of flooding, greater runoff and erosion, and thus the potential for adverse water quality effects.

Climate change will likely further constrain already over-allocated water resources in some sections of the U.S., increasing competition among agricultural, municipal, industrial, and ecological uses. Although current water management practices in the U.S. are generally advanced, particularly in the West, climate change increasingly creates conditions well outside of historical observations. Rising temperatures will diminish snowpack and increase evaporation, affecting seasonal availability of water. In the Great Lakes and major river systems, lower levels are likely to exacerbate challenges relating to water quality, navigation, recreation, hydropower generation, water transfers, and bi-national relationships. Higher water temperatures, increased precipitation intensity, and longer periods of low flows can exacerbate many forms of water pollution. Decreased water supply and lower water levels are likely to exacerbate challenges relating to navigation in the U.S.

CCSP concluded that, with increased $CO_2$ and temperature, the life cycle of grain and oilseed crops will likely progress more rapidly. But, as temperature rises, these crops will increasingly begin to experience failure, especially if climate variability increases and precipitation lessens or becomes more variable. Furthermore, the marketable yield of many horticultural crops—e.g., tomatoes, onions, fruits—is very likely to be more sensitive to climate change than grain and oilseed crops. The IPCC reported that moderate climate change in the early decades of the century is projected to increase aggregate yields of rain-fed agriculture in North America as a whole by 5–20 percent, but with important variability among regions. However, like CCSP, IPCC further stated that major challenges are projected for crops that are near the warm end of their suitable range or depend on highly utilized water resources.

Higher temperatures will very likely reduce livestock production during the summer season, but these losses will very likely be partially offset by warmer temperatures during the winter season.

Climate change has very likely increased the size and number of forest fires, insect outbreaks, and tree mortality in the interior west, the Southwest, and Alaska, and will continue to do so. An increased frequency of disturbance is at least as important to ecosystem function as incremental changes in temperature, precipitation, atmospheric $CO_2$, nitrogen deposition, and ozone pollution. IPCC reported that overall forest growth for North America as a whole will likely increase modestly (10–20 percent) as a result of extended growing seasons and elevated $CO_2$ over the next century, but with important spatial and temporal variation.

In addition to human health effects, tropospheric ozone increases as a result of temperature increases and other climatic changes can have significant adverse effects on crop yields, pasture and forest growth and species composition.

Coastal communities and habitats will be increasingly stressed by climate change impacts interacting with development and pollution. Sea level is rising along much of the U.S. coast, and the rate of change will increase in the future, exacerbating the impacts of progressive inundation, storm-surge flooding, and shoreline erosion. Coastal aquifers and estuaries are vulnerable to salt water intrusion due to rising sea levels, which could compromise water sources used for municipal drinking water, agricultural crops, and other human uses. Storm impacts are likely to be more severe, especially along the Gulf and Atlantic coasts. Salt marshes, other coastal habitats, and dependent species are threatened by sea-level rise, fixed structures blocking landward migration, and changes in vegetation. Population growth and rising value of infrastructure in coastal areas increases vulnerability to climate variability and future climate change.

Water infrastructure, including drinking water and wastewater treatment plants, and sewer and stormwater management systems, may be at greater risk of flooding, sea level rise and storm surge, low flows, and other factors that could impair functioning. For example, some of these impacts are already being experienced in Alaska, where rapidly melting permafrost has damaged and disrupted drinking water distribution systems and wastewater infrastructure.

Ocean acidification is projected to continue, resulting in the reduced biological production of marine calcifiers, including corals.

Climate change is likely to affect U.S. energy use (e.g., heating and cooling requirements), and energy production (e.g., effects on hydropower), physical infrastructures and institutional infrastructures. Climate change will likely interact with and possibly

exacerbate ongoing environmental change and environmental pressures in settlements, particularly in Alaska where indigenous communities are facing major environmental changes from sea ice loss and coastal erosion that threaten traditional ways of life.

Over the 21st century, changes in climate will cause some species to shift north and to higher elevations and fundamentally rearrange U.S. ecosystems. Differential capacities to adapt to range shifts and constraints from development, habitat fragmentation, invasive species, and broken ecological connections will alter ecosystem structure, composition, function, and services.

The Administrator acknowledges that as for human health, so too for welfare: moderate temperature increases may have some benefits, particularly for agriculture and forestry over the short term, as summarized above in this section and discussed in more detail in the Technical Support Document in Part IV, sections 9(a) and 10(a). This possibility is not inconsistent with a judgment that greenhouse gases in the atmosphere endanger welfare. Beneficial effects can coexist with harmful effects, and it is not necessary to reach a firm conclusion, for particular domains and sectors, about the net result in order to reach an overall conclusion in favor of endangerment.

5. The Administrator's Consideration of International Effects

The Administrator judges that the impacts to public health and welfare occurring within the U.S. alone warrant her proposed endangerment finding. In addition, the Administrator believes that consideration of climate change effects in other world regions adds support for today's proposal, but that consideration of international impacts is not necessary in order to reach a judgment that there is endangerment to public health and welfare. Thus, the Administrator does not now take a position on the legal question whether international effects, on their own, would be sufficient to support an endangerment finding. Some of the world's regions are expected to face greater impacts due to climate change because they are more vulnerable. Even apart from the effects of climate change on other world regions—effects which are considerable—the Administrator also believes many of these impacts could raise economic, trade, humanitarian and even national security issues for the U.S.

The IPCC identifies the most vulnerable world regions as the Arctic, because of high rates of projected warming on natural systems; Africa, especially the sub-Saharan region, because of current low adaptive capacity (e.g., lack of infrastructure and resources) as well as climate change; small islands, due to high exposure of population and infrastructure to risk of sea-level rise and increased storm surge; and Asian mega deltas, due to large populations and high exposure to sea level rise, storm surge and river flooding.

On a global basis, according to the IPCC, projected climate change-related impacts are likely to affect the health of millions of people, particularly those with low adaptive capacity, as a result of a number of factors including increased cardio respiratory diseases due to higher concentrations of ground-level ozone brought on by higher temperatures, and by more frequent and intense heat waves. Food production is expected to be much more vulnerable to climate change in poorer regions of the world compared to food production in the U.S. The IPCC also identified that the coasts around the world are experiencing the adverse consequences of hazards related to climate and sea level. Coastal settlements are highly vulnerable to extreme events, such as storms which impose substantial costs on coastal societies. Ecosystems and species around the world are very likely to show a wide range of vulnerabilities to climate change, depending on the extent to which climate change alters conditions that could cross critical thresholds. The most vulnerable ecosystems include coral reefs, sea-ice ecosystems, high-latitude boreal forests, and mountain ecosystems where there is no possibility of migrating to adapt to climate change.

Climate change impacts in certain regions of the world may exacerbate problems that raise humanitarian, trade and national security issues for the U.S. Climate change has been described as a potential threat multiplier regarding national security issues. This is because, as noted above, climate change can aggravate existing problems in certain regions of the world such as poverty, social tensions, general environmental degradation, and conflict over increasingly scarce water resources.

6. The Administrator's Consideration of Key Uncertainties

There are many inherent uncertainties associated with characterizing both the observed and projected risks and impacts to public health and welfare due to current and projected greenhouse gas concentrations. Both probability and severity are not easy to specify. It is difficult to attribute any single past event (hurricane, flood, drought, or heat wave) to elevated greenhouse gas concentrations even if it is understood that anthropogenic climate change has already made such events more likely or more extreme. The precise rate and magnitude of future climate change, for both the globe and for the U.S., remain uncertain, even in the hypothetical case where current greenhouse gas concentrations would remain constant over the next several decades. Projecting the exact magnitude of a particular impact due to climate change is difficult due to what are often long time frames to consider, the uncertain nature of how the system or sector will be affected by climate change, and uncertainties about how other factors (e.g., income levels, technologies, demographics) will change over time which can in turn affect the vulnerability of the system or sector to climate change.

Many uncertainties could push in the direction of either greater or lesser risks as they become better understood. EPA has acknowledged the possibility of beneficial effects on both health and welfare. Other possibilities include catastrophic events. Examples of such key uncertainties involve how the frequency of hurricanes and other extreme weather events may change in a changing climate, the potential to trigger thresholds for abrupt climate change (e.g., disintegration of the Greenland Ice Sheet or collapse of the West Antarctic Ice Sheet), and how responsive the climate ultimately will be to the heating effect being caused by anthropogenic greenhouse gases. Even if the probability of extremely high-impact events may be small, the existence of such high impact events, and the potential for other currently unknown catastrophic impacts that could plausibly result from record-high atmospheric greenhouse gas levels, substantially bolsters the case for an endangerment finding with respect to greenhouse gases.[28] These uncertainties will be with us for the foreseeable future. However, Congress expected the Administrator to consider uncertainties and extrapolate from limited data. It also recognized that there are inherent limitations and difficulties in information on public health and welfare, but nonetheless expected the

[28] A recent economic study that has received considerable attention in the climate change research community (Weitzman, The Review of Economics and Statistics, 2009) has determined that if the probability distribution of the magnitude of possible impacts has a "fat tail", then the expected utility of reducing the probability of that tail becomes astronomical. The study determined that anthropogenic climate change is a plausible candidate for such a "fat tailed" damage function.

Administrator to exercise her judgment based on the information available.

At the same time, there is a broad base of scientific evidence that has been reviewed extensively by the scientific community, which supports the findings discussed about how anthropogenic increases in greenhouse gases are affecting the climate and the key risks to public health and welfare that human-induced climate change pose. The Administrator believes that the scientific findings in totality provide compelling evidence of human-induced climate change, and that serious risks and potential impacts to public health and welfare have been clearly identified, even if they cannot always be quantified with confidence. The Administrator's proposed endangerment finding is based on weighing the scientific evidence, considering the uncertainties, and balancing any benefits to human health, society and the environment that may also occur. Given the evolution of climate change science over the past 15 years or more, the Administrator believes the evidence of discernible human influence on the global climate, and the risks that such climate change poses, has become more compelling, and therefore believes the evidence that there is endangerment to the public health and welfare of current and future generations has likewise become more compelling in step with our increasing understanding of the climate change problem.

7. Summary

The Administrator concludes that, in the circumstances presented here, the case for finding that greenhouse gases in the atmosphere endanger public health and welfare is compelling and, indeed, overwhelming. The scientific evidence described here is the product of decades of research by thousands of scientists from the U.S. and around the world. The evidence points ineluctably to the conclusion that climate change is upon us as a result of greenhouse gas emissions, that climatic changes are already occurring that harm our health and welfare, and that the effects will only worsen over time in the absence of regulatory action. The effects of climate change on public health include sickness and death. It is hard to imagine any understanding of public health that would exclude these consequences. The effects on welfare embrace every category of effect described in the Clean Air Act's definition of "welfare" and, more broadly, virtually every facet of the living world around us. And, according to the scientific evidence relied upon in making this finding, the probability of the consequences is shown to range from likely to virtually certain to occur. This is not a close case in which the magnitude of the harm is small and the probability great, or the magnitude large and the probability small. In both magnitude and probability, climate change is an enormous problem. The greenhouse gases that are responsible for it endanger public health and welfare within the meaning of the Clean Air Act.

## IV. The Administrator's Cause or Contribute Finding

As noted above, the Administrator has proposed to define the air pollution for purposes of the endangerment finding to be the mix of six key greenhouse gases in the atmosphere. The Administrator must also define the air pollutant or pollutants for purposes of making the cause or contribute determination. In this section, the *air pollutant(s)* that may cause or contribute to the proposed definition of *air pollution* are discussed.

As noted earlier, to help appreciate the distinction between these terms, the air pollution can be thought of as the total, cumulative stock in the atmosphere. The air pollutants, on the other hand, are the emissions and can be thought of as the flow that changes the size of the total stock. EPA did not conduct climate modeling analyses to determine what fraction of global greenhouse gas concentrations are due to the emissions from section 202(a) source categories. Rather, consistent with prior practice and with current science, EPA used emissions as a perfectly reasonable proxy for contributions to atmospheric concentrations. Indeed, cumulative emissions are responsible for the cumulative change in the stock of concentrations in the atmosphere (i.e., the fraction of a country's or an economic sector's cumulative emissions compared to the world's greenhouse gas emissions over a long time period will be directly proportional to that fraction of the change in concentrations attributable to that country or economic sector); likewise, annual emissions are a perfectly reasonable proxy for annual incremental changes in atmospheric concentrations.

### *A. The Air Pollutant(s)*

This section discusses the proposed definition of the air pollutant for the cause or contribute finding as the collective class of six greenhouse gases rather than the individual greenhouse gases.

1. Proposed Definition of Air Pollutant

When making a cause or contribute finding under section 202(a), the Administrator must first look at the emissions from the source category and decide how to define the air pollutant being evaluated. In this case, the source category emits four gases, which share common physical properties relevant to climate change: all are long-lived in the atmosphere; all become globally well mixed in the atmosphere; all trap outgoing heat that would otherwise escape to space; and all are directly emitted as greenhouse gases rather than forming as a greenhouse gas in the atmosphere after emission of a precursor gas. There are other gases which share these common properties which are not emitted by the section 202(a) source categories. Nonetheless, it is entirely appropriate for the Administrator to define the air pollutant in a manner that recognizes the shared relevant properties of all of these six gases, even though they are not all emitted from the source category before her.

The Administrator is proposing to define a single air pollutant that is the collective class of the six greenhouse gases. It is the Administrator's judgment that this collective approach for the contribution test is most consistent with the treatment of greenhouse gases by those studying climate change science and policy, where it has become common practice to evaluate greenhouse gases on a collective $CO_2$-equivalent basis. For example, under the UNFCCC, the U.S. and other Parties report their annual emissions of the six greenhouse gases in $CO_2$-equivalent units. This facilitates comparisons of the multiple greenhouse gases from different sources and from different countries, and provides a measure of the collective warming potential of multiple greenhouse gases. There are also several federal and state climate programs, such as EPA's Climate Leaders program and California's Climate Action Registry that encourage firms to report (and reduce) emissions of all six greenhouse gases. Furthermore, the Administrator recently signed (March 10, 2009) the Proposed Greenhouse Gas Mandatory Reporting Rule, which proposes the reporting of greenhouse gas emissions on a $CO_2$-equivalent basis above certain $CO_2$-equivalent thresholds, thereby also recognizing the common and collective treatment of the six greenhouse gases.

This proposed definition of air pollutant is not unique, as EPA has previously treated a class of substances with similar impacts on the environment as a single pollutant (e.g., particulate matter, volatile organic compounds). These six greenhouse gases are being considered collectively in the endangerment determination

because they share the same relevant properties regarding their effect on the global climate and the associated changes throughout the climate system that can result. Thus, the Administrator believes it is appropriate to consider the six greenhouse gases as constituents of a single air pollutant.

The Administrator recognizes that only four of the six greenhouse gases covered in the definition of air pollution are emitted by section 202(a) source categories. It is not unusual for a particular source category to emit only a subset of a class of substances that constitute a single air pollutant. For example, a source may emit only 20 of the possible 200 plus chemicals that meet the definition of volatile organic compound (VOC) in the regulations, but that source is evaluated based on its emissions of "VOCs," and not its emissions of the 20 chemicals by name.

Nonetheless, the Administrator recognizes that each greenhouse gas could be considered a separate air pollutant. Thus, although proposing to define air pollutant as the class of six greenhouse gases, and basing the proposed contribution finding on that air pollutant, the Administrator also considered each greenhouse gas individually, as discussed below.

2. How the Definition of Air Pollutant in the Endangerment Determination Affects Section 202(a) Standards

The Administrator believes that she has significant discretion when establishing greenhouse gas emission standards under section 202(a) with respect to whether the greenhouse gases are treated as a single collective pollutant or each greenhouse gas is defined as a separate air pollutant. Under section 202(a), the Administrator is required to set "standards applicable to the emission of any air pollutant" that the Administrator determines causes or contributes to air pollution that endangers. If the Administrator defines the air pollutant as the collection of six greenhouse gases, and makes the appropriate cause or contribute and endangerment findings for section 202(a) sources, then she is called on to set standards applicable to the emission of this air pollutant. The term "standards applicable to the emission of any air pollutant" is not defined, and the Administrator has the discretion to interpret it in a reasonable manner to effectuate the purposes of section 202(a).

If the Administrator defines the air pollutant as the group of greenhouse gases, she believes she would have the discretion to set standards that either control the emissions of the group as a whole, and/or standards that control emissions of individual greenhouse gases, as constituents of the class. For example, it might be appropriate to set a standard that measures and controls the aggregate emissions of the group of greenhouse gases, weighted by $CO_2$ equivalent. Depending on the circumstances, however, it may be appropriate to set standards for individual gases, or some combination of group and individual standards. These and other similar approaches could appropriately be considered setting a standard or standards applicable to the emission of the group of greenhouse gases that are defined as the air pollutant. The Administrator would consider a variety of factors in determining what approach to take in setting the standard or standards; for example she would consider the characteristics of the vehicle or engine emissions, such as rate and variability, the kind and availability of control technology, and other matters relevant to setting standards under section 202(a). Likewise, taking into consideration the circumstances involved, the Administrator could determine that it was appropriate to set separate standards, a group standard, or some combination of those, in a case where each greenhouse gas was considered a separate air pollutant.[29]

*B. Proposed Cause or Contribute Finding*

1. Overview of Greenhouse Gas Emissions

In 2006, U.S. greenhouse gas emissions were 7,054 teragrams[30] of $CO_2$ equivalent[31] ($TgCO_2eq$). The dominant gas emitted is $CO_2$, mostly from fossil fuel combustion. Methane is the second largest component of U.S. emissions, followed by $N_2O$, and the fluorinated gases (HFCs, PFCs, and $SF_6$). Electricity generation is the largest emitting sector (2,378 $TgCO_2eq$ or 34 percent of total U.S. greenhouse gas emissions), followed by transportation (1,970 $TgCO_2eq$ or 28 percent) and industry (1,372 $TgCO_2eq$ or 19 percent). Land use, land use change and forestry offset almost 13 percent of total U.S. emissions through net sequestration. Total U.S. greenhouse gas emissions have increased by almost 15 percent between 1990 and 2006. The electricity generation and transportation sectors have contributed most to this increase.

Total global greenhouse gas emissions in 2005 (the most recent year for which data for all countries and all greenhouse gases are available) were 38,726 $TgCO_2eq$. This represents an increase in global greenhouse gas emissions of about 26 percent since 1990 (excluding land use, land use change and forestry). In 2005, total U.S. greenhouse gas emissions were responsible for 18 percent of global emissions, ranking only behind China, which was responsible for 19 percent of global greenhouse gas emissions.

2. Overview of Section 202(a) Source Categories and Cause or Contribute Analysis

The relevant mobile sources under section 202 (a)(1) of the Clean Air Act are "*any class or classes of new motor vehicles or new motor vehicle engines,* * * *.*" CAA § 202(a)(1) (emphasis added). The motor vehicles and motor vehicle engines (hereinafter "Section 202(a) source categories") addressed are:

- Passenger cars
- Light-duty trucks
- Motorcycles
- Buses
- Medium/heavy-duty trucks

As noted earlier, in the past the requisite contribution findings have been proposed concurrently with proposing emission standards for the relevant mobile source category. Thus, the prior contribution findings often focused on a subset of the section 202(a) (or other section) source categories. Today's proposed cause or contribute finding, however, is for all of the section 202(a) source categories and the Administrator is considering emissions from all of these source categories in the proposed determination.

Sources covered by section 202(a) of the Act emit four of the six greenhouse gases that in combination comprise the air pollutant being considered in the cause or contribute analysis: Carbon

[29] At this time, a final positive endangerment finding would not make the air pollutant found to cause or contribute to air pollution that endangers a regulated pollutant under the CAA's Prevention of Significant Deterioration (PSD) program. See memorandum entitled "EPA's Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program" (Dec. 18, 2008). EPA is reconsidering this memorandum and will be seeking public comment on the issues raised in it. That proceeding, not this rulemaking, would be the appropriate venue for submitting comments on the issue of whether a final, positive endangerment finding under section 202(a) of the Act should trigger the PSD program, and the implications of the definition of air pollutant in that endangerment finding on the PSD program.

[30] One teragram (Tg) = 1 million metric tons. 1 metric ton = 1,000 kg = 1.102 short tons = 2,205 lbs.

[31] Long-lived greenhouse gases are compared and summed together on a $CO_2$ equivalent basis by multiplying each gas by its Global Warming Potential (GWPs), as estimated by IPCC. In accordance with UNFCCC reporting procedures, the U.S. quantifies greenhouse gas emissions using the 100-year time frame values for GWPs established in the IPCC Second Assessment Report.

dioxide, methane, nitrous oxide, and hydrofluorocarbons.[32] To support the Administrator's assessment, EPA has analyzed historical data of these greenhouse gases for motor vehicles and motor vehicle engines in the U.S. from 1990 to 2006. The source of the U.S. greenhouse gas emissions data is the *Inventory of U.S. Greenhouse Gas Emissions and Sinks:* 1990–2006, published in 2008 (hereinafter "U.S. Inventory"). The source of global greenhouse gas emissions data, against which a number of comparisons are made, is the Climate Analysis Indicators Tool of the World Resources Institute (2007).[33]

There are a number of possible ways of assessing "cause or contribute" and no single approach is required or has been used exclusively in previous determinations under the Act. Because the air pollution against which the contribution is being evaluated is the mix of six greenhouse gas concentrations, the logical starting point for any contribution analysis is a comparison of the emissions of the air pollutant from the section 202(a) category to the total, global emissions of the six greenhouse gases. The Administrator recognizes that there are other valid comparisons that can and should be considered in evaluating whether emissions of the air pollutant cause or contribute to the combined concentration of the six greenhouse gases. To inform the Administrator's assessment, the following types of comparisons for both the collective and individual emissions of greenhouse gases from section 202(a) source categories are provided:

- As a share of total current global aggregate emissions of the six greenhouse gases included in the proposed definition of air pollution;
- As a share of total current U.S. aggregate emissions of the six greenhouse gases; and
- As a share of the total current global transportation emissions of the six greenhouse gases.

In addition, when reviewing each greenhouse gas as an individual pollutant, the Administrator also considered the following comparisons:

- As a share of current global emissions of that individual greenhouse gas;
- As a share of total section 202(a) source category emissions of the six greenhouse gases; and
- As a share of current U.S. emissions of that individual greenhouse gas, including comparisons to the magnitude of emissions of that greenhouse gas from other non-transport related source categories.

Note that for global comparisons, all emissions are from the year 2005, the most recent year for which data for all greenhouse gas emissions and all countries are available. For comparisons within the U.S., all emissions are for the year 2006, the most recent year for which U.S. data are currently available. All values for emission numbers represent total annual emissions. All annual emissions data are being considered on a $CO_2$ equivalent basis, which is a commonly accepted metric for comparing different greenhouse gases, both in the U.S. annual greenhouse gas Inventory and with international greenhouse gas inventories from other Parties to the UNFCCC.[34] Future projected emissions are not used in this cause or contribute analysis, because they are uncertain and current emissions data are a valid proxy for near-term emissions. This approach is consistent with how contribution has been assessed in previous actions under the Clean Air Act.

Some comments on the ANPR argued that when evaluating the contribution from new motor vehicles and engines, the Administrator needs to project what emissions would be after implementation of the fuel efficiency standards in the Energy Independence and Security Act of 2007 (EISA). Other comments noted that the Administrator should recognize that in the future the denominator of global aggregate emissions of greenhouse gases will increase as the numerator of new motor vehicle and engine emissions decreases. As noted above, the Administrator believes that the traditional practice of considering the recent motor vehicle emissions inventory as a surrogate for estimates for new motor vehicles and engines is appropriate. In general, the focus of the contribution test should be on current and near-term emissions. The current and near term emissions from the section 202(a) sources can be expected to impact atmospheric concentrations for many decades to come, given the long atmospheric life of the greenhouse gases. The Administrator is aware of the requirements of EISA, and she has concluded that the expected reductions in emissions from section 202(a) source categories would not affect her determination regarding cause or contribution. In addition to looking at absolute emissions comparisons, the Administrator also considered other relevant factors, as described below.

### 3. Proposed Finding That Emissions of the Collective Group of Six Greenhouse Gases Contributes to Air Pollution Which May Reasonably Be Anticipated To Endanger Public Health and Welfare

#### a. Total Greenhouse Gas Emissions From Section 202(a) Source Categories

As discussed above, the Administrator is proposing to define air pollutant for purposes of the contribution finding as the collective group of six greenhouse gases. Section 202(a) source categories emit four of the greenhouse gases ($CO_2$, $CH_4$, $N_2O$, and HFCs), therefore the emissions of the single air pollutant are the collective emissions of these four greenhouse gases. This section summarizes information on total section 202(a) source category emissions of greenhouse gases within that definition.[35]

In 2006, section 202(a) source categories collectively were the second largest greenhouse gas-emitting sector within the U.S. (behind the electricity generating sector), emitting 1,665 $TgCO_2eq$ and representing 24 percent of total U.S. greenhouse gas emissions (Table 1). Between 1990 and 2006, total greenhouse gas emissions from passenger cars decreased 0.9 percent, while emissions from light-duty trucks increased 57 percent, largely due to the increased use of sport-utility vehicles and other light-duty trucks.

Globally in 2005, section 202(a) source category greenhouse gas emissions represented 28 percent of global transport greenhouse gas emissions and 4.3 percent of total global greenhouse gas emissions (Table 2). The global transport sector was 14 percent of all global greenhouse gas emissions in 2005. If U.S. section 202(a) source category greenhouse gas emissions were ranked against total greenhouse gas emissions for entire countries, U.S. section 202(a) emissions would rank behind only China, the U.S. as a whole, Russia and India, and would rank ahead

[32] Emissions of hydrofluorocarbons result from the use of HFCs in cooling systems designed for passenger comfort, as well as auxiliary systems for refrigeration.

[33] WRI (2007) Climate Analysis Indicators Tool (CAIT). Available at *http://cait.wri.org.* Accessed February 20, 2009.

[34] Emissions of different greenhouse gases are compared using global warming potentials (GWPs). The GWP of a greenhouse gas is defined as the ratio of the time-integrated radiative forcing from the instantaneous release of 1 kilogram (kg) of a trace substance relative to that of 1 kg of a reference gas (IPCC 2001). The reference gas used is $CO_2$, and therefore GWP-weighted emissions are measured in teragrams of $CO_2$ equivalent ($TgCO_2eq.$).

[35] Detailed combined greenhouse gas emissions data for Section 202(a) source categories are presented in Appendix B of the Technical Support Document.

of Japan, Brazil, Germany and every other country in the world.

TABLE 1—SECTORAL COMPARISON TO TOTAL U.S. GREENHOUSE GAS (GHG) EMISSIONS ($TgCO_2E$)

| U.S. Emissions | 1990 | 1995 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|---|---|---|---|---|
| Section 202(a) GHG emissions ... | 1231.9 | 1364.4 | 1568.1 | 1576.8 | 1617.9 | 1629.7 | 1667.4 | 1670.0 | 1665.4 |
| Share of U.S. (%) ..... | 20.0% | 21.0% | 22.3% | 22.8% | 23.2% | 23.3% | 23.6% | 23.4% | 23.6% |
| Electricity Sector emissions ..... | 1859.1 | 1989.7 | 2328.9 | 2290.9 | 2300.4 | 2329.4 | 2363.4 | 2430.0 | 2377.8 |
| Share of U.S. (%) ..... | 30.2% | 30.6% | 33.1% | 33.1% | 33.0% | 33.3% | 33.4% | 34.1% | 33.7% |
| Industrial Sector emissions ..... | 1460.3 | 1478.0 | 1432.9 | 1384.3 | 1384.9 | 1375.5 | 1388.9 | 1354.3 | 1371.5 |
| Share of U.S. (%) ..... | 23.8% | 22.8% | 20.4% | 20.0% | 19.8% | 19.7% | 19.6% | 19.0% | 19.4% |
| Total US GHG emissions ..... | 6148.3 | 6494.0 | 7032.6 | 6921.3 | 6981.2 | 6998.2 | 7078.0 | 7129.9 | 7054.2 |

TABLE 2—COMPARISON TO GLOBAL GREENHOUSE GAS (GHG) EMISSIONS ($TgCO_2E$)

| | 2005 | Sec 202(a) share |
|---|---|---|
| All US GHG emissions ..... | 7,130 | 23.4% |
| Global transport GHG emissions ..... | 5,909 | 28.3% |
| All global GHG emissions | 38,726 | 4.3% |

b. Proposed Contribution Finding for the Single Air Pollutant Comprised of the Collective Group of Six Greenhouse Gases

Based on the data summarized above, the Administrator proposes to find that the emissions of the defined air pollutant from new motor vehicles and engines contribute to the air pollution previously discussed. As noted above, the Administrator recognizes that only four of the six greenhouse gases covered in the definition of air pollution are emitted by section 202(a) source categories, and has made her determination based on the combined contribution of these four greenhouse gases. It is not unusual for a particular source category to emit only a subset of a class of substances that constitute a single air pollutant (for example, volatile organic compounds).

It is the Administrator's judgment that the collective greenhouse gas emissions from section 202(a) source categories are significant, whether the comparison is global (over 4 percent of total greenhouse gas emissions) or domestic (24 percent of total greenhouse gas emissions). The Administrator believes that consideration of the global context is important for the cause or contribute test but that the analysis should not solely consider the global context. Greenhouse gas emissions from section 202(a) source categories, or from any other U.S. source, will become globally mixed in the atmosphere, and thus will have an effect not only on the U.S. regional climate but on the global climate as a whole, and indeed for years and decades to come. The Administrator believes that these unique, global aspects of the climate change problem tend to support a finding that lower levels of emissions should be considered to contribute to the air pollution than might otherwise be considered appropriate when considering contribution to a local or regional air pollution problem.

Importantly, because no single greenhouse gas source category dominates on the global scale, many (if not all) individual greenhouse gas source categories could appear too small to matter, when, in fact, they could be very significant contributors in terms of both absolute emissions or in comparison to other similar source categories within the U.S. If the U.S. and the rest of the world are to combat the risks associated with global climate change, contributors must do their part even if their contributions to the global problem, measured in terms of percentage, are smaller than typically encountered when tackling solely regional or local environmental issues. Total U.S. greenhouse gas emissions make up about 18 percent of the world's greenhouse gas emissions, and individual sources within the U.S. will be subsets of that 18 percent. The Administrator is placing significant weight on the fact that section 202(a) source categories contribute to 24 percent of total U.S. greenhouse gas emissions for the proposed contribution finding.

4. Additional Consideration of Whether Each Greenhouse Gas as a Separate Air Pollutant Contributes to Air Pollution Which May Reasonably Be Anticipated To Endanger Public Health and Welfare

As noted above, the Administrator also considered whether emissions of individual greenhouse gas from section 202(a) source categories, separately, would contribute to the air pollution defined above. This section discussed the contribution of each of the four individual greenhouse gases emitted by Section 202(a) source categories.

a. Carbon Dioxide Emissions From Section 202(a) Source Categories

Carbon dioxide is emitted from motor vehicles and motor vehicle engines during the fossil fuel combustion process. During combustion, the carbon stored in the fuels is oxidized and emitted as $CO_2$ and smaller amounts of other carbon compounds.

In 1990, Section 202(a) source categories emitted 23 percent of total U.S. $CO_2$ emissions, behind only the electricity generation sector (36 percent). In 2006, Section 202(a) source categories remained the second largest sector, growing to 26 percent of total U.S. $CO_2$ emissions.

Carbon dioxide is the dominant greenhouse gas emitted from Section 202(a) source categories (94 percent of total U.S. Section 202(a) source category greenhouse gas emissions in 2006). Carbon dioxide emissions from these source categories grew by 32 percent between 1990 and 2006, largely due to increased carbon dioxide emissions from light-duty trucks (61 percent since 1990) and medium/heavy-duty trucks (76 percent).

In 2005, carbon dioxide from section 202(a) source categories in the U.S. were responsible for 4 percent of global aggregate greenhouse gas emissions (a similar percentage compared to the U.S. share of global greenhouse gas emissions when considering all greenhouse gas emissions from U.S. section 202(a) sources). Section 202(a) source category carbon dioxide emissions are a significantly larger share of global transportation greenhouse gas emissions (27 percent) than the corresponding share of all U.S. $CO_2$ emissions to the global total (18 percent), reflecting the comparatively larger size of the transport sector in the U.S. compared to the global average.

If the Administrator were to evaluate carbon dioxide as a separate air pollutant, she would consider the

emissions from section 202(a) source categories to contribute to the air pollution, placing primary weight on the fact that carbon dioxide is so dominant among all section 202(a) greenhouse gas emissions (94 percent) and contributes to a significant share of all U.S. carbon dioxide emissions (26 percent) and global greenhouse gas emissions (4 percent).

b. Methane Emissions From Section 202(a) Source Categories

Methane emissions from motor vehicles are a function of the methane content of the motor fuel, the amount of hydrocarbons passing uncombusted through the engine, and any post-combustion control of hydrocarbon emissions (such as catalytic converters).

In 2006, methane emissions from section 202(a) source categories were 0.11 percent of total greenhouse gas emissions from U.S. motor vehicles and motor vehicle engines. Methane emissions from these source categories decreased by 58 percent between 1990 and 2006, largely due to decreased methane emissions from passenger cars (62 percent) and light-duty trucks (51 percent). In 2006, methane emissions from these source categories equaled 0.32 percent of total U.S. methane emissions and 0.03 percent of total U.S. greenhouse gas emissions.

Methane emissions from Section 202(a) source categories were less than 0.01 percent of total global greenhouse gas emissions in 2005. When compared to the smaller subsets of global transportation emissions, and global methane emissions, section 202(a) source category methane emissions were about 0.03 percent in both cases in 2005.

If the Administrator were to evaluate methane as a separate air pollutant, she would consider the emissions from section 202(a) source categories to contribute to the air pollution. The Administrator would place primary weight on the same reason that the Administrator promotes the reduction of methane and other non-$CO_2$ greenhouse gas emissions from sources with relatively low but potent emissions, as manifested in its domestic methane partnership programs and the international Methane to Markets Partnership, which was launched in 2004. Specifically, these emissions are at a level that contributes to the climate change problem and there are valuable reductions available from these levels. As noted above, consideration of the global nature of greenhouse gas emissions and climate change means that a percentage contribution of specific gases and sectors would be expected to be much smaller than for previous rulemakings when the nature of the air pollution was national, regional or local.

c. Nitrous Oxide Emissions From Section 202(a) Source Categories

Nitrous oxide is a product of the reaction that occurs between nitrogen and oxygen during fuel combustion. Nitrous oxide (and nitrogen oxide ($NO_X$)) emissions from motor vehicles and motor vehicle engines are closely related to fuel characteristics, air-fuel mixes, combustion temperatures, and the use of pollution control equipment. For example, some types of catalytic converters installed to reduce motor vehicle $NO_X$, CO, and hydrocarbon emissions can promote the formation of nitrous oxide.

In 2006, nitrous oxide emissions from section 202(a) source categories accounted for 1.8 percent of total greenhouse gas emissions from U.S. motor vehicles and motor vehicle engines. Nitrous oxide emissions from these source categories decreased by 27 percent between 1990 and 2006, largely due to decreased emissions from passenger cars (39 percent) and light-duty trucks (10 percent). In 2006, nitrous oxide emissions from these source categories equaled 8.0 percent of total U.S. nitrous oxide emissions. In fact, Section 202(a) source categories are the second largest U.S source of $N_2O$, behind only agricultural soil management (which represented 72 percent of total nitrous oxide emissions in 2006).

In 2005, nitrous oxide emissions from U.S. section 202(a) source categories were 0.08 percent of total global greenhouse gas emissions. Also in 2005, U.S. section 202(a) sources accounted for 1.0 percent of global $N_2O$ emissions and 0.6 percent of global transportation greenhouse gas emissions.

If the Administrator were to evaluate nitrous oxide as a separate air pollutant, she would consider the emissions from section 202(a) source categories to contribute to the air pollution, placing primary weight on the fact that nitrous oxide emissions from section these source categories are significant in terms of their contribution to U.S. (and global) emissions of that particular gas. Although Section 202 emissions of nitrous oxide appear small on a global basis, they were 8.0 percent of total U.S. $N_2O$ emissions in 2006, second only to agricultural soil management (which represented 72 percent of total nitrous oxide emissions in 2006). In addition, as mentioned in the previous discussion of methane, given the vast number of sources and sectors that emit greenhouse gases around the world, even sources which represent a small percentage of U.S. or global emissions can be considered to contribute to the larger problem.

d. HFC Emissions From Section 202(a) Source Categories

Hydrofluorocarbons (a term which encompasses a group of eleven related compounds) are progressively replacing CFCs and HCFCs in section 202(a) cooling and refrigeration systems as they are being phased out under the Montreal Protocol and Title VI of the Clean Air Act. For example, HFC–134a has become a replacement for CFC–12 in mobile air conditioning systems. A number of HFC blends, containing multiple compounds, have also been introduced. The emissions pathway can be complex, with hydrofluorocarbons being emitted to the atmosphere during charging of cooling and refrigeration systems, during operation, and during decommissioning and disposal.

Section 202(a) source categories of hydrofluorocarbons accounted for 4.2 percent of total greenhouse gas emissions from U.S. motor vehicles and motor vehicle engines in 2006. Hydrofluorocarbons were not used in motor vehicles in 1990, but by 2006 emissions had increased to 70 $TgCO_2e$ (this represents an increase of 270 percent between 1995 and 2006). In 2006, hydrofluorocarbon emissions from these source categories equaled 56 percent of total U.S. hydrofluorocarbon emissions, making it the single largest source category of U.S. hydrofluorocarbon emissions.

In 2005, hydrofluorocarbons from section 202(a) source categories were 0.18 percent of total global greenhouse gas emissions. When compared to the smaller subset of global transportation emissions, section 202(a) source category hydrofluorocarbon emissions were 1.3 percent in 2005. However, U.S. section 202(a) HFC sources equaled 18 percent of global hydrofluorocarbon emissions, making it the largest source of global hydrofluorocarbon emissions.

If the Administrator were to evaluate hydrofluorocarbons as a separate air pollutant, she would consider the emissions from section 202(a) source categories to contribute to the air pollution, placing primary weight on the fact that hydrofluorocarbon emissions from these source categories are the largest U.S. and global source of that particular gas, and emissions have grown 270 percent since 1995. If the decision were made that these emissions do not contribute because hydrofluorocarbon emissions under section 202(a) make up just 0.18 percent

of global greenhouse gas emissions it would be inconsistent with the U.S. practice of encouraging hydrofluorocarbon emission reductions. Indeed, if the Administrator determined that hydrofluorocarbon emissions from section 202(a) source categories did not contribute, it would be unlikely that she would find contribution for hydrofluorocarbons from any other source of these (and other fluorinated) greenhouse gases. For these reasons, the Administrator believes the global context remains important to consider, but that more weight should placed on a contribution analysis done within the domestic context.

## V. 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 policy issues. 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 action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). The final endangerment finding would not impose an information collection request on any person.

### *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 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.

Because this proposed action will not impose any requirements, the Administrator certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. This proposed action will not impose any requirements on small entities. The endangerment and contribution findings do not in-and-of-themselves impose any new requirements but rather set forth the Administrator's determination on whether greenhouse gases in the atmosphere may reasonably be anticipated to endanger public health or welfare, and whether emissions of greenhouse gases from new motor vehicles and engines contribute to this air pollution. Accordingly, the proposed action affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the proposal.

### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it 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." "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 endangerment determination 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. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Although the Administrator considered health and safety risks as part of this proposed endangerment finding, the proposed finding itself does not impose a standard intended to mitigate those risks.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (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 action does not impose requirements on these activities.

### *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, 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. 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 (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 proposed endangerment determination will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. Nonetheless, when developing the proposed endangerment determination, the Administrator considered the impacts of climate change on minority or low-income populations.

Dated: April 17, 2009.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. E9–9339 Filed 4–23–09; 8:45 am]

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Federal Register

Friday,
April 24, 2009

Part IV

# Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 418
Medicare Program; Proposed Hospice Wage Index for Fiscal Year 2010; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 405 and 418**

**[CMS–1420–P]**

**RIN 0938–AP45**

# Medicare Program; Proposed Hospice Wage Index for Fiscal Year 2010

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would set forth the hospice wage index for fiscal year 2010. The proposed rule would adopt a MedPAC recommendation regarding a process for certification and recertification of terminal illness. This proposed rule would also continue the phase-out of the wage index budget neutrality adjustment factor (BNAF), which will conclude in 2011. In addition, we are requesting comments on a suggestion to require recertification visits by physicians or advanced practice nurses, and on issues of payment reform for use in possible future policy development. Finally, the proposed rule would make several technical and clarifying changes to the regulatory text.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 22, 2009.

**ADDRESSES:** In commenting, please refer to file code CMS–1420–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1420–P, P.O. Box 8012, Baltimore, MD 21244–8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1420–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

*Submission of comments on paperwork requirements.* You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Randy Throndset (410) 786–0131. Katie Lucas (410) 786–7723.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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## I. Background

### *A. General*

#### 1. Hospice Care

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses

an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling services and inpatient respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care. Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. Section 1814(i) of the Act provides payment for Medicare participating hospices.

2. Medicare Payment for Hospice Care

Our regulations at 42 CFR part 418 establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G provides for payment in one of four prospectively-determined rate categories (routine home care, continuous home care, inpatient respite care, and general inpatient care) to hospices based on each day a qualified Medicare beneficiary is under a hospice election.

*B. Hospice Wage Index*

Our regulations at § 418.306(c) require that the wage index for all labor markets in which Medicare-participating hospices do business be established using the most current hospital wage data available, including any changes by Office of Management and Budget (OMB) to the Metropolitan Statistical Areas (MSAs) definitions. OMB revised the MSA definitions beginning in 2003 with new designations called the Core Based Statistical Areas (CBSAs). For the purposes of the hospice benefit, the term "MSA-based" refers to wage index values and designations based on the previous MSA designations before 2003. Conversely, the term "CBSA-based" refers to wage index values and designations based on the OMB revised MSA designations in 2003, which now include CBSAs. In the August 11, 2004 IPPS final rule (69 FR 49026), the revised labor market area definitions were adopted at § 412.64(b), which were effective October 1, 2004 for acute care hospitals. We also revised the labor market areas for hospices using the new OMB standards that included CBSAs. In the FY 2006 hospice wage index final rule (70 FR 45130), we implemented a 1-year transition policy using a 50/50 blend of the CBSA-based wage index values and the MSA-based wage index values for FY 2006. The one-year transition policy ended on September 30, 2006. For FY 2007, FY 2008, and FY 2009, we used wage index values based on CBSA designations.

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels. The original hospice wage index was based on the 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, a committee was formulated to negotiate a wage index methodology that could be accepted by the industry and the government. This committee, functioning under a process established by the Negotiated Rulemaking Act of 1990, was comprised of national hospice associations; rural, urban, large and small hospices; multi-site hospices; consumer groups; and a government representative. On April 13, 1995, the Hospice Wage Index Negotiated Rulemaking Committee signed an agreement for the methodology to be used for updating the hospice wage index.

In the August 8, 1997 **Federal Register** (62 FR 42860), we published a final rule implementing a new methodology for calculating the hospice wage index based on the recommendations of the negotiated rulemaking Committee, using a hospital wage index rather than continuing to use the Bureau of Labor Statistics (BLS) data. The committee statement was included in the appendix of that final rule (62 FR 42883). The reduction in overall Medicare payments if a new wage index were adopted was noted in the November 29, 1995 notice transmitting the recommendations of the negotiated rulemaking committee (60 FR 61264). Therefore, the Committee also decided that for each year in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments as if the 1983 wage index had been used.

As decided upon by the Committee, budget neutrality means that, in a given year, estimated aggregate payments for Medicare hospice services using the updated hospice values will equal estimated payments that would have been made for these services if the 1983 hospice wage index values had remained in effect. Although payments to individual hospice programs may change each year, the total payments each year to hospices would not be affected by using the updated hospice wage index because total payments would be budget neutral as if the 1983 wage index had been used. To implement this policy, a BNAF would be computed and applied annually to the pre-floor, pre-reclassified hospital wage index, when deriving the hospice wage index.

The BNAF is calculated by computing estimated payments using the most recent completed year of hospice claims data. The units (days or hours) from those claims are multiplied by the updated hospice payment rates to calculate estimated payments. For this proposed rule, that means estimating payments for FY 2010 using FY 2007 hospice claims data, and applying the estimated FY 2010 hospice payment rates (updating the FY 2009 rates by the FY 2010 estimated hospital market basket update). The FY 2010 hospice wage index values are then applied to the labor portion of the payment rates only. The procedure is repeated using the same claims data and payment rates, but using the 1983 BLS-based wage index instead of the updated raw pre-floor, pre-reclassified hospital wage index (note that both wage indices include their respective floor adjustments). The total payments are then compared, and the adjustment required to make total payments equal is computed; that adjustment factor is the BNAF.

The hospice wage index is updated annually. Our most recent update, published in the **Federal Register** (73 FR 46464) on August 8, 2008, set forth updates to the hospice wage index for FY 2009. That update also finalized a provision for a 3-year phase-out of the BNAF, which was applied to the wage index values. As discussed in detail below, the update was later revised with the February 17, 2009 passage of the American Recovery and Reinvestment Act (ARRA), which eliminated the BNAF phase-out for FY 2009.

1. Raw Wage Index Values (Pre-Floor, Pre-Reclassified Hospital Wage Index)

As described in the August 8, 1997 hospice wage index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are then subject to either a BNAF or application of the hospice floor calculation to compute the hospice wage index used to determine payments to hospices.

Pre-floor, pre-reclassified hospital wage index values of 0.8 or greater are adjusted by the BNAF. Pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by the greater of:

(1) The hospice BNAF; or (2) the hospice 15 percent floor adjustment, which is a 15 percent increase subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index (raw wage index) value of 0.4000, we would perform the following calculations using the BNAF (which for this example is 0.060988; we added 1 to simplify the calculation) and the hospice floor to determine County A's hospice wage index:

Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by the BNAF: (0.4000 × 1.060988 = 0.4244)

Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by the hospice 15 percent floor adjustment: (0.4000 × 1.15 = 0.4600).

Based on these calculations, County A's hospice wage index would be 0.4600.

The BNAF has been computed and applied annually to the labor portion of the hospice payment. Currently, the labor portion of the payment rates is as follows: For Routine Home Care, 68.71 percent; for Continuous Home Care, 68.71 percent; for General Inpatient Care, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore the non-labor portion of the payment rates is as follows: for Routine Home Care, 31.29 percent; for Continuous Home Care, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent.

The August 8, 2008 FY 2009 Hospice Wage Index final rule (73 FR 46464) implemented a phase-out of the hospice BNAF over 3 years, beginning with a 25 percent reduction in the BNAF in FY 2009, an additional 50 percent reduction for a total of 75 percent in FY 2010, and complete phase out of the BNAF in FY 2011. However, subsequent to the publication of the above rule, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (ARRA) eliminated the BNAF phase-out for FY 2009. Specifically, division B, section 4301(a) of ARRA prohibited the Secretary from phasing out or eliminating the BNAF in the Medicare hospice wage index before October 1, 2009, and instructed the Secretary to recompute and apply the final Medicare hospice wage index for FY 2009 as if there had been no reduction in the BNAF. We have done so in an administrative instruction to our intermediaries, which was issued as Change Request (CR) #6418 (Transmittal #1701, dated 3/13/2009).

While ARRA eliminated the BNAF phase-out for FY 2009, it neither changed the 75 percent reduction in the BNAF for FY 2010, nor prohibited the elimination of the BNAF in FY 2011 that were previously implemented in the August 8, 2008 Hospice Wage Index final rule. The provision in the ARRA that eliminated the FY 2009 BNAF reduction provided the hospice industry additional time to prepare for the FY 2010 75 percent BNAF reduction and the FY 2011 BNAF elimination. Therefore, in accordance with the August 8, 2008 FY 2009 Hospice Wage Index final rule, the rationale presented in that final rule, and consistent with section 4301(a) of ARRA, CMS plans to reduce the BNAF by 75 percent in FY 2010 and ultimately eliminate the BNAF in 2011. We are accepting comments on the BNAF reductions.

2. Changes to Core Based Statistical Area (CBSA) Designations

The annual update to the hospice wage index is published in the **Federal Register** and is based on the most current available hospital wage data, as well as any changes by OMB to the definitions of MSAs, which now include CBSA designations. The August 4, 2005 hospice wage index final rule (70 FR 45130) set forth the adoption of the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Micropolitan Statistical Areas and the creation of MSAs and Combined Statistical Areas. In adopting the OMB CBSA geographic designations, we provided for a 1-year transition with a blended hospice wage index for all hospices for FY 2006. Subsequent fiscal years have used the full CBSA-based hospice wage index.

3. Definition of Rural and Urban Areas

Each hospice's labor market is determined based on definitions of MSAs issued by OMB. In general, an urban area is defined as an MSA or New England County Metropolitan Area (NECMA) as defined by OMB. Under § 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of the urban area. The urban and rural area geographic classifications are defined in § 412.64(b)(1)(ii)(A) through (C), and have been used for the Medicare hospice benefit since implementation.

In the August 22, 2007 FY 2008 Inpatient Prospective Payment System (IPPS) final rule with comment period (72 FR 47130), § 412.64(b)(1)(ii)(B) was revised such that the two "New England deemed Counties" that had been considered rural under the OMB definitions (Litchfield County, CT and Merrimack County, NH) but deemed urban, were no longer considered urban effective for discharges occurring on or after October 1, 2007. Therefore, these two counties are considered rural in accordance with § 412.64(b)(1)(ii)(C).

The recommendations to adjust payments to reflect local differences in wages are codified in § 418.306(c) of our regulations; however there had been no explicit reference to § 412.64 in § 418.306(c) before implementation of the August 8, 2008 FY 2009 Hospice Wage Index final rule. Although § 412.64 had not been explicitly referred to, the hospice program has used the definition of urban in § 412.64(b)(1)(ii)(A) and (b)(1)(ii)(B), and the definition of rural as any area outside of an urban area in § 412.64(b)(1)(ii)(C). With the implementation of the August 8, 2008 FY 2009 Wage Index final rule, we now explicitly refer to those provisions in § 412.64 to make it absolutely clear how we define urban and rural for purposes of the hospice wage index.

Litchfield County, CT and Merrimack County, NH are considered rural areas for hospital IPPS purposes in accordance with § 412.64. Effective October 1, 2008, Litchfield County, CT was no longer considered part of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT), and Merrimack County, NH was no longer considered part of urban CBSA 31700 (Manchester-Nashua, NH). Rather, these counties are now considered to be rural areas within their respective States under the hospice payment system. When the raw pre-floor, pre-reclassified hospital wage index was adopted for use in deriving the hospice wage index, it was decided not to take into account IPPS geographic reclassifications. This policy of following OMB designations of rural or urban, rather than considering some counties to be "deemed" urban, is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the hospice wage index.

4. Areas Without Hospital Wage Data

When adopting OMB's new labor market designations in FY 2006, we identified some geographic areas where there were no hospitals, and thus, no hospital wage index data on which to base the calculation of the hospice wage index. Beginning in FY 2006, we adopted a policy to use the FY 2005 pre-floor, pre-reclassified hospital wage index value for rural areas when no hospital wage data were available. We also adopted the policy that for urban labor markets without a hospital from

which hospital wage index data could be derived, all of the CBSAs within the State would be used to calculate a Statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. Consequently, in subsequent fiscal years, we applied the average pre-floor, pre-reclassified hospital wage index data from all urban areas in that state, to urban areas without a hospital. The only affected CBSA is 25980, Hinesville-Fort Stewart, Georgia.

Under the CBSA labor market areas, there are no hospitals in rural locations in Massachusetts and Puerto Rico. Since there was no rural proxy for more recent rural data within those areas, in the FY 2006 hospice wage index proposed rule (70 FR 22394, 22398), we proposed applying the FY 2005 pre-floor, pre-reclassified hospital wage index value to rural areas where no hospital wage data were available. In the FY 2006 final rule and in the FY 2007 update notice, we applied the FY 2005 pre-floor, pre-reclassified hospital wage index data to areas lacking hospital wage data in rural Massachusetts and rural Puerto Rico.

In the FY 2008 hospice wage index final rule (72 FR 50217), we considered alternatives to our methodology to update the pre-floor, pre-reclassified hospital wage index for rural areas without hospital wage data. We indicated that we believed that the best imputed proxy for rural areas would—(1) use pre-floor, pre-reclassified hospital data; (2) use the most local data available to impute a rural pre-floor, pre-reclassified hospital wage index; (3) be easy to evaluate; and (4) be easy to update from year-to-year.

Therefore, in FY 2008, and again in FY 2009, in cases where there was a rural area without rural hospital wage data, we used the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. This approach does not use rural data, however, the approach uses pre-floor, pre-reclassified hospital wage data, is easy to evaluate, is easy to update from year-to-year, and uses the most local data available. In the FY 2008 hospice wage index final rule (72 FR 50217), we noted that in determining an imputed rural pre-floor, pre-reclassified hospital wage index, we interpret the term "contiguous" to mean sharing a border. For example, in the case of Massachusetts, the entire rural area consists of Dukes and Nantucket Counties. We determined that the borders of Dukes and Nantucket Counties are contiguous with Barnstable and Bristol Counties. Under the adopted methodology, the pre-floor, pre-reclassified hospital wage index values for the Counties of Barnstable (CBSA 12700, Barnstable Town, MA) and Bristol (CBSA 39300, Providence-New Bedford-Fall River, RI–MA) would be averaged resulting in an imputed pre-floor, pre-reclassified rural hospital wage index for FY 2008. We noted in the FY 2008 final hospice wage index rule that while we believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type, such as a Critical Access Hospital, that does not submit the appropriate wage data), if a similar situation arose in the future, we would re-examine this policy.

We also noted that we do not believe that this policy would be appropriate for Puerto Rico, as there are sufficient economic differences between hospitals in the United States and those in Puerto Rico, including the payment of hospitals in Puerto Rico using blended Federal/Commonwealth-specific rates. Therefore, we believe that a separate and distinct policy for Puerto Rico is necessary. Any alternative methodology for imputing a pre-floor, pre-reclassified hospital wage index for rural Puerto Rico would need to take into account the economic differences between hospitals in the United States and those in Puerto Rico. Our policy of imputing a rural pre-floor, pre-reclassified hospital wage index based on the pre-floor, pre-reclassified hospital wage index(es) of CBSAs contiguous to the rural area in question does not recognize the unique circumstances of Puerto Rico. While we have not yet identified an alternative methodology for imputing a pre-floor, pre-reclassified hospital wage index for rural Puerto Rico, we will continue to evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources. For FY 2008 and FY 2009, we used the most recent pre-floor, pre-reclassified hospital wage index available for Puerto Rico, which is 0.4047.

5. CBSA Nomenclature Changes

The Office of Management and Budget (OMB) regularly publishes a bulletin that updates the titles of certain CBSAs. In the FY 2008 hospice wage index final rule (72 FR 50218) we noted that the FY 2008 rule and all subsequent hospice wage index rules and notices would incorporate CBSA changes from the most recent OMB bulletins. The OMB bulletins may be accessed at *http://www.whitehouse.gov/omb/bulletins/index.html.*

6. Wage Data From Multi-Campus Hospitals

Historically, under the Medicare hospice benefit, we have established hospice wage index values calculated from the raw pre-floor, pre-reclassified hospital wage data (also called the IPPS wage index) without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. The wage adjustment established under the Medicare hospice benefit is based on the location where services are furnished without any reclassification.

For FY 2010, the data collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2005 were used to compute the 2009 raw pre-floor, pre-reclassified hospital wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. This 2009 raw pre-floor, pre-reclassified hospital wage index was used to derive the applicable wage index values for the hospice wage index because these data (FY 2005) are the most recent complete cost data.

Beginning in FY 2008, the IPPS apportioned the wage data for multi-campus hospitals located in different labor market areas (CBSAs) to each CBSA where the campuses are located (see the FY 2008 IPPS final rule with comment period 72 FR 47317 through 47320). We are continuing to use the raw pre-floor, pre-reclassified hospital wage data as a basis to determine the hospice wage index values for FY 2010 because hospitals and hospices both compete in the same labor markets, and therefore, experience similar wage-related costs. We note that the use of raw pre-floor, pre-reclassified hospital (IPPS) wage data, used to derive the FY 2010 hospice wage index values, reflects the application of our policy to use that data to establish the hospice wage index. The FY 2010 hospice wage index values presented in this notice were computed consistent with our raw pre-floor, pre-reclassified hospital (IPPS) wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments for hospice). As implemented in the August 8, 2008 FY 2009 Hospice Wage Index final rule, for the FY 2009 Medicare hospice benefit, the hospice wage index was computed from IPPS wage data (submitted by hospitals for cost reporting periods beginning in FY 2004 (as was the FY 2008 IPPS wage index)), which allocated salaries and hours to the campuses of two multi-campus hospitals with campuses that are located in different labor areas, one in

Massachusetts and another in Illinois. Thus, the FY 2009 hospice wage index values for the following CBSAs were affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI–MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974), and Lake County-Kenosha County, IL–WI (CBSA 29404).

7. Hospice Payment Rates

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the hospital market basket index, minus 1 percentage point. However, neither the BBA nor subsequent legislation specified alteration to the hospital market basket adjustment to be used to compute hospice payment for fiscal years beyond 2002. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent fiscal years will be the market basket percentage for the fiscal year. It has been longstanding practice to use the inpatient hospital market basket as a proxy for a hospice market basket.

Historically, the rate update has been published through a separate administrative instruction issued annually, in the summer, to provide adequate time to implement system change requirements. Hospices determine their payments by applying the hospice wage index in this proposed rule to the labor portion of the published hospice rates.

## II. Provisions of the Proposed Rule

### *A. FY 2010 Proposed Hospice Wage Index*

1. Background

The hospice final rule published in the **Federal Register** on December 16, 1983 (48 FR 56008) provided for adjustment to hospice payment rates to reflect differences in area wage levels. We apply the appropriate hospice wage index value to the labor portion of the hospice payment rates based on the geographic area where hospice care was furnished. As noted earlier, each hospice's labor market area is based on definitions of MSAs issued by the OMB. For this proposed rule, we will use the pre-floor, pre-reclassified hospital wage index, based solely on the CBSA designations, as the basis for determining wage index values for the proposed FY 2010 hospice wage index.

As noted above, our hospice payment rules utilize the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. We are proposing again to use the pre-floor and pre-reclassified hospital wage index data as the basis to determine the hospice wage index, which is then used to adjust the labor portion of the hospice payment rates based on the geographic area where the beneficiary receives hospice care. We believe the use of the pre-floor, pre-reclassified hospital wage index data, as a basis for the hospice wage index, results in the appropriate adjustment to the labor portion of the costs. For the FY 2010 update to the hospice wage index, we propose to continue to use the most recent pre-floor, pre-reclassified hospital wage index available at the time of publication.

2. Areas Without Hospital Wage Data

In adopting the CBSA designations, we identified some geographic areas where there are no hospitals, and no hospital wage data on which to base the calculation of the hospice wage index. These areas are described in section I.B.4 of this proposed rule. Beginning in FY 2006, we adopted a policy that, for urban labor markets without an urban hospital from which a pre-floor, pre-reclassified hospital wage index can be derived, all of the urban CBSA pre-floor, pre-reclassified hospital wage index values within the State would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index to use as a reasonable proxy for these areas. Currently, the only CBSA that would be affected by this policy is CBSA 25980, Hinesville, Georgia. We propose to continue this policy for FY 2010.

Currently, the only rural areas where there are no hospitals from which to calculate a pre-floor, pre-reclassified hospital wage index are Massachusetts and Puerto Rico. In August 2007 (72 FR 50217) we adopted a methodology for imputing rural pre-floor, pre-reclassified hospital wage index values for areas where no hospital wage data are available as an acceptable proxy; that methodology is also described in section I.B.4 of this proposed rule. In FY 2010, Dukes and Nantucket Counties are the only areas in rural Massachusetts which are affected. We are again proposing to apply this methodology for imputing a rural pre-floor, pre-reclassified hospital wage index for those rural areas without rural hospital wage data in FY 2010.

However, as we noted in section I.B.4 of this proposed rule, we do not believe that this policy is appropriate for Puerto Rico. For FY 2010, we again propose to continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047. This pre-floor, pre-reclassified hospital wage index value will then be adjusted upward by the hospice 15 percent floor adjustment in the computing of the proposed FY 2010 hospice wage index.

3. FY 2010 Wage Index With 75 Percent Reduced Budget Neutrality Adjustment Factor (BNAF)

The hospice wage index set forth in this proposed rule would be effective October 1, 2009 through September 30, 2010. We are not proposing any modifications to the hospice wage index methodology. In accordance with our regulations and the agreement signed with other members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using the most current hospital data available. For this proposed rule, the FY 2009 hospital wage index was the most current hospital wage data available for calculating the FY 2010 hospice wage index values. We used the FY 2009 pre-floor, pre-reclassified hospital wage index data for this calculation.

As noted above, for FY 2010, the hospice wage index values will be based solely on the adoption of the CBSA-based labor market definitions and the hospital wage index. We continue to use the most recent pre-floor and pre-reclassified hospital wage index data available (based on FY 2005 hospital cost report wage data). A detailed description of the methodology used to compute the hospice wage index is contained in the September 4, 1996 hospice wage index proposed rule (61 FR 46579), the August 8, 1997 hospice wage index final rule (62 FR 42860), and the August 8, 2008 FY 2009 Hospice Wage Index final rule (73 FR 46464).

The August 8, 2008 FY 2009 Hospice Wage Index final rule finalized a provision to phase out the BNAF over 3 years, with a 25 percent reduction in the BNAF in FY 2009, an additional 50 percent reduction for a total of a 75 percent reduction in FY 2010, and complete phase out in FY 2011. However, on February 17, 2009, the President signed ARRA (P.L. 111–5); Section 4301(a) of ARRA eliminated the BNAF phase-out for FY 2009. Therefore, in an administrative instruction (Change Request 6418, Transmittal 1701, dated 3/13/2009) entitled "Revision of the Hospice Wage Index and the Hospice Pricer for FY 2009," we instructed CMS contractors to use the revised FY 2009 hospice Pricer, which included a revised hospice wage index to reflect a full (unreduced) BNAF rather than the 25 percent reduced BNAF set forth in

the August 8, 2008 FY 2009 Hospice Wage Index final rule.

While ARRA eliminated the BNAF phase-out for FY 2009, it did not change the 75 percent reduction in the BNAF for FY 2010, or the elimination of the BNAF in FY 2011 that was previously implemented in the August 8, 2008 FY 2009 Hospice Wage Index final rule. The provision in ARRA that eliminated the FY 2009 BNAF reduction provided the hospice industry additional time to prepare for the FY 2010 75 percent BNAF reduction and the FY 2011 BNAF elimination. Therefore, in accordance with the August 8, 2008 FY 2009 Hospice Wage Index final rule (73 FR 46464), the rationale presented in that final rule, and consistent with the section 4301(a) of ARRA, we plan to reduce the BNAF for FY 2010 by 75 percent, and ultimately eliminate the BNAF in FY 2011. We are accepting comments on the BNAF reductions.

An unreduced BNAF for FY 2010 is computed to be 0.067845 (or 6.7845 percent). A 75 percent reduced BNAF, which is subsequently applied to the pre-floor, pre-reclassified hospital wage index values greater than or equal to 0.8, is computed to be 0.016961 (or 1.6961 percent). Pre-floor, pre-reclassified hospital wage index values, which are less than 0.8, are subject to the hospice floor calculation; that calculation is described in section I.B.1.

The proposed hospice wage index for FY 2010 is shown in Addenda A and B. Specifically, Addendum A reflects the proposed FY 2010 wage index values for urban areas under the CBSA designations. Addendum B reflects the proposed FY 2010 wage index values for rural areas under the CBSA designations.

4. Effects of Phasing Out the BNAF

The full (unreduced) BNAF calculated for FY 2010 is 6.7845 percent. As implemented in the August 8, 2008 FY 2009 Hospice Wage Index final rule (73 FR 46464), we are reducing the BNAF by 75 percent for FY 2010, and eliminating it altogether for FY 2011 and beyond.

For FY 2010, this is mathematically equivalent to taking 25 percent of the full BNAF value, or multiplying 0.067845 by 0.25, which equals 0.016961 (1.6961 percent). The BNAF of 1.6961 percent reflects a 75 percent reduction in the BNAF. The 75 percent reduced BNAF (1.6961 percent) would be applied to the pre-floor, pre-reclassified hospital wage index values of 0.8 or greater in the proposed FY 2010 hospice wage index.

The hospice floor calculation would still apply to any pre-floor, pre-reclassified hospital wage index values less than 0.8. Currently, the hospice floor calculation has 4 steps. First, pre-floor, pre-reclassified hospital wage index values that are less than 0.8 are multiplied by 1.15. Second, the minimum of 0.8 or the pre-floor, pre-reclassified hospital wage index value times 1.15 is chosen as the preliminary hospice wage index value. Steps 1 and 2 are referred to in this proposed rule as the hospice 15 percent floor adjustment. Third, the pre-floor, pre-reclassified hospital wage index value is multiplied by the BNAF. Finally, the greater result of either step 2 or step 3 is chosen as the final hospice wage index value. The hospice floor calculation is unchanged by the BNAF reduction. We note that steps 3 and 4 will become unnecessary once the BNAF is eliminated.

We examined the effects of a 75 percent reduction in the BNAF versus using the full BNAF of 6.7845 percent on the proposed FY 2010 hospice wage index. The FY 2010 BNAF reduction of 75 percent resulted in approximately a 4.76 to 4.77 percent reduction in most hospice wage index values. The elimination of the BNAF in FY 2011 would result in an estimated final reduction of the FY 2011 hospice wage index values of approximately 1.66 to 1.67 percent compared to FY 2010 hospice wage index values.

Those CBSAs whose pre-floor, pre-reclassified hospital wage index values had the hospice 15 percent floor adjustment applied before the BNAF reduction would not be affected by this proposed phase out of the BNAF. These CBSAs, which typically include rural areas, are protected by the hospice 15 percent floor adjustment. We have estimated that 17 CBSAs are already protected by the hospice 15 percent floor adjustment, and are therefore completely unaffected by the BNAF reduction. There are over 100 hospices in these 17 CBSAs.

Additionally, some CBSAs with pre-floor, pre-reclassified wage index values less than 0.8 will become newly eligible for the hospice 15 percent floor adjustment as a result of the 75 percent reduced BNAF. Areas where the hospice floor calculation would have yielded a wage index value greater than 0.8 if the full BNAF were applied, but which will have a final wage index value less than 0.8 after the 75 percent reduced BNAF is applied, will now be eligible for the hospice 15 percent floor adjustment. These CBSAs will see a smaller reduction in their hospice wage index values since the hospice 15 percent floor adjustment will apply. We have estimated that 18 CBSAs will have their pre-floor, pre-reclassified hospital wage index value become newly protected by the hospice 15 percent floor adjustment due to the 75 percent reduction in the BNAF. Because of the protection given by the hospice 15 percent floor adjustment, these CBSAs will see smaller percentage decreases in their hospice wage index values than those CBSAs that are not eligible for the hospice 15 percent floor adjustment. This will affect those hospices with lower hospice wage index values, which are typically in rural areas. There are over 300 hospices located in these 18 CBSAs.

Finally, the hospice wage index values only apply to the labor portion of the payment rates; the labor portion is described in section I.B.1 of this proposed rule. Therefore the projected reduction in payments due to the 75 percent reduction of the BNAF will be an estimated 3.2 percent, as described in column 4 of Table 1 in section VI of this proposed rule. In addition, the estimated effects of the phase-out of the BNAF will be mitigated by any hospital market basket updates in payments. We will not have the final market basket update for FY 2010 until the summer. However, the current estimate of the hospital market basket update for FY 2010 is 2.1 percent. The final update will be communicated through an administrative instruction. The combined effects of a 75 percent reduction of the BNAF and an estimated hospital market basket update of 2.1 percent for FY 2010 is an overall estimated decrease in payments to hospices in FY 2010 of 1.1 percent (column 5 of Table 1 in section VI of this proposed rule).

*B. Proposed Change to the Physician Certification and Recertification Process, § 418.22*

The Medicare Payment Advisory Commission (MedPAC) has noted an increasing proportion of hospice patients with stays exceeding 180 days, and significant variation in hospice length of stay. MedPAC has questioned whether there is sufficient accountability and enforcement related to certification and recertification of Medicare hospice patients. Currently, our policy requires the hospice medical director or physician member of the interdisciplinary group and the patient's attending physician (if any) to certify the patient as having a terminal illness for the initial 90-day period of hospice care. Subsequent benefit periods only require recertification by the hospice medical director or by the physician member of the hospice interdisciplinary group. These certifications must

indicate that the patient's life expectancy is 6 months or less if the illness runs its normal course, and must be signed by the physician. The medical record must include documentation that supports the terminal prognosis.

At their November 6, 2008 public meeting, MedPAC presented the findings of an expert panel of hospice providers convened in October 2008; that panel noted that while many hospices comply with the Medicare eligibility criteria, some are enrolling and recertifying patients who are not eligible.

The expert panel noted that there were several reasons for the variation in compliance. First, they noted that in some cases there was limited medical director engagement in the certification or recertification process. Physicians had delegated this responsibility to the staff involved with patients' day-to-day care, and simply signed off on the paperwork. Second, inadequate charting of the patient's condition or a lack of staff training had led some physicians to certify patients who were not truly eligible for Medicare's hospice benefit. Finally, some panelists cited financial incentives associated with long-stay patients. The panelists mentioned anecdotal reports of hospices using questionable marketing strategies to recruit patients without mentioning the terminal illness requirement, and of hospices failing to discharge patients who had improved or enrolling patients who had already been discharged or turned away from other hospices. Consensus emerged among the panelists that more accountability and oversight of certification and recertification are needed. See, *http://www.medpac.gov/transcripts/20081104_Hospice_final_public.pdf* and *http://www.medpac.gov/transcripts/1106-1107MedPAC%20final.pdf*.

We believe that those physicians that are certifying a hospice patient's continued eligibility can reasonably be expected to synthesize in a few sentences the clinical aspects of the patient's condition that support the prognosis. We believe that such a requirement, as suggested by the expert panel and by MedPAC, would encourage greater physician engagement in the certification and recertification process by focusing attention on the physician's responsibility to set out the clinical basis for the terminal prognosis indicated in the patient's medical record.

To increase accountability related to the physician certification and recertification process, we are proposing a change to § 418.22. Specifically, we propose to add a new paragraph (b)(3) to § 418.22 to require that physicians that certify or recertify hospice patients as being terminally ill include a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less. This brief narrative should be written or typed on the certification form itself. We do not believe that an attachment should be permissible because an attachment could easily be prepared by someone other than the physician. We seek comments on whether this proposed requirement would increase physician engagement in the certification and recertification process.

*C. Proposed Update of Covered Services, § 418.202*

In Part 418, subpart F, we describe covered hospice services. In § 418.200, Requirements for Coverage, we note that covered services must be reasonable and necessary for the palliation or management of the terminal illness as well as related conditions. We also note that services provided must be consistent with the plan of care. The language at § 418.202, Covered services, describes specific types of hospices services that are covered. Section 418.202(f) describes the coverage of medical appliances and supplies, including drugs and biologicals. The last sentence of § 418.202(f) states that covered "Medical supplies include those that are part of the written plan of care."

The updated CoPs, which were effective as of December 2008, require that hospices include all comorbidities in the plan of care, even if those comorbidities are not related to the terminal diagnosis. In § 418.54(c)(2) we refer to assessing the patient for complications and risk factors that affect care planning. Comorbidities that are unrelated to the terminal illness need to be addressed in the comprehensive assessment and should be on the plan of care, clearly marked as comorbidities unrelated to the terminal illness. The hospice is not responsible for providing care for the unrelated comorbidities. Because these unrelated comorbidities must be included in the plan of care, and the hospice is not responsible for providing the care for these unrelated comorbidities, we propose revising § 418.202(f) to state that medical supplies covered by the Medicare hospice benefit include only those that are part of the plan of care and that are for the palliation or management of the terminal illness or related conditions.

*D. Proposed Clarification of Payment Procedures for Hospice Care, § 418.302*

Section 1861(dd) of the Act limits coverage of and payment for inpatient days for hospice patients. There are sometimes situations when a hospice patient receives inpatient care but is unable to return home, even though the medical situation no longer warrants general impatient care (GIP), or even though 5 days of respite have ended. In computing the inpatient cap, the hospice should only count inpatient days in which GIP or respite care is provided and billed as GIP or respite days. For example, assume a patient received 5 days of respite care while a caregiver was out of town, but the caregiver's return was delayed for a day due to circumstances beyond her control. The patient had to remain as an inpatient for a 6th day, but was no longer eligible for respite care. According to § 418.302(e)(5), the hospice should switch from billing for respite care to billing for routine home care on the 6th day. The hospice should only count 5 days toward the inpatient cap, not 6 days, since only 5 inpatient days were provided and billed as respite days.

Because we have received several inquiries about how to count inpatient days that are provided and billed as routine home care, we propose to revise § 418.302(f)(2) to clarify that only inpatient days in which GIP or respite care is provided and billed are counted as inpatient days when computing the inpatient cap.

*E. Proposed Clarification of Intermediary Determination and Notice of Amount of Program Reimbursement, § 405.1803*

Currently, hospices that exceed either the inpatient cap or the aggregate cap are sent a letter by their contractor (regional home health and hospice intermediary (RHHI) or fiscal intermediary (FI)), detailing the cap results, along with a demand for repayment. As described in an administrative instruction (CR 6400, Transmittal 1708, issued April 3, 2009) effective July 1, 2009, this letter of determination of program reimbursement will be sent to every hospice provider, regardless of whether or not the hospice has exceeded the cap. A demand for repayment will be included for those hospices which have exceeded either cap. If a hospice disagrees with the contractor's cap calculations, the hospice has appeal rights which are set out at 42 CFR § 418.311 and Part 405, Subpart R. The letter of determination of program

reimbursement shall include language describing the hospice's appeal rights. We are proposing to clarify the language at § 405.1803(a) to note that for the purposes of hospice, the determination of program reimbursement letter sent by the contractors serves as the written notice reflecting the intermediary's determination of the total amount of reimbursement due the hospice, which is commonly called a Notice of Program Reimbursement or NPR. Additionally, we are proposing to clarify § 405.1803(a)(1)(i) to note that in the case of hospice, the reporting period covered by the determination of program reimbursement letter is the hospice cap year and the bases for the letter are the cap calculations rather than reasonable cost from cost report data.

*F. Proposed Technical and Clarifying Changes*

In addition to the proposals and solicitation of comments discussed above, we are proposing to make the following technical changes to clarify existing regulations text, correct errors that we have identified in the regulations, remove obsolete cross references, or to ensure consistent use of terminology in our regulations.

1. Proposed Clarification of the Statutory Basis for Hospice Regulation, § 418.1

Currently, the statutory basis for the hospice regulations is described at § 418.1, and notes that Part 418 implements section 1861(dd) of the Act. The regulation describes section 1861(dd) of the Act as specifying covered hospice services and the conditions that a hospice program must meet to participate in the Medicare program. While that is correct, section 1861(dd) of the Act also specifies some limitations on coverage and payment for inpatient hospice care. We propose to clarify § 418.1 by adding a sentence noting that section 1861(dd) of the Act limits coverage and payment for inpatient hospice care.

2. Proposed Update of the Scope of Part, § 418.2

The current regulations at § 418.2 ("Scope of part.") describe each of the subparts in Part 418. Some of these subparts have been revised or removed with the update of the hospice conditions of participation (CoPs) in 2008. Specifically, subpart B specifies the eligibility and election requirements, along with the duration of benefits. Subparts C and D specify the Conditions of Participation, with subpart C now entitled "Patient Care" rather than "General Provisions and Administration", and subpart D now entitled "Organizational Environment" rather than "Core Services". Subpart E, which is currently described as specifying reimbursement methods and procedures, was removed and reserved with the update of the CoPs. Subparts F and G relate to payment policy, including covered services and hospice payment; currently subpart F is described in § 418.2 as specifying coinsurance amounts. Finally, subpart H specifies coinsurance amounts applicable to hospice care, rather than subpart F as the regulation currently reads. Accordingly, we propose to update section § 418.2 to reflect the current organization and scope of Part 418.

3. Proposed Revision of Hospice Aide and Homemaker Services, § 418.76

We are proposing a technical correction at § 418.76(f)(1) to clarify that home health agencies that have been found out of compliance with paragraphs (a) or (b) of § 484.36, regarding home health aide qualifications, are prohibited from providing hospice aide training. The word "out" was inadvertently omitted from the regulation text in the June 5, 2008 hospice final rule.

4. Proposed Clarification of Hospice Multiple Location, § 418.100

For the sake of clarity, we propose to delete the word "that" from § 418.100(f)(1)(iii), regarding multiple locations. The revised element would require that the lines of authority and professional and administrative control must be clearly delineated in the hospice's organizational structure and in practice, and must be traced to the location issued the certification number.

5. Proposed Revision to Short Term Inpatient Care, § 418.108

We propose to correct in § 418.108(b)(1)(ii) an erroneous reference to § 418.110(f), Patient rooms. This section, which addresses facilities that are considered acceptable for the provision of respite care to hospice patients, was intended to reference the standard at § 418.110(e), Patient areas. The published reference to standard (f) was a typographic error, and we propose to correct it by changing the reference to standard (e).

6. Proposed Clarification of the Requirements for Coverage, § 418.200

Section 418.200 describes the requirements for coverage for Medicare hospice services, and references § 418.58 ("Conditions of Participation plan of care"). This cross reference is no longer accurate as § 418.58 was updated with the publication of the new CoPs in 2008. We propose to detail the requirements for coverage related to the plan of care rather than cross refer to the CoPs regulations. This revision would avoid the need to make updates to this section each time the CoPs are changed.

The statute specifies requirements for hospice coverage in section 1814(a)(7)(A) through (C) of the Act. The Act requires that the hospice medical director and the patient's attending physician certify the terminal illness for the initial period of hospice care and that the medical director recertify the terminal illness for each subsequent benefit period. Additionally, the Act requires that a plan of care exist before care is provided; that the plan of care be reviewed periodically by the attending physician, the medical director, and the interdisciplinary group; and that care be provided in accordance with the plan of care. We propose to clarify § 418.200 to incorporate these requirements for coverage, rather than cross reference CoP requirements in CoP regulations.

7. Proposed Incorporation of the Term "Hospice Aide," § 418.202, § 418.204, and § 418.302

Over the last several years, we have worked with the industry to update the hospice CoPs. These efforts culminated in publication of a final rule in 2008, which was effective December 2, 2008. The revised CoPs redesignated the "home health aide" who works in hospice as a "hospice aide". We propose to revise § 418.202(g), § 418.204(a), and § 418.302 to include the new terminology.

8. Proposed Clarification of Administrative Appeals, § 418.311

A hospice that does not believe its payments have been properly determined may request a review from the intermediary or from the Provider Reimbursement Review Board (PRRB), depending on the amount in controversy. Section 418.311 details the procedures for appealing a payment decision and also refers to Part 405, Subpart R.

We propose to clarify the last sentence of this section, which currently notes that "the methods and standards for the calculation of the payment rates by CMS are not subject to appeal." The payment rates referred to are the national rates which are set by statute, and updated according to the statute using the hospital market basket (unless Congress has instructed us to update the rates differently). To ensure better understanding of what is not subject to

appeal, we propose to revise § 418.311 to provide that methods and standards for the calculation of the statutorily defined payment rates by CMS are not subject to appeal.

## III. Request for Comments on Other Policy Issues

### *A. Recertification Visits, § 418.22*

As noted earlier, MedPAC convened an expert panel from the hospice industry in late 2008. That panel noted that some hospices are enrolling and recertifying patients who are not eligible for hospice care under the Medicare benefit, and consensus emerged that greater accountability and oversight are needed in the certification and recertification process. To further increase accountability in the recertification process, several of the panelists suggested to MedPAC that an additional policy change be made to the recertification process. Several panelists supported a requirement that a hospice physician or advanced practice nurse visit the patient at the time of the 180-day recertification to assess continued eligibility, and at every certification thereafter. MedPAC recommended that the physician or advanced practice nurse be required to attest that the visit took place. See, *http://www.medpac.gov/transcripts/20081104_Hospice_final_public.pdf* and *http://www.medpac.gov/transcripts/1106-1107MedPAC%20final.pdf*.

At this time, we are not proposing any policy change requiring visits by physicians or advanced practice nurses in order to recertify patients. We note that the statute requires a physician to certify and recertify terminal illness for hospice patients, and specifically precludes nurse practitioners from doing so at 1814(a)(7)(A) of the Act. A recertification visit to a hospice patient by a nurse practitioner would not relieve the physician of his or her legal responsibility to recertify the terminal illness of such hospice patient. The physician is ultimately responsible for the recertification determination. However, the visit, if performed by a nurse practitioner, could potentially serve as an additional, objective source of information for the physician in the recertification of terminal illness decision. We are also considering other options related to a nurse practitioner making recertification visits. For example, a nurse practitioner who is involved in a patient's day-to-day care may not be as objective in assessing eligibility for recertification as a nurse practitioner who is not caring for that patient regularly. One option to better ensure that a nurse practitioner visit results in additional, objective clinical assessment of the patient's condition might be to require that such nurse practitioner not be involved in the hospice patient's day-to-day care. Also, there are different possible approaches regarding the timeframe for making visits. Visits by a physician or nurse practitioner could be made within a timeframe close to the recertification deadline, such as the 2-week period centered around the recertification date, thereby allowing a window of time surrounding the recertification timeframe for a visit to occur.

While we are not proposing a policy change regarding recertification visits at this time, we are soliciting comments on the suggestion to require physician or nurse practitioner visits for hospice recertifications at or around 180 days and for every benefit period thereafter. We are seeking comments on all aspects of this suggestion, including practical issues of implementation. We will analyze and consider the comments received in possible future policy development.

### *B. Hospice Aggregate Cap Calculation*

As described in section 1814(i)(2)(A) through (C) of the Act, when the Medicare hospice benefit was implemented, the Congress included an aggregate cap on hospice payments. The hospice aggregate cap limits the total aggregate payment any individual hospice can receive in a year. The Congress stipulated that a "cap amount" be computed each year. The cap amount was set at $6,500 per beneficiary when first enacted in 1983 and is adjusted annually by the change in the medical care expenditure category of the consumer price index for urban consumers from March 1984 to March of the cap year. The cap year is defined as the period from November 1st to October 31st, and was set in place in the December 16, 1983 hospice final rule (48 FR 56022). This timeframe was chosen as the cap year since the Medicare hospice program began on November 1, 1983 (48 FR 56022). For the 2008 cap year, the cap amount was $22,386.15 per beneficiary. This cap amount is multiplied by the number of Medicare beneficiaries who received hospice care in a particular hospice during the year, resulting in its hospice aggregate cap, which is the allowable amount of total Medicare payments that hospice can receive for that cap year. A hospice's total reimbursement for the cap year cannot exceed the hospice aggregate cap. If its hospice aggregate cap is exceeded, then the hospice must repay the excess back to Medicare.

Using the most recent (2008) payment rates before wage adjustment, the 2008 cap amount ($22,386.15) is roughly equal to the cost of providing routine home care for 166 days. Because the hospice aggregate cap is computed in the aggregate for the entire hospice, rather than on a per beneficiary basis, hospices that admit a mix of short-stay and long stay Medicare beneficiaries will rarely exceed the cap. On average, lower expenditures made on behalf of Medicare beneficiaries with shorter hospice stays offset the expenditures made on behalf of Medicare beneficiaries with longer stays such that in the aggregate, the majority of hospices do not exceed the calculated aggregate cap.

Until recently, hospices rarely exceeded the aggregate cap. The Government Accountability Office (GAO) found that between 1999 and 2002, less than 2 percent of hospices exceeded the aggregate cap [United States Government Accountability Office, "Medicare Hospice Care. Modifications to Payment Methodology May Be Warranted". October 2004, Washington, DC. p. 18]. MedPAC reported that the number of hospices that exceeded the aggregate cap has grown steadily between 2002 and 2005, but remains just under 8 percent as of 2005 [Medicare Payment Advisory Commission, "Report to the Congress: Reforming the Delivery System". June 2008. Washington, DC. p. 212.]. We do not believe that hospices are exceeding the aggregate cap due to our intermediaries' method of calculating the aggregate cap. Rather, MedPAC's analyses suggest that certain hospices exceed the aggregate cap due to "significantly longer lengths of stay" than hospices that do not exceed the cap [MedPAC, p. 214–15]. MedPAC suggests that longer average lengths of stay at certain hospices could be due, in part, to a change in their patient case-mix that has brought in more patients with less predictable disease trajectories [MedPAC, p. 213–14]. However, patient case mix was not found to account for all of the discrepancy in length of stay [MedPAC, p. 214–15]. MedPAC also found that for-profit ownership, smaller patient loads, and being a freestanding facility were correlated with longer lengths of stay and the consequent likelihood of exceeding the aggregate cap [MedPAC, p. 212–215].

As stated above, in our current hospice aggregate cap calculation methodology, the intermediary calculates each hospice's aggregate cap amount by multiplying the per-beneficiary cap amount by the number of Medicare beneficiaries counted in

each cap year. Patients who receive hospice care in more than one cap year are counted so that, in the aggregate, the "number of Medicare beneficiaries" for each year is reduced to reflect the proportion of time patients receive in other years. Hospices are currently required to submit a report of their Medicare beneficiary unduplicated census to their intermediary within 30 days of the end of the cap year. Our current methodology also apportions the beneficiary across multiple hospices if the beneficiary receives care from more than one hospice during the cap year, with the proportional shares summing to 1. The intermediary reduces each hospice's Medicare beneficiary count by that fraction which represents proportional days of care the beneficiary received in another hospice during the year, with all the proportional shares summing to 1.

In counting the Medicare beneficiaries for the unduplicated census report, we instruct hospices to use a slightly different timeframe from the cap year used to count payments. When determining a hospice's expenditures during a cap year, the intermediary sums all claims submitted by the hospice for services performed during the cap year, which begins on November 1st of each year and ends on the October 31st of the following year. However, we instruct hospices to include those beneficiaries who elect the benefit between September 28th of each year and September 27th of the following year, rather than following the November 1st to October 31st cap year. CMS (then HCFA) used mean length of stay from demonstration project data to determine the point at which to include a beneficiary in calculating the hospice cap. Using half of the mean length of stay, or 70 days/2 = 35 days, CMS implemented a timeframe for counting beneficiaries that began less than 35 days from the end of the cap year. Therefore, the timeframe for counting beneficiaries was set as September 28th through September 27th (48 FR 56022). This method of reducing the number of Medicare beneficiaries counted in a cap year to reflect time spent in other years was implemented because it allows for counting the beneficiary in the reporting period where he or she used most of the days of covered hospice care (48 FR 38158). We believe that the regulation complies with the statutory requirements without being unduly burdensome. This approach has the major advantage of allowing each hospice to estimate its aggregate cap calculation within a short period of time after the close of a cap year. While we believe that the current hospice aggregate cap methodology equitably meets the statutory requirements for calculating the hospice aggregate cap set out at section 1814(i)(2) of the Act, the availability of more sophisticated databases and data systems provides us with an opportunity to incorporate efficiencies in the cap calculation process. The lack of sophisticated data systems in place in the 1980's limited our options for how to efficiently compute the hospice aggregate cap. In the 1980's access to claims data was very slow, and searchable claims databases were virtually non-existent. While the current system still has limitations, the advancement of technology has brought with it provider access to benefit period information in the Common Working File (CWF), which was created in the 1990's, and faster processing speeds, which allow contractors and hospices easier access to claims information for hospice aggregate cap calculation purposes. Therefore, we are now able to consider more efficient approaches to calculating the aggregate cap.

The time required for intermediaries to compute each hospice's aggregate cap and send demand letters when overpayments exist delays our recovery of those overpayments and may also contribute to some hospices exceeding the cap in subsequent years. Hospices have described receiving demands for cap overpayments more than a year after the end of the cap year, and have expressed concern that they are not timely notified about their cap overpayments. Hospices which don't closely monitor compliance with their aggregate cap may not have anticipated an overpayment, and the lag in notification may contribute to the risk of a hospice exceeding its aggregate cap in the subsequent year. More timely notification of overpayments would enable hospices to more quickly review their admissions practices, and make necessary changes to ensure that all their patients meet the eligibility requirements for hospice care.

We are exploring a number of different hospice aggregate cap implementation methodology changes to address these issues, and to take advantage of the technological efficiencies available. Specifically, we are exploring enhancements to our current methodology which will improve the timeliness of hospices' notification of cap overpayments, will enable such overpayments to be collected more quickly, and which will encourage hospices to be more proactively involved in managing their admissions practices such that they do not exceed their hospice aggregate cap. We are considering several changes to the annual hospice aggregate cap calculation implementation methodology which could help hospices avoid exceeding the aggregate cap.

If a beneficiary receives hospice care for an extended period of time, or elects hospice toward the end of a cap year, he or she is more likely to cross into more than 1 cap year, or to receive care from more than 1 hospice. If we made a mathematically precise determination of the proportion of time each patient spent in each cap year at each hospice from which they received care, in order for a given cap year report to be final, adjustments to that cap year report would have to continue until the beneficiary actually died. Only then could a final determination of the aggregate cap be made for a given year for each hospice that had treated the beneficiary. Such an approach could be viewed as particularly burdensome to the hospice as a hospice's financial system would likely need to be able to continually react to subsequent hospice aggregate cap calculations, readjusting payments to Medicare to account for an overpayment amount that is ever-changing, that is, until the beneficiary dies.

A variation of this approach would allow apportioning of beneficiaries who receive care in more than 1 cap period over 2 consecutive years. This approach would minimize, but not completely eliminate, the adjustments required to prior year cap calculations. This method still has the effect of delaying the final cap determination. However, it raises questions about scenarios where a beneficiary received hospice care in his first and second cap year, either revoked or was discharged from the benefit, and returned to a different hospice at a much later date, such as in the third cap year. We would like public input from hospices, patient groups, other provider types, academics, and members of the general public on how to best handle this or similar scenarios.

Besides considering different approaches to counting beneficiaries, another option is to require hospices to compute their own hospice aggregate cap and submit a certified cap report to their contractors, along with any overpayment, 7 months after the end of the cap year. The information used for the hospice aggregate cap calculation originates with hospices, and is available to them through the CWF or through their own accounting records. Requiring hospices to compute and report their own hospice aggregate cap would result in hospices being proactive in managing their cap calculations. In

this approach, contractors would still verify the reported cap.

We are soliciting comments on these and other policy options in an effort to gather more information on this issue, and any other possible underlying issues that may exist.

*C. Hospice Payment Reform*

Since the inception of the hospice benefit in 1983, the amount that the Medicare program has spent on this benefit has grown considerably. The number of unduplicated hospice Medicare beneficiaries has increased from 401,140 in FY 1998 to 986,435 in FY 2007, which represents a 146 percent increase. Additionally, at the inception of the benefit, most hospice patients elected hospice care due to terminal cancer. The profile of the hospice patient has changed in recent years such that hospices now provide care to beneficiaries with a wide range of terminal conditions. In calendar year (CY) 1998, 54 percent of hospice patients had terminal cancer diagnoses. In CY 2007, only 28 percent of hospice patients had terminal cancer diagnoses. With the diversity of diagnoses, hospice stays began to increase. The national average length of stay for patients in hospice has risen from 48 days per patient in CY 1998 to 73 days per patient in CY 2006. Additionally, long hospice stays have grown even longer by about 50 percent. Between 2000 and 2005, hospices in the 90th percentile for average length of stay increased their average length of stay from 144 to 212 days.

MedPAC has performed extensive analysis of the hospice benefit over the past few years, and has recommended that CMS reform the hospice payment structure to ensure greater accountability in the hospice benefit. MedPAC believes that the current hospice payment system contains incentives that make long hospice stays more profitable, which may result in misuse of the benefit.

Medicare spending for hospice is rapidly growing, more than tripling between 2000 and 2007. In fiscal year (FY) 1998, expenditures for the Medicare hospice benefit were $2.2 billion, while in FY 2007, expenditures for the Medicare hospice benefit were $10.6 billion, more than the Medicare program spends on inpatient rehabilitation hospitals, critical access hospitals, long term care hospitals, or psychiatric hospitals. Medicare hospice spending is expected to more than double in the next 10 years and will account for roughly 2.3 percent of overall Medicare spending in FY 2009.

The number of hospice agencies has also grown by over 70 percent since 1997. The growth is overwhelmingly in the for-profit category. In 1997, there were 1,834 hospices, about 20 percent of which were for-profit and 80 percent were non-profit. In 2008, there were over 3,200 hospices, and 51 percent of these are for-profit entities. Since 2000, nearly all hospices newly participating in Medicare are for-profit entities. MedPAC reports that the newly participating hospices have margins five to six times higher than more established hospices. MedPAC estimates that, on average, hospice Medicare margins were approximately 3.4 percent in 2005. However, the for-profit hospices are estimated to have margins ranging from 15.9 percent in 2003 to 11.8 percent in 2005.

In their analyses of the hospice benefit in their June 2008 "Report to the Congress," MedPAC found that hospice care is more costly at the beginning and end of an episode of hospice care, because of the intensity of services provided during those times. Hospices provide more visits to a patient right after a patient elects hospice and in the time shortly before death, than they provide during the middle of the episode. In its November 6, 2008 public meeting, MedPAC suggested that payments to hospices should decline as the beneficiary's length of stay increases, thus better reflecting intensity and frequency of the hospice services provided over the course of treatment. MedPAC also suggested that payment to hospices should increase during the period just prior to the patient's death to reflect the higher resource usage during this time [see, *http://www.medpac.gov/transcripts/20081104_Hospice_final_public.pdf* and *http://www.medpac.gov/transcripts/1106-1107MedPAC%20final.pdf.*]. MedPAC believes this payment structure would better reflect hospice patient resource usage and hospice costs, and would encourage hospices to admit patients at the time in their illness which provides the most benefit to the patient.

We are soliciting comments regarding MedPAC's suggestions on reforming the hospice payment system, as well as broader comments and suggestions regarding hospice payment reform. We note that MedPAC's suggested payment reforms would require Congressional action to change the statute.

## IV. Update on Additional Hospice Data Collection

Over the past several years MedPAC, the GAO, and the Office of the Inspector General have all recommended that CMS collect more comprehensive data in order to better evaluate trends in utilization of the Medicare hospice benefit. We have been phasing in this process to collect more comprehensive data on hospice claims. We also began collecting additional data on hospice claims beginning in January 2007 through an administrative instruction (CR 5245, Transmittal 1011, issued July 28, 2006), when we started required reporting of a HCPCS code on the claim to describe the location where services were provided (Phase 1). In addition, we issued an administrative instruction (CR 5567, Transmittal 1494, issued April 29, 2008) requiring Medicare hospices to provide detail on their claims about the number of physician, nurse, aide, and social worker visits provided to beneficiaries. The start date of this mandatory CR 5567 reporting requirement was July 2008 (Phase 2).

On several occasions, industry representatives have communicated to CMS that the newly required claims information was not comprehensive enough to accurately reflect hospice care. A major concern was that CMS was not requiring reporting of the visit intensity. As a result of these concerns, we committed to working with the industry to expand the data collection requirements. In October 2008, we solicited comments via a posting on CMS' hospice center Web site (*http://www.cms.hhs.gov/center/hospice.asp*) on an approach to collecting additional data about hospice resource use. We asked about data collection using hospice claims, along with data collection using hospice cost reports. This proposed rule provides an update on the additional data collection which is in process.

Based on the feedback received from our October 2008 web posting, we have revised our plans for Phase 3 of the claims data collection. Those plans are currently being developed and will be implemented through an administrative instruction.

Phase 3 will involve collecting new data on hospice claims. In addition to the existing visit reporting requirement, we anticipate requiring visit time reporting in 15 minute increments for nurses, social workers, and aides. We anticipate requiring visit and visit time reporting in 15 minute increments from physical therapists, occupational therapists, and speech language therapists. We also anticipate requiring reporting of some social worker phone calls and their associated time, within certain limits. Specifically, we anticipate requiring the reporting of social worker calls that are necessary for the palliation and management of the

terminal illness and related conditions as described in the patient's plan of care (for example, counseling, speaking with a patient's family, or arranging for a placement). Furthermore, we anticipate that only social worker phone calls related to providing and/or coordinating care to the patient and family, and documented as such in the clinical records, would be reported. We anticipate that visit and time data collection for respite and general inpatient care provided by non-hospice staff in contract facilities would be exempt from the reporting requirement. Finally, we anticipate that travel time, documentation time, and interdisciplinary group time would not be included in the time reporting. These changes would necessitate line-item billing on hospice claims.

While other Medicare provider types (for example, home health agencies) have had to provide similar information on their claims, hospices have historically not had been required to provide this information. This additional data collection would bring the requirements for hospice claims more in line with the claim requirements of other Medicare benefits, and provide valuable information about services provided to Medicare beneficiaries.

We also note that this additional data collection uses existing revenue codes and existing UB–04 and 837I claim forms. Those claims forms were previously approved by the OMB under control number #0938–0997.

As stated above, these changes will be forthcoming through an administrative instruction, and are not to be considered as proposals in this rule; that instruction will be issued some time this spring or summer.

Additionally, we are developing plans to revise the hospice cost reports to include additional sources of revenue, and to gather more detailed data on services provided by volunteers, by chaplains, by counselors, and by pharmacists. We will continue to work with the industry to seek out the best approach to these and any other changes we may make in order to collect useful information on hospice services.

## V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on the issue for the following section of this document that contains information collection requirements.

*Section 418.22 Certification of terminal illness.*

Section 418.22 requires the physician to include on or with the certification a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less.

The burden associated with this requirement is the time and effort put forth by the physician to include a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less. We estimate it would take a physician 5 minutes to meet this requirement. We also estimate that a narrative would be provided on 1,534,388 certifications or recertifications annually. Therefore, the total annual burden associated with this requirement is 127,866 hours. The current requirements for § 418.22 are approved under OMB# 0938–0302 with an expiration date of 8/31/2009. We will revise the currently approved PRA package to reflect any changes in burden.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer,
*Fax:* (202) 395–7245; or
*E-mail:*
*OIRA_submission@omb.eop.gov.*

## VI. Regulatory Impact Analysis

### *A. Overall Impact*

We have examined the impacts 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), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)). We estimated the impact on hospices, as a result of the changes to the proposed FY 2010 hospice wage index and of reducing the BNAF by 75 percent.

As discussed previously, the methodology for computing the hospice wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 hospice wage index final rule (62 FR 42860). The BNAF, which was implemented in the August 8, 1997 rule, is being phased out. This rule proposes updates to the hospice wage index in accordance with the August 8, 2008 FY 2009 Hospice Wage Index final rule (73 FR 46464), which originally implemented a 75 percent reduced BNAF for FY 2010 as the second year of a 3-year phase-out of the BNAF.

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). We have determined that this proposed rule is an economically significant rule under this Executive Order.

Column 4 of Table 1 shows the combined effects of the 75 percent reduction in the BNAF and of the updated wage data, comparing estimated payments for FY 2010 to estimated payments for FY 2009. In keeping with the American Recovery and Reinvestment Act (ARRA) mentioned earlier in this proposed rule, the FY 2009 payments used for comparison have a full (unreduced) BNAF applied. We estimate that the total hospice payments for FY 2010 will decrease by $340 million as a result of the application of the 75 percent reduction in the BNAF and the updated wage data. This estimate does not take into account any hospital market basket update, which is currently estimated to be about 2.1 percent for FY 2010. The final hospital market basket update will not be available until sometime later this year and will be communicated through an administrative instruction. The effect of an estimated 2.1 percent hospital market basket update on payments to hospices is approximately

$240 million. Taking into account an estimated 2.1 percent hospital market basket update, in addition to the 75 percent reduction in the BNAF and the updated wage data, it is estimated that hospice payments would decrease by $100 million in FY 2010 ($340 million − $240 million = $100 million). The percent change in payments to hospices due to the combined effects of the 75 percent reduction in the BNAF, the updated wage data, and the estimated hospital market basket update of 2.1 percent is reflected in column 5 of the impact table (Table 1).

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The majority of hospices and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7 million to $34.5 million in any 1 year (for details, see *http://www.sba.gov/contractingopportunities/officials/size/index.html*). While the Small Business Administration (SBA) does not define a size threshold in terms of annual revenues for hospices, they do define one for home health agencies ($13.5 million; see *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*). For the purposes of this proposed rule, because the hospice benefit is a home-based benefit, we are applying the SBA definition of "small" for home health agencies to hospices; we will use this definition of "small" in determining if this proposed rule has a significant impact on a substantial number of small entities (for example, hospices). Using 2007 claims data, we estimate that 96 percent of hospices have revenues below $13.5 million.

As indicated in Table 1 below, there are 3,206 hospices as of January 29, 2009. Approximately 49.8 percent of Medicare certified hospices are identified as voluntary or government agencies and, therefore, are considered small entities. Most of these and most of the remainder are also small hospice entities because, as noted above, their revenues fall below the SBA size thresholds.

We note that the hospice wage index methodology was previously guided by consensus, through a negotiated rulemaking committee that included representatives of national hospice associations, rural, urban, large and small hospices, multi-site hospices, and consumer groups. Based on all of the options considered, the committee agreed on the methodology described in the committee statement, and after notice and comment, it was adopted into regulation in the August 8, 1997 final rule. In developing the process for updating the hospice wage index in the 1997 final rule, we considered the impact of this methodology on small hospice entities and attempted to mitigate any potential negative effects. Small hospice entities are more likely to be in rural areas, which are less affected by the BNAF reduction than entities in urban areas. Generally, hospices in rural areas are protected by the hospice floor adjustment, which mitigates the effect of the BNAF reduction.

The effects of this rule on hospices are shown in Table 1. Overall, Medicare payments to all hospices will decrease by an estimated 3.2 percent, reflecting the combined effects of the 75 percent reduction in the BNAF and the updated wage data. However, when we consider the combined effects of the 75 percent reduction to the BNAF and the updated wage data on small or medium sized hospices, as defined by routine home care days rather than by the SBA definition, the effect is –2.9 percent. Furthermore, when including the estimated hospital market basket update of 2.1 percent into these estimates, the combined effects on Medicare payment to all hospices would result in an estimated decrease of approximately 1.1 percent. For small to medium hospices (as defined by routine home care days), the effects on revenue when accounting for the updated wage data, the 75 percent BNAF reduction, and the estimated hospital market basket update are –0.8 percent and –0.9 percent, respectively. Overall average hospice revenue effects will be slightly less than these estimates since according the National Hospice and Palliative Care Organization, about 16 percent of hospice patients are non-Medicare. HHS practice in interpreting the RFA is to consider effects economically "significant" only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. As noted above, the combined effect of only the updated wage data and the 75 percent reduced BNAF for all hospices (large and small) is 3.2 percent. Since, by SBA's definition of "small" (when applied to hospices), nearly all hospices are considered to be small entities, the combined effect of only the updated wage data and the 75 percent reduced BNAF (3.2 percent) exceeds HHS' 3.0 percent minimum threshold. However, HHS' practice in determining "significant economic impact" has considered either *total* revenue or *total* costs. Total hospice revenues include the effect of the market basket update. When we consider the combined effect of the updated wage data, the 75 percent BNAF reduction, and the estimated 2.1 percent 2009 market basket update, the overall impact is a decrease in hospice payments of 1.1 percent for FY 2010. Therefore, the Secretary has determined that this proposed rule does not create a significant economic impact on a substantial number of small entities.

In the August 8, 2008 FY 2009 Hospice Wage Index final rule, we implemented a 3-year phase-out of the BNAF. The BNAF was to be reduced by 25 percent in FY 2009, by an additional 50 percent for a total of 75 percent in FY 2010, and by a final 25 percent, for complete elimination in FY 2011. This phased approach to eliminating the BNAF was estimated to reduce payments by 1.1 percent in FY 2009, an additional 2 percent in FY 2010, and an additional 1 percent in FY 2011. As originally implemented, the phase out of the BNAF would not have a significant economic impact on small entities because in any of the 3 fiscal years, the estimated reduction in payments was less than 3 percent. However, on February 17, 2009, ARRA eliminated the phase-out for FY 2009, but left intact the BNAF reductions implemented in the August 8, 2008 FY 2009 Hospice Wage Index final rule for FY 2010 and FY 2011. While we are still using a phased approach to eliminating the BNAF, the phase-out is now occurring over 2 years rather than over 3 years. There is a greater impact on hospices in FY 2010 since hospices move from having a full (unreduced) BNAF in FY 2009 to a 75 percent reduced BNAF in FY 2010.

The hospice floor calculation gives some relief to hospices with pre-floor, pre-reclassified wage index values less than 0.8. Hospices which are eligible for the hospice floor calculation will either be totally unaffected by the BNAF phase-out, or will be less affected by the phase-out. As noted in section II.A.4 of this proposed rule, there are just over 100 hospices that will be totally unaffected by the BNAF phase-out and just over 300 hospices which will be less affected by the BNAF phase-out, due to the hospice floor calculation.

Hospices do not need to take any action for the BNAF phase-out to be effective. The FY 2010 wage index includes the 75 percent reduced BNAF, and that wage index is applied to hospice payments automatically by the claims processing contractors, thereby relieving hospices of the responsibility of having to implement the change.

We are taking a number of actions to provide information to hospices to help them prepare for the BNAF phase-out. First, this phase-out was originally

implemented in the August 8, 2008 FY 2009 Hospice Wage Index final rule. With the passage of ARRA, hospices have been given additional time to prepare for the FY 2010 BNAF reduction, and the ultimate elimination of the BNAF in FY 2011. Second, we continue to publicize information about the BNAF phase-out on our hospice Web site. The hospice center page at *http://www.cms.hhs.gov/center/hospice.asp* provides information about the BNAF phase-out and links to related documents. Third, we are publicizing the information about the BNAF phase-out through other avenues (for example, through Open Door Forums). All of these efforts should provide information to hospices to help them prepare for the BNAF phase-out.

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 603 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 a metropolitan statistical area and has fewer than 100 beds. Therefore, the Secretary has determined that this proposed 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 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of about $100 million or more in 1995 dollars, updated for inflation. That threshold is currently approximately $133 million in 2009. This proposed rule is not anticipated to have an effect on State, local, or tribal governments or on the private sector of $133 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have an impact on the rights, roles, and responsibilities of State, local, or tribal governments.

*B. Anticipated Effects*

This section discusses the impact of the projected effects of the proposed hospice wage index, including the effects of an estimated 2.1 percent hospital market basket update that will be communicated separately through an administrative instruction. The proposed provisions include continuing to use the CBSA-based pre-floor, pre-reclassified hospital wage index as a basis for the hospice wage index and continuing to use the same policies for treatment of areas (rural and urban) without hospital wage data. In FY 2010, we are continuing with the 75 percent reduction of the BNAF which, in the August 8, 2008 FY 2009 Hospice Wage Index final rule (73 FR 46464), was originally implemented as the second year of a 3-year phase-out of the BNAF. The proposed FY 2010 hospice wage index is based upon the 2009 pre-floor, pre-reclassified hospital wage index and the most complete claims data available (FY 2007) with a 75 percent reduction in the BNAF.

For the purposes of our impacts, our baseline is estimated FY 2009 payments (without any BNAF reduction) using the 2008 pre-floor, pre-reclassified hospital wage index. Our first comparison (column 3, Table 1) compares our baseline to estimated FY 2010 payments (holding payment rates constant) using the updated wage data (2009 pre-floor, pre-reclassified hospital wage index). Consequently, the estimated effects illustrated in column 3 of Table 1 show the distributional effects of the updated wage data only. The effects of using the updated pre-floor, pre-reclassified hospital wage index data combined with the 75 percent reduction in the BNAF are illustrated in column 4 of Table 1.

We have included a comparison of the combined effects of the 75 percent BNAF reduction, the updated pre-floor, pre-reclassified hospital wage index, and an estimated 2.1 percent hospital market basket increase for FY 2010 (Table 1, column 5). Presenting these data gives the hospice industry a more complete picture of the effects on their total revenue of the proposed hospice wage index discussed in this rule, the BNAF phase-out, and the estimated FY 2010 hospital market basket update. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

TABLE 1—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS OF UPDATING THE PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, REDUCING THE BNAF BY 75 PERCENT AND APPLYING AN ESTIMATED 2.1 PERCENT HOSPITAL MARKET BASKET UPDATE FOR THE FY 2010 PROPOSED HOSPICE WAGE INDEX, COMPARED TO THE FY 2009 HOSPICE WAGE INDEX WITH NO BNAF REDUCTION

| | Number of hospices * (1) | Number of routine home care days in thousands (2) | Percent change in hospice payments due to FY 2010 wage index change (3) | Percent change in hospice payments due to wage index change and 75% reduction in BNAF (4) | Percent change in hospice payments due to wage index change, 75% reduction in BNAF and estimated hospital market basket update (5) |
|---|---|---|---|---|---|
| ALL HOSPICES | 3,206 | 67,763 | (0.0) | (3.2) | (1.1) |
| URBAN HOSPICES | 2,184 | 58,428 | (0.1) | (3.3) | (1.2) |
| RURAL HOSPICES | 1,022 | 9,336 | 0.1 | (2.3) | (0.3) |
| BY REGION—URBAN: | | | | | |

TABLE 1—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS OF UPDATING THE PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, REDUCING THE BNAF BY 75 PERCENT AND APPLYING AN ESTIMATED 2.1 PERCENT HOSPITAL MARKET BASKET UPDATE FOR THE FY 2010 PROPOSED HOSPICE WAGE INDEX, COMPARED TO THE FY 2009 HOSPICE WAGE INDEX WITH NO BNAF REDUCTION—Continued

| | Number of hospices* (1) | Number of routine home care days in thousands (2) | Percent change in hospice payments due to FY 2010 wage index change (3) | Percent change in hospice payments due to wage index change and 75% reduction in BNAF (4) | Percent change in hospice payments due to wage index change, 75% reduction in BNAF and estimated hospital market basket update (5) |
|---|---|---|---|---|---|
| NEW ENGLAND | 121 | 2,092 | 0.0 | (3.4) | (1.4) |
| MIDDLE ATLANTIC | 209 | 5,971 | (0.1) | (3.4) | (1.4) |
| SOUTH ATLANTIC | 314 | 12,988 | (0.8) | (4.0) | (1.9) |
| EAST NORTH CENTRAL | 307 | 8,318 | (0.5) | (3.7) | (1.7) |
| EAST SOUTH CENTRAL | 171 | 4,512 | (0.0) | (2.9) | (0.9) |
| WEST NORTH CENTRAL | 169 | 3,860 | 0.4 | (2.9) | (0.8) |
| WEST SOUTH CENTRAL | 410 | 7,949 | 0.0 | (3.1) | (1.1) |
| MOUNTAIN | 203 | 5,065 | 0.1 | (3.2) | (1.2) |
| PACIFIC | 245 | 6,702 | 1.6 | (2.0) | 0.1 |
| OUTLYING** | 35 | 972 | (1.2) | (1.2) | 0.9 |
| BY REGION—RURAL: | | | | | |
| NEW ENGLAND | 26 | 175 | 0.6 | (2.7) | (0.7) |
| MIDDLE ATLANTIC | 44 | 462 | (0.4) | (3.5) | (1.5) |
| SOUTH ATLANTIC | 128 | 1,915 | (0.1) | (2.7) | (0.7) |
| EAST NORTH CENTRAL | 145 | 1,354 | (0.6) | (3.8) | (1.8) |
| EAST SOUTH CENTRAL | 152 | 2,051 | (0.1) | (1.3) | 0.8 |
| WEST NORTH CENTRAL | 192 | 965 | 0.7 | (2.4) | (0.4) |
| WEST SOUTH CENTRAL | 176 | 1,406 | 0.9 | (0.9) | 1.2 |
| MOUNTAIN | 106 | 601 | (0.4) | (3.2) | (1.2) |
| PACIFIC | 52 | 397 | 1.7 | (1.7) | 0.3 |
| OUTLYING | 1 | 9 | 0.0 | 0.0 | 2.1 |
| ROUTINE HOME CARE DAYS: | | | | | |
| 0–3499 DAYS (small) | 663 | 1,103 | 0.1 | (2.9) | (0.8) |
| 3500–19,999 DAYS (medium) | 1,537 | 15,311 | 0.1 | (2.9) | (0.9) |
| 20,000+ DAYS (large) | 1,006 | 51,350 | (0.1) | (3.2) | (1.2) |
| TYPE OF OWNERSHIP:† | | | | | |
| VOLUNTARY (Non-Profit) | 1,187 | 29,043 | (0.1) | (3.3) | (1.3) |
| PROPRIETARY (For Profit) | 1,608 | 33,275 | 0.1 | (3.0) | (1.0) |
| GOVERNMENT | 411 | 5,446 | (0.1) | (3.3) | (1.3) |
| HOSPICE BASE: | | | | | |
| FREESTANDING | 2,028 | 51,413 | (0.1) | (3.2) | (1.2) |
| HOME HEALTH AGENCY | 601 | 9,509 | 0.2 | (3.1) | (1.1) |
| HOSPITAL | 561 | 6,627 | 0.2 | (3.0) | (0.9) |
| SKILLED NURSING FACILITY | 16 | 214 | (0.1) | (3.5) | (1.5) |

BNAF = Budget Neutrality Adjustment Factor.
* As of January 29, 2009; Source: OSCAR database.
** Guam, Puerto Rico, Virgin Islands.
† In previous years, there was also a category labeled "Other"; these were Other Government hospices, and have been combined with the "Government" category.
Note: Comparison is to FY 2009 estimated payments from the August 8, 2008 FY 2009 Hospice Wage Index final rule (73 FR 46464), but with no BNAF reduction.

Table 1 shows the results of our analysis. In column 1, we indicate the number of hospices included in our analysis as of January 29, 2009. In column 2, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Columns 3, 4, and 5 compare FY 2010 estimated payments with those estimated for FY 2009. The estimated FY 2009 payments incorporate a BNAF which has not been reduced. Column 3 shows the percentage change in estimated Medicare payments from FY 2009 to FY 2010 due to the effects of the updated wage data only, with estimated FY 2009 payments. Column 4 shows the percentage change in estimated hospice payments from FY 2009 to FY 2010 due to the combined effects of using the 2009 pre-floor, pre-reclassified hospital wage index and reducing the BNAF by 75 percent. Column 5 shows the percentage change in estimated hospice payments from FY 2009 to FY 2010 due to the combined effects of using updated wage data, a 75 percent BNAF

reduction, and a 2.1 percent estimated hospital market basket update.

Table 1 also categorizes hospices by various geographic and hospice characteristics. The first row of data displays the aggregate result of the impact for all Medicare-certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 2,184 hospices located in urban areas and 1,022 hospices located in rural areas. The next two row groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The next grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in FY 2007. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

As indicated in Table 1, there are 3,206 hospices. Approximately 49.8 percent of Medicare-certified hospices are identified as voluntary (non-profit) or government agencies. Because the National Hospice and Palliative Care Organization estimates that approximately 83.6 percent of hospice patients in 2007 were Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As stated previously, the following discussions are limited to demonstrating trends rather than projected dollars. We used the pre-floor, pre-reclassified hospital wage indexes as well as the most complete claims data available (FY 2007) in developing the impact analysis. The FY 2010 payment rates will be adjusted to reflect the full hospital market basket, as required by section 1814(i)(1)(C)(ii)(VII) of the Act. As previously noted, we publish these rates through administrative instructions rather than in a proposed rule. Currently the FY 2010 hospital market basket update is estimated to be 2.1 percent; however this figure is subject to change. Since the inclusion of the effect of an estimated hospital market basket increase provides a more complete picture of projected total hospice payments for FY 2010, the last column of Table 1 shows the combined impacts of the updated wage index, the 75 percent BNAF reduction, and an estimated 2.1 percent hospital market basket update factor.

As discussed in the FY 2006 hospice wage index final rule (70 FR 45129), hospice agencies may use multiple hospice wage index values to compute their payments based on potentially different geographic locations. Before January 1, 2008, the location of the beneficiary was used to determine the CBSA for routine and continuous home care and the location of the hospice agency was used to determine the CBSA for respite and general inpatient care. Beginning January 1, 2008, the hospice wage index utilized is based on the location of the site of service. As the location of the beneficiary's home and the location of the facility may vary, there will still be variability in geographic location for an individual hospice. We anticipate that the location of the various sites will usually correspond with the geographic location of the hospice, and thus we will continue to use the location of the hospice for our analyses of the impact of the proposed changes to the hospice wage index in this rule. For this analysis, we use payments to the hospice in the aggregate based on the location of the hospice.

The impact of hospice wage index changes has been analyzed according to the type of hospice, geographic location, type of ownership, hospice base, and size. Our analysis shows that most hospices are in urban areas and provide the vast majority of routine home care days. Most hospices are medium-sized followed by large hospices. Hospices are almost equal in numbers by ownership with 1,598 designated as non-profit and 1,608 as proprietary. The vast majority of hospices are freestanding.

1. Hospice Size

Under the Medicare hospice benefit, hospices can provide four different levels of care days. The majority of the days provided by a hospice are routine home care (RHC) days, representing about 97 percent of the services provided by a hospice. Therefore, the number of RHC days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. As discussed in the August 4, 2005 final rule, we currently use three size designations to present the impact analyses. The three categories are: (1) Small agencies having 0 to 3,499 RHC days; (2) medium agencies having 3,500 to 19,999 RHC days; and (3) large agencies having 20,000 or more RHC days. The updated FY 2010 wage index values without any BNAF reduction are anticipated to increase payments to small and medium hospices by 0.1 percent, and to decrease payments to large hospices by 0.1 percent (column 3); the FY 2010 wage index values using the updated wage data and the 75 percent BNAF reduction that was finalized in the FY 2009 final rule, published August 2008 (73 FR 46464), are anticipated to decrease estimated payments to small and to medium hospices by 2.9 percent each, and to large hospices by 3.2 percent (column 4); and finally, the FY 2010 wage index values with the updated wage data, the 75 percent BNAF reduction which was finalized in the FY 2009 final rule, published in August 2008 (73 FR 46464), and the estimated 2.1 percent hospital market basket update are projected to decrease estimated payments by 0.8 percent for small hospices, by 0.9 percent for medium hospices, and to decrease estimated payments by 1.2 percent for large hospices (column 5).

2. Geographic Location

Column 3 of Table 1 shows that FY 2010 wage index values without the BNAF reduction would result in little change in estimated payments. Urban hospices are anticipated to experience a slight decrease of 0.1 percent while rural hospices are anticipated to have a slight increase of 0.1 percent. For urban hospices, the greatest increase of 1.6 percent is anticipated to be experienced by the Pacific regions, followed by an increase for West North Central regions of 0.4 percent, an increase for Mountain regions of 0.1 percent, and no change for the West South Central or New England regions. The remaining urban regions are anticipated to experience a decrease ranging from 0.1 percent in the Middle Atlantic region to a 1.2 percent decrease for Outlying regions. East South Central is anticipated to see a slight decrease which rounds to a 0.0 percent change.

Column 3 shows that for rural hospices, Outlying regions are anticipated to experience no change. Five regions are anticipated to experience a decrease ranging from 0.1 percent for the South Atlantic and East South Central regions to 0.6 percent for the East North Central region. The remaining regions are anticipated to experience an increase ranging from 0.6 percent for the New England region to 1.7 percent for the Pacific region.

Column 4 shows the combined effect of the 75 percent BNAF reduction and the updated pre-floor, pre-reclassified hospital wage index values on estimated payments, as compared to the FY 2009 estimated payments using a BNAF with no reduction. Overall urban hospices are anticipated to experience a 3.3 percent decrease in payments, while

rural hospices expect a 2.3 percent decrease. The estimated percent decrease in payment for urban hospices ranged from 1.2 percent for Outlying hospices to 4.0 percent for South Atlantic hospices.

The estimated percent decrease in payment for rural hospices ranged from 0.9 percent for West South Central hospices to 3.8 percent for East North Central hospices. Rural Outlying estimated payments were unaffected.

Column 5 shows the combined effects of the proposed FY 2010 wage index values with the updated wage data, the 75 percent BNAF reduction which was finalized in the FY 2009 final rule, published in August 2008 (73 FR 46464), and the estimated 2.1 percent hospital market basket update on estimated payments as compared to the estimated FY 2009 payments. Note that the FY 2009 payments had no BNAF reduction applied to them. Overall, urban hospices are anticipated to experience a 1.2 percent decrease in payments while rural hospices should experience a 0.3 percent decrease in payments. Urban hospices are anticipated to experience a decrease in estimated payments in 8 regions, ranging from a 0.8 percent decrease for the West North Central region to a 1.9 percent decrease for South Atlantic hospices. Urban hospices in 2 regions are anticipated to see an increase in estimated payments of 0.1 percent for the Pacific region and 0.9 percent for Outlying regions. Rural hospices in 6 regions are estimated to see a decrease in payments ranging from 0.4 percent for the West North Central region to 1.8 percent for the East North Central region. Rural hospices in 4 regions are anticipated to see an increase in payments ranging from 0.3 percent for the Pacific region to 2.1 percent for the Outlying regions.

3. Type of Ownership

Column 3 demonstrates the effect of the updated pre-floor, pre-reclassified hospital wage index on FY 2010 estimated payments versus FY 2009 estimated payments with no BNAF reduction applied to them. We anticipate that using the updated pre-floor, pre-reclassified hospital wage index data would increase estimated payments to proprietary (for-profit) hospices by 0.1 percent. We estimate a slight decrease in payments for voluntary (non-profit) and government hospices of 0.1 percent each.

Column 4 demonstrates the combined effects of using updated pre-floor, pre-reclassified hospital wage index data and of incorporating a 75 percent BNAF reduction. Estimated payments to proprietary (for-profit) hospices are anticipated to decrease by 3.0 percent, while voluntary (non-profit) and government hospices are each anticipated to experience decreases of 3.3 percent.

Column 5 shows the combined effects of the updated pre-floor, pre-reclassified hospital wage index values with the updated wage data, the 75 percent BNAF reduction, and the estimated 2.1 percent hospital market basket update on estimated payments, comparing FY 2010 to FY 2009 (using a BNAF with no reduction). Estimated FY 2010 payments are anticipated to decrease by 1.0 percent for proprietary (for-profit) hospices, and by 1.3 percent for both voluntary (non-profit) and government hospices.

4. Hospice Base

Column 3 demonstrates the effect of using the updated pre-floor, pre-reclassified hospital wage index values, comparing estimated payments for FY 2010 to FY 2009 (using a BNAF with no reduction). Estimated payments are anticipated to decrease by 0.1 percent each for freestanding facilities and for hospices based out of skilled nursing facilities. Home health and hospital based facilities are anticipated to experience a 0.2 percent increase in estimated payments.

Column 4 shows the combined effects of updating the pre-floor, pre-reclassified hospital wage index values and reducing the BNAF by 75 percent (as finalized in the FY 2009 final rule, published August 2008, 73 FR 46464), comparing FY 2010 to FY 2009 (using a BNAF with no reduction) estimated payments. Skilled nursing facility based hospices are estimated to see a 3.5 percent decrease, freestanding hospices are estimated to see a 3.2 percent decrease, home health agency based hospices are anticipated to experience a 3.1 percent decrease in payments, and hospital-based hospices are anticipated to experience a 3.0 percent decrease in payments.

Column 5 shows the combined effects of the updated pre-floor, pre-reclassified hospital wage index, the 75 percent BNAF reduction which was finalized in FY 2009 hospice wage index final rule (73 FR 46464), and the estimated 2.1 percent hospital market basket update on estimated payments, comparing FY 2010 to FY 2009 (using a BNAF with no reduction). Estimated payments are anticipated to decrease by 0.9 percent for hospital based hospices, by 1.1 percent for home health agency based hospices, and by 1.2 percent and by 1.5 percent for freestanding hospices and skilled nursing facility based hospices, respectively.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the proposed provisions of this rule. This table provides our best estimate of the decrease in Medicare payments under the hospice benefit as a result of the changes presented in this proposed rule on data for 3,206 hospices in our database. All expenditures are classified as transfers to Medicare providers (that is, hospices).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2009 TO FY 2010

[In millions]

| Category | Transfers |
|---|---|
| Annualized Monetized Transfers. | $ −340. |
| From Whom to Whom | Federal Government to Hospices. |

**Note:** The $340 million reduction in transfers includes the 75 percent reduction in the BNAF and the updated wage data. It does not include the estimated hospital market basket update, which is currently forecast to be about 2.1 percent.

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 405*

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 418*

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare and Medicare Services propose to amend 42 CFR chapter IV as set forth below:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405 subpart R continues to read as follows:

**Authority:** Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878, and 1886 of the Social Security Act (42 U.S.C. 405, 1302, 1395f(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo, and 1395ww).

### Subpart R—Provider Reimbursement Determinations and Appeals

2. Section 405.1803 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

**§ 405.1803 Intermediary determination and notice of amount of program reimbursement.**

(a) *General requirement.* Upon receipt of a provider's cost report, or amended cost report where permitted or required, the intermediary must within a reasonable period of time (as described in § 405.1835(a)(3)(ii)), furnish the provider and other parties as appropriate (see § 405.1805) a written notice reflecting the intermediary's determination of the total amount of reimbursement due the provider. For the purposes of hospice, the intermediaries' determination of program reimbursement letter, which provides the results of the inpatient and aggregate cap calculations, shall serve as a notice of program reimbursement. The intermediary must include the following information in the notice, as appropriate:

(1) *Reasonable cost.* The notice must—(i) Explain the intermediary's determination of total program reimbursement due the provider on the basis of reasonable cost for the reporting period covered by the cost report or amended cost report, or in the case of hospice, on the basis of the cap calculations for the reporting period that is the cap year; and

(ii) Relate this determination to the provider's claimed total program reimbursement due the provider for this period.

* * * * *

## PART 418—HOSPICE CARE

3. The authority citation for part 418 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 Provision and Definitions

4. Section 418.1 is amended by revising the introductory text to read as follows:

**§ 418.1 Statutory basis.**

This part implements section 1861(dd) of the Social Security Act (the Act). Section 1861(dd) of the Act specifies services covered as hospice care and the conditions that a hospice program must meet in order to participate in the Medicare program. Section 1861(dd) also specifies limitations on coverage of, and payment for, inpatient hospice care. The following sections of the Act are also pertinent:

* * * * *

5. Section 418.2 is revised to read as follows:

**§ 418.2 Scope of part.**

Subpart A of this part sets forth the statutory basis and scope and defines terms used in this Part. Subpart B specifies the eligibility and election requirements and the benefit periods. Subparts C and D specify the conditions of participation for hospices. Subpart E is reserved for future use. Subparts F and G specify coverage and payment policy. Subpart H specifies coinsurance amounts applicable to hospice care.

### Subpart B—Eligibility, Election and Duration of Benefits

6. Section 418.22 is amended by adding a new paragraph (b)(3) to read as follows:

**§ 418.22 Certification of terminal illness.**

* * * * *

(b) * * *

(3) The physician must include on the certification a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less.

* * * * *

### Subpart C—Conditions of Participation: Patient Care

7. Section 418.76 is amended by revising paragraph (f)(1) to read as follows:

**§ 418.76 Condition of participation: Hospice aide and homemaker services.**

* * * * *

(f) * * *

(1) Had been out of compliance with the requirements of § 484.36(a) and § 484.36(b) of this chapter.

* * * * *

### Subpart D—Conditions of Participation: Organizational Environment

8. Section 418.100 is amended by revising paragraph (f)(1)(iii) to read as follows:

**§ 418.100 Condition of participation: Organization and administration of service.**

* * * * *

(f) * * *

(1) * * *

(iii) The lines of authority and professional and administrative control must be clearly delineated in the hospice's organizational structure and in practice, and must be traced to the location that issued the certification number.

* * * * *

**§ 418.108 [Amended]**

9. In paragraph (b)(1)(ii), the cross reference to "§ 418.110(f)" is revised to read "§ 418.110(e)."

### Subpart F—Covered Services

10. Section 418.200 is revised to read as follows:

**§ 418.200 Requirements for coverage.**

To be covered, hospice services must meet the following requirements. They must be reasonable and necessary for the palliation and management of the terminal illness as well as related conditions. The individual must elect hospice care in accordance with § 418.24. A plan of care must be established and periodically reviewed by the attending physician, the medical director, and the interdisciplinary group of the hospice program. That plan of care must be established before hospice care is provided. The services provided must be consistent with the plan of care. A certification that the individual is terminally ill must be completed as set forth in section § 418.22.

11. Section § 418.202 is amended by revising paragraphs (f) and (g) to read as follows:

**§ 418.202 Covered Services.**

* * * * *

(f) Medical appliances and supplies, including drugs and biologicals. Only drugs as defined in section 1861(t) of the Act and which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered. Appliances may include covered durable medical equipment as described in § 410.38 of this chapter as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness. Equipment is provided by the hospice for use in the patient's home while he or she is under hospice care. Medical supplies include those that are part of the written plan of care and that are for palliation and management of the terminal or related conditions.

(g) Home health or hospice aide services furnished by qualified aides as designated in § 418.94 and homemaker services. Home health aides (also known

as hospice aides) may provide personal care services as defined in § 409.45(b) of this chapter. Aides may perform household services to maintain a safe and sanitary environment in areas of the home used by the patients, such as changing bed linens or light cleaning and laundering essential to the comfort and cleanliness of the patient. Aide services may include assistance in maintenance of a safe and healthy environment and services to enable the individual to carry out the treatment plan.

* * * * *

12. Section § 418.204 is amended by revising paragraph (a) to read as follows:

**§ 418.204 Special coverage requirements.**

(a) *Periods of crisis.* Nursing care may be covered on a continuous basis for as much as 24 hours a day during periods of crisis as necessary to maintain an individual at home. Either homemaker or home health aide (also known as hospice aide) services or both may be covered on a 24-hour continuous basis during periods of crisis but care during these periods must be predominantly nursing care. A period of crisis is a period in which the individual requires continuous care to achieve palliation and management of acute medical symptoms.

* * * * *

## Subpart G—Payment for Hospice Care

13. Section 418.302 is amended by revising paragraphs (b)(2) and (f)(2) to read as follows:

**§ 418.302 Payment procedures for hospice care.**

* * * * *

(b) * * *

(2) *Continuous home care day.* A continuous home care day is a day on which an individual who has elected to receive hospice care is not in an inpatient facility and receives hospice care consisting predominantly of nursing care on a continuous basis at home. Home health aide (also known as a hospice aide) or homemaker services or both may also be provided on a continuous basis. Continuous home care is only furnished during brief periods of crisis as described in § 418.204(a) and only as necessary to maintain the terminally ill patient at home.

* * * * *

(f) * * *

(2) At the end of a cap period, the intermediary calculates a limitation on payment for inpatient care to ensure that Medicare payment is not made for days of inpatient care in excess of 20 percent of the total number of days of hospice care furnished to Medicare patients. Only inpatient days that were provided and billed as general inpatient or respite days are counted as inpatient days when computing the inpatient cap.

* * * * *

14. Section 418.311 is revised to read as follows:

**§ 418.311 Administrative appeals.**

A hospice that believes its payments have not been properly determined in accordance with these regulations may request a review from the intermediary or the Provider Reimbursement Review Board (PRRB) if the amount in controversy is at least $1,000 or $10,000, respectively. In such a case, the procedure in 42 CFR part 405, subpart R, will be followed to the extent that it is applicable. The PRRB, subject to review by the Secretary under § 405.1874 of this chapter, shall have the authority to determine the issues raised. The methods and standards for the calculation of the statutorily defined payment rates by CMS are not subject to appeal.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: March 30, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 15, 2009.

**Charles E. Johnson,**

*Acting Secretary.*

BILLING CODE 4120–01–P

**Addendum A. Proposed Hospice Wage Index for Urban Areas by CBSA - FY 2010**

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 10180 | Abilene, TX<br>Callahan County, TX<br>Jones County, TX<br>Taylor County, TX | 0.8234 |
| 10380 | Aguadilla-Isabela-San Sebastián, PR<br>Aguada Municipio, PR<br>Aguadilla Municipio, PR<br>Añasco Municipio, PR<br>Isabela Municipio, PR<br>Lares Municipio, PR<br>Moca Municipio, PR<br>Rincón Municipio, PR<br>San Sebastián Municipio, PR | 0.3909 |
| 10420 | Akron, OH<br>Portage County, OH<br>Summit County, OH | 0.9068 |
| 10500 | Albany, GA<br>Baker County, GA<br>Dougherty County, GA<br>Lee County, GA<br>Terrell County, GA<br>Worth County, GA | 0.8851 |
| 10580 | Albany-Schenectady-Troy, NY<br>Albany County, NY<br>Rensselaer County, NY<br>Saratoga County, NY<br>Schenectady County, NY<br>Schoharie County, NY | 0.8855 |
| 10740 | Albuquerque, NM<br>Bernalillo County, NM<br>Sandoval County, NM<br>Torrance County, NM<br>Valencia County, NM | 0.9366 |
| 10780 | Alexandria, LA<br>Grant Parish, LA<br>Rapides Parish, LA | 0.8268 |
| 10900 | Allentown-Bethlehem-Easton, PA-NJ<br>Warren County, NJ<br>Carbon County, PA<br>Lehigh County, PA<br>Northampton County, PA | 0.9660 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 11020 | Altoona, PA<br>Blair County, PA | 0.8666 |
| 11100 | Amarillo, TX<br>Armstrong County, TX<br>Carson County, TX<br>Potter County, TX<br>Randall County, TX | 0.9078 |
| 11180 | Ames, IA<br>Story County, IA | 0.9648 |
| 11260 | Anchorage, AK<br>Anchorage Municipality, AK<br>Matanuska-Susitna Borough, AK | 1.2133 |
| 11300 | Anderson, IN<br>Madison County, IN | 0.8909 |
| 11340 | Anderson, SC<br>Anderson County, SC | 0.9732 |
| 11460 | Ann Arbor, MI<br>Washtenaw County, MI | 1.0622 |
| 11500 | Anniston-Oxford, AL<br>Calhoun County, AL | 0.8061 |
| 11540 | Appleton, WI<br>Calumet County, WI<br>Outagamie County, WI | 0.9600 |
| 11700 | Asheville, NC<br>Buncombe County, NC<br>Haywood County, NC<br>Henderson County, NC<br>Madison County, NC | 0.9297 |
| 12020 | Athens-Clarke County, GA<br>Clarke County, GA<br>Madison County, GA<br>Oconee County, GA<br>Oglethorpe County, GA | 0.9754 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 12060 | Atlanta-Sandy Springs-Marietta, GA<br>Barrow County, GA<br>Bartow County, GA<br>Butts County, GA<br>Carroll County, GA<br>Cherokee County, GA<br>Clayton County, GA<br>Cobb County, GA<br>Coweta County, GA<br>Dawson County, GA<br>DeKalb County, GA<br>Douglas County, GA<br>Fayette County, GA<br>Forsyth County, GA<br>Fulton County, GA<br>Gwinnett County, GA<br>Haralson County, GA<br>Heard County, GA<br>Henry County, GA<br>Jasper County, GA<br>Lamar County, GA<br>Meriwether County, GA<br>Newton County, GA<br>Paulding County, GA<br>Pickens County, GA<br>Pike County, GA<br>Rockdale County, GA<br>Spalding County, GA<br>Walton County, GA | 0.9919 |
| 12100 | Atlantic City-Hammonton, NJ<br>Atlantic County, NJ | 1.2176 |
| 12220 | Auburn-Opelika, AL<br>Lee County, AL | 0.8000 |
| 12260 | Augusta-Richmond County, GA-SC<br>Burke County, GA<br>Columbia County, GA<br>McDuffie County, GA<br>Richmond County, GA<br>Aiken County, SC<br>Edgefield County, SC | 0.9778 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 12420 | Austin-Round Rock, TX<br>Bastrop County, TX<br>Caldwell County, TX<br>Hays County, TX<br>Travis County, TX<br>Williamson County, TX | 0.9698 |
| 12540 | Bakersfield, CA<br>Kern County, CA | 1.1379 |
| 12580 | Baltimore-Towson, MD<br>Anne Arundel County, MD<br>Baltimore County, MD<br>Carroll County, MD<br>Harford County, MD<br>Howard County, MD<br>Queen Anne's County, MD<br>Baltimore City, MD | 1.0226 |
| 12620 | Bangor, ME<br>Penobscot County, ME | 1.0347 |
| 12700 | Barnstable Town, MA<br>Barnstable County, MA | 1.2857 |
| 12940 | Baton Rouge, LA<br>Ascension Parish, LA<br>East Baton Rouge Parish, LA<br>East Feliciana Parish, LA<br>Iberville Parish, LA<br>Livingston Parish, LA<br>Pointe Coupee Parish, LA<br>St. Helena Parish, LA<br>West Baton Rouge Parish, LA<br>West Feliciana Parish, LA | 0.8301 |
| 12980 | Battle Creek, MI<br>Calhoun County, MI | 1.0292 |
| 13020 | Bay City, MI<br>Bay County, MI | 0.9405 |
| 13140 | Beaumont-Port Arthur, TX<br>Hardin County, TX<br>Jefferson County, TX<br>Orange County, TX | 0.8623 |
| 13380 | Bellingham, WA<br>Whatcom County, WA | 1.1837 |
| 13460 | Bend, OR<br>Deschutes County, OR | 1.1568 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 13644 | Bethesda-Frederick-Gaithersburg, MD<br>Frederick County, MD<br>Montgomery County, MD | 1.0727 |
| 13740 | Billings, MT<br>Carbon County, MT<br>Yellowstone County, MT | 0.8954 |
| 13780 | Binghamton, NY<br>Broome County, NY<br>Tioga County, NY | 0.8719 |
| 13820 | Birmingham-Hoover, AL<br>Bibb County, AL<br>Blount County, AL<br>Chilton County, AL<br>Jefferson County, AL<br>St. Clair County, AL<br>Shelby County, AL<br>Walker County, AL | 0.8941 |
| 13900 | Bismarck, ND<br>Burleigh County, ND<br>Morton County, ND | 0.8000 |
| 13980 | Blacksburg-Christiansburg-Radford, VA<br>Giles County, VA<br>Montgomery County, VA<br>Pulaski County, VA<br>Radford City, VA | 0.8293 |
| 14020 | Bloomington, IN<br>Greene County, IN<br>Monroe County, IN<br>Owen County, IN | 0.9131 |
| 14060 | Bloomington-Normal, IL<br>McLean County, IL | 0.9481 |
| 14260 | Boise City-Nampa, ID<br>Ada County, ID<br>Boise County, ID<br>Canyon County, ID<br>Gem County, ID<br>Owyhee County, ID | 0.9425 |
| 14484 | Boston-Quincy, MA<br>Norfolk County, MA<br>Plymouth County, MA<br>Suffolk County, MA | 1.2099 |
| 14500 | Boulder, CO<br>Boulder County, CO | 1.0477 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 14540 | Bowling Green, KY<br>Edmonson County, KY<br>Warren County, KY | 0.8530 |
| 14600 | Bradenton-Sarasota-Venice, FL<br>Manatee County, FL<br>Sarasota County, FL | 1.0068 |
| 14740 | Bremerton-Silverdale, WA<br>Kitsap County, WA | 1.0953 |
| 14860 | Bridgeport-Stamford-Norwalk, CT<br>Fairfield County, CT | 1.3086 |
| 15180 | Brownsville-Harlingen, TX<br>Cameron County, TX | 0.9067 |
| 15260 | Brunswick, GA<br>Brantley County, GA<br>Glynn County, GA<br>McIntosh County, GA | 0.9729 |
| 15380 | Buffalo-Niagara Falls, NY<br>Erie County, NY<br>Niagara County, NY | 0.9699 |
| 15500 | Burlington, NC<br>Alamance County, NC | 0.8884 |
| 15540 | Burlington-South Burlington, VT<br>Chittenden County, VT<br>Franklin County, VT<br>Grand Isle County, VT | 0.9411 |
| 15764 | Cambridge-Newton-Framingham, MA<br>Middlesex County, MA | 1.1274 |
| 15804 | Camden, NJ<br>Burlington County, NJ<br>Camden County, NJ<br>Gloucester County, NJ | 1.0521 |
| 15940 | Canton-Massillon, OH<br>Carroll County, OH<br>Stark County, OH | 0.8991 |
| 15980 | Cape Coral-Fort Myers, FL<br>Lee County, FL | 0.9555 |
| 16180 | Carson City, NV<br>Carson City, NV | 1.0300 |
| 16220 | Casper, WY<br>Natrona County, WY | 0.9741 |
| 16300 | Cedar Rapids, IA<br>Benton County, IA<br>Jones County, IA<br>Linn County, IA | 0.9070 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 16580 | Champaign-Urbana, IL<br>Champaign County, IL<br>Ford County, IL<br>Piatt County, IL | 0.9621 |
| 16620 | Charleston, WV<br>Boone County, WV<br>Clay County, WV<br>Kanawha County, WV<br>Lincoln County, WV<br>Putnam County, WV | 0.8415 |
| 16700 | Charleston-North Charleston-Summerville, SC<br>Berkeley County, SC<br>Charleston County, SC<br>Dorchester County, SC | 0.9365 |
| 16740 | Charlotte-Gastonia-Concord, NC-SC<br>Anson County, NC<br>Cabarrus County, NC<br>Gaston County, NC<br>Mecklenburg County, NC<br>Union County, NC<br>York County, SC | 0.9758 |
| 16820 | Charlottesville, VA<br>Albemarle County, VA<br>Fluvanna County, VA<br>Greene County, VA<br>Nelson County, VA<br>Charlottesville City, VA | 0.9982 |
| 16860 | Chattanooga, TN-GA<br>Catoosa County, GA<br>Dade County, GA<br>Walker County, GA<br>Hamilton County, TN<br>Marion County, TN<br>Sequatchie County, TN | 0.9029 |
| 16940 | Cheyenne, WY<br>Laramie County, WY | 0.9433 |
| 16974 | Chicago-Naperville-Joliet, IL<br>Cook County, IL<br>DeKalb County, IL<br>DuPage County, IL<br>Grundy County, IL<br>Kane County, IL<br>Kendall County, IL<br>McHenry County, IL | 1.0575 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Will County, IL | |
| 17020 | Chico, CA<br>Butte County, CA | 1.1082 |
| 17140 | Cincinnati-Middletown, OH-KY-IN<br>Dearborn County, IN<br>Franklin County, IN<br>Ohio County, IN<br>Boone County, KY<br>Bracken County, KY<br>Campbell County, KY<br>Gallatin County, KY<br>Grant County, KY<br>Kenton County, KY<br>Pendleton County, KY<br>Brown County, OH<br>Butler County, OH<br>Clermont County, OH<br>Hamilton County, OH<br>Warren County, OH | 0.9851 |
| 17300 | Clarksville, TN-KY<br>Christian County, KY<br>Trigg County, KY<br>Montgomery County, TN<br>Stewart County, TN | 0.8439 |
| 17420 | Cleveland, TN<br>Bradley County, TN<br>Polk County, TN | 0.8146 |
| 17460 | Cleveland-Elyria-Mentor, OH<br>Cuyahoga County, OH<br>Geauga County, OH<br>Lake County, OH<br>Lorain County, OH<br>Medina County, OH | 0.9398 |
| 17660 | Coeur d'Alene, ID<br>Kootenai County, ID | 0.9480 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 17780 | College Station-Bryan, TX<br>Brazos County, TX<br>Burleson County, TX<br>Robertson County, TX | 0.9505 |
| 17820 | Colorado Springs, CO<br>El Paso County, CO<br>Teller County, CO | 1.0146 |
| 17860 | Columbia, MO<br>Boone County, MO<br>Howard County, MO | 0.8685 |
| 17900 | Columbia, SC<br>Calhoun County, SC<br>Fairfield County, SC<br>Kershaw County, SC<br>Lexington County, SC<br>Richland County, SC<br>Saluda County, SC | 0.9085 |
| 17980 | Columbus, GA-AL<br>Russell County, AL<br>Chattahoochee County, GA<br>Harris County, GA<br>Marion County, GA<br>Muscogee County, GA | 0.8887 |
| 18020 | Columbus, IN<br>Bartholomew County, IN | 0.9904 |
| 18140 | Columbus, OH<br>Delaware County, OH<br>Fairfield County, OH<br>Franklin County, OH<br>Licking County, OH<br>Madison County, OH<br>Morrow County, OH<br>Pickaway County, OH<br>Union County, OH | 1.0112 |
| 18580 | Corpus Christi, TX<br>Aransas County, TX<br>Nueces County, TX<br>San Patricio County, TX | 0.8744 |
| 18700 | Corvallis, OR<br>Benton County, OR | 1.1496 |
| 19060 | Cumberland, MD-WV<br>Allegany County, MD<br>Mineral County, WV | 0.8000 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 19124 | Dallas-Plano-Irving, TX<br>Collin County, TX<br>Dallas County, TX<br>Delta County, TX<br>Denton County, TX<br>Ellis County, TX<br>Hunt County, TX<br>Kaufman County, TX<br>Rockwall County, TX | 1.0114 |
| 19140 | Dalton, GA<br>Murray County, GA<br>Whitfield County, GA | 0.8853 |
| 19180 | Danville, IL<br>Vermilion County, IL | 0.9533 |
| 19260 | Danville, VA<br>Pittsylvania County, VA<br>Danville City, VA | 0.8537 |
| 19340 | Davenport-Moline-Rock Island, IA-IL<br>Henry County, IL<br>Mercer County, IL<br>Rock Island County, IL<br>Scott County, IA | 0.8578 |
| 19380 | Dayton, OH<br>Greene County, OH<br>Miami County, OH<br>Montgomery County, OH<br>Preble County, OH | 0.9359 |
| 19460 | Decatur, AL<br>Lawrence County, AL<br>Morgan County, AL | 0.8000 |
| 19500 | Decatur, IL<br>Macon County, IL | 0.8283 |
| 19660 | Deltona-Daytona Beach-Ormond Beach, FL<br>Volusia County, FL | 0.9041 |
| 19740 | Denver-Aurora, CO<br>Adams County, CO<br>Arapahoe County, CO<br>Broomfield County, CO<br>Clear Creek County, CO<br>Denver County, CO<br>Douglas County, CO<br>Elbert County, CO<br>Gilpin County, CO<br>Jefferson County, CO | 1.1001 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Park County, CO | |
| 19780 | Des Moines-West Des Moines, IA<br>Dallas County, IA<br>Guthrie County, IA<br>Madison County, IA<br>Polk County, IA<br>Warren County, IA | 0.9697 |
| 19804 | Detroit-Livonia-Dearborn, MI<br>Wayne County, MI | 1.0127 |
| 20020 | Dothan, AL<br>Geneva County, AL<br>Henry County, AL<br>Houston County, AL | 0.8000 |
| 20100 | Dover, DE<br>Kent County, DE | 1.0500 |
| 20220 | Dubuque, IA<br>Dubuque County, IA | 0.8522 |
| 20260 | Duluth, MN-WI<br>Carlton County, MN<br>St. Louis County, MN<br>Douglas County, WI | 1.0539 |
| 20500 | Durham, NC<br>Chatham County, NC<br>Durham County, NC<br>Orange County, NC<br>Person County, NC | 0.9897 |
| 20740 | Eau Claire, WI<br>Chippewa County, WI<br>Eau Claire County, WI | 0.9832 |
| 20764 | Edison-New Brunswick, NJ<br>Middlesex County, NJ<br>Monmouth County, NJ<br>Ocean County, NJ<br>Somerset County, NJ | 1.1474 |
| 20940 | El Centro, CA<br>Imperial County, CA | 0.8894 |
| 21060 | Elizabethtown, KY<br>Hardin County, KY<br>Larue County, KY | 0.8670 |
| 21140 | Elkhart-Goshen, IN<br>Elkhart County, IN | 0.9730 |
| 21300 | Elmira, NY<br>Chemung County, NY | 0.8387 |
| 21340 | El Paso, TX | 0.8841 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | El Paso County, TX | |
| 21500 | Erie, PA<br>Erie County, PA | 0.8861 |
| 21660 | Eugene-Springfield, OR<br>Lane County, OR | 1.1249 |
| 21780 | Evansville, IN-KY<br>Gibson County, IN<br>Posey County, IN<br>Vanderburgh County, IN<br>Warrick County, IN<br>Henderson County, KY<br>Webster County, KY | 0.8837 |
| 21820 | Fairbanks, AK<br>Fairbanks North Star Borough, AK | 1.1489 |
| 21940 | Fajardo, PR<br>Ceiba Municipio, PR<br>Fajardo Municipio, PR<br>Luquillo Municipio, PR | 0.4670 |
| 22020 | Fargo, ND-MN<br>Cass County, ND<br>Clay County, MN | 0.8305 |
| 22140 | Farmington, NM<br>San Juan County, NM | 0.8188 |
| 22180 | Fayetteville, NC<br>Cumberland County, NC<br>Hoke County, NC | 0.9498 |
| 22220 | Fayetteville-Springdale-Rogers, AR-MO<br>Benton County, AR<br>Madison County, AR<br>Washington County, AR<br>McDonald County, MO | 0.9122 |
| 22380 | Flagstaff, AZ<br>Coconino County, AZ | 1.1942 |
| 22420 | Flint, MI<br>Genesee County, MI | 1.1619 |
| 22500 | Florence, SC<br>Darlington County, SC<br>Florence County, SC | 0.8268 |
| 22520 | Florence-Muscle Shoals, AL<br>Colbert County, AL<br>Lauderdale County, AL | 0.8005 |
| 22540 | Fond du Lac, WI<br>Fond du Lac County, WI | 0.9451 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 22660 | Fort Collins-Loveland, CO<br>Larimer County, CO | 1.0034 |
| 22744 | Fort Lauderdale-Pompano Beach-Deerfield Beach, FL<br>Broward County, FL | 1.0115 |
| 22900 | Fort Smith, AR-OK<br>Crawford County, AR<br>Franklin County, AR<br>Sebastian County, AR<br>Le Flore County, OK<br>Sequoyah County, OK | 0.8000 |
| 23020 | Fort Walton Beach-Crestview-Destin, FL<br>Okaloosa County, FL | 0.8918 |
| 23060 | Fort Wayne, IN<br>Allen County, IN<br>Wells County, IN<br>Whitley County, IN | 0.9332 |
| 23104 | Fort Worth-Arlington, TX<br>Johnson County, TX<br>Parker County, TX<br>Tarrant County, TX<br>Wise County, TX | 0.9874 |
| 23420 | Fresno, CA<br>Fresno County, CA | 1.1196 |
| 23460 | Gadsden, AL<br>Etowah County, AL | 0.8118 |
| 23540 | Gainesville, FL<br>Alachua County, FL<br>Gilchrist County, FL | 0.9470 |
| 23580 | Gainesville, GA<br>Hall County, GA | 0.9263 |
| 23844 | Gary, IN<br>Jasper County, IN<br>Lake County, IN<br>Newton County, IN<br>Porter County, IN | 0.9407 |
| 24020 | Glens Falls, NY<br>Warren County, NY<br>Washington County, NY | 0.8617 |
| 24140 | Goldsboro, NC<br>Wayne County, NC | 0.9298 |
| 24220 | Grand Forks, ND-MN<br>Polk County, MN<br>Grand Forks County, ND | 0.8000 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 24300 | Grand Junction, CO<br>Mesa County, CO | 0.9978 |
| 24340 | Grand Rapids-Wyoming, MI<br>Barry County, MI<br>Ionia County, MI<br>Kent County, MI<br>Newaygo County, MI | 0.9340 |
| 24500 | Great Falls, MT<br>Cascade County, MT | 0.8933 |
| 24540 | Greeley, CO<br>Weld County, CO | 0.9848 |
| 24580 | Green Bay, WI<br>Brown County, WI<br>Kewaunee County, WI<br>Oconto County, WI | 0.9874 |
| 24660 | Greensboro-High Point, NC<br>Guilford County, NC<br>Randolph County, NC<br>Rockingham County, NC | 0.9164 |
| 24780 | Greenville, NC<br>Greene County, NC<br>Pitt County, NC | 0.9608 |
| 24860 | Greenville-Mauldin-Easley, SC<br>Greenville County, SC<br>Laurens County, SC<br>Pickens County, SC | 1.0130 |
| 25020 | Guayama, PR<br>Arroyo Municipio, PR<br>Guayama Municipio, PR<br>Patillas Municipio, PR | 0.3736 |
| 25060 | Gulfport-Biloxi, MS<br>Hancock County, MS<br>Harrison County, MS<br>Stone County, MS | 0.9182 |
| 25180 | Hagerstown-Martinsburg, MD-WV<br>Washington County, MD<br>Berkeley County, WV<br>Morgan County, WV | 0.9150 |
| 25260 | Hanford-Corcoran, CA<br>Kings County, CA | 1.1054 |
| 25420 | Harrisburg-Carlisle, PA<br>Cumberland County, PA<br>Dauphin County, PA<br>Perry County, PA | 0.9308 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 25500 | Harrisonburg, VA<br>Rockingham County, VA<br>Harrisonburg City, VA | 0.9045 |
| 25540 | Hartford-West Hartford-East Hartford, CT<br>Hartford County, CT<br>Middlesex County, CT<br>Tolland County, CT | 1.1257 |
| 25620 | Hattiesburg, MS<br>Forrest County, MS<br>Lamar County, MS<br>Perry County, MS | 0.8000 |
| 25860 | Hickory-Lenoir-Morganton, NC<br>Alexander County, NC<br>Burke County, NC<br>Caldwell County, NC<br>Catawba County, NC | 0.9128 |
| 25980 | Hinesville-Fort Stewart, GA[3]<br>Liberty County, GA<br>Long County, GA | 0.9265 |
| 26100 | Holland-Grand Haven, MI<br>Ottawa County, MI | 0.9161 |
| 26180 | Honolulu, HI<br>Honolulu County, HI | 1.2011 |
| 26300 | Hot Springs, AR<br>Garland County, AR | 0.9268 |
| 26380 | Houma-Bayou Cane-Thibodaux, LA<br>Lafourche Parish, LA<br>Terrebonne Parish, LA | 0.8000 |
| 26420 | Houston-Sugar Land-Baytown, TX<br>Austin County, TX<br>Brazoria County, TX<br>Chambers County, TX<br>Fort Bend County, TX<br>Galveston County, TX<br>Harris County, TX<br>Liberty County, TX<br>Montgomery County, TX<br>San Jacinto County, TX<br>Waller County, TX | 1.0005 |
| 26580 | Huntington-Ashland, WV-KY-OH<br>Boyd County, KY<br>Greenup County, KY<br>Lawrence County, OH<br>Cabell County, WV | 0.9411 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Wayne County, WV | |
| 26620 | Huntsville, AL<br>Limestone County, AL<br>Madison County, AL | 0.9236 |
| 26820 | Idaho Falls, ID<br>Bonneville County, ID<br>Jefferson County, ID | 0.9234 |
| 26900 | Indianapolis-Carmel, IN<br>Boone County, IN<br>Brown County, IN<br>Hamilton County, IN<br>Hancock County, IN<br>Hendricks County, IN<br>Johnson County, IN<br>Marion County, IN<br>Morgan County, IN<br>Putnam County, IN<br>Shelby County, IN | 1.0076 |
| 26980 | Iowa City, IA<br>Johnson County, IA<br>Washington County, IA | 0.9644 |
| 27060 | Ithaca, NY<br>Tompkins County, NY | 0.9777 |
| 27100 | Jackson, MI<br>Jackson County, MI | 0.9467 |
| 27140 | Jackson, MS<br>Copiah County, MS<br>Hinds County, MS<br>Madison County, MS<br>Rankin County, MS<br>Simpson County, MS | 0.8204 |
| 27180 | Jackson, TN<br>Chester County, TN<br>Madison County, TN | 0.8668 |
| 27260 | Jacksonville, FL<br>Baker County, FL<br>Clay County, FL<br>Duval County, FL<br>Nassau County, FL<br>St. Johns County, FL | 0.9152 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 27340 | Jacksonville, NC<br>Onslow County, NC | 0.8316 |
| 27500 | Janesville, WI<br>Rock County, WI | 0.9826 |
| 27620 | Jefferson City, MO<br>Callaway County, MO<br>Cole County, MO<br>Moniteau County, MO<br>Osage County, MO | 0.8924 |
| 27740 | Johnson City, TN<br>Carter County, TN<br>Unicoi County, TN<br>Washington County, TN | 0.8106 |
| 27780 | Johnstown, PA<br>Cambria County, PA | 0.8054 |
| 27860 | Jonesboro, AR<br>Craighead County, AR<br>Poinsett County, AR | 0.8050 |
| 27900 | Joplin, MO<br>Jasper County, MO<br>Newton County, MO | 0.9566 |
| 28020 | Kalamazoo-Portage, MI<br>Kalamazoo County, MI<br>Van Buren County, MI | 1.0984 |
| 28100 | Kankakee-Bradley, IL<br>Kankakee County, IL | 1.0663 |
| 28140 | Kansas City, MO-KS<br>Franklin County, KS<br>Johnson County, KS<br>Leavenworth County, KS<br>Linn County, KS<br>Miami County, KS<br>Wyandotte County, KS<br>Bates County, MO<br>Caldwell County, MO<br>Cass County, MO<br>Clay County, MO<br>Clinton County, MO<br>Jackson County, MO<br>Lafayette County, MO<br>Platte County, MO<br>Ray County, MO | 0.9773 |
| 28420 | Kennewick-Pasco-Richland, WA<br>Benton County, WA | 1.0079 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Franklin County, WA | |
| 28660 | Killeen-Temple-Fort Hood, TX<br>Bell County, TX<br>Coryell County, TX<br>Lampasas County, TX | 0.8914 |
| 28700 | Kingsport-Bristol-Bristol, TN-VA<br>Hawkins County, TN<br>Sullivan County, TN<br>Bristol City, VA<br>Scott County, VA<br>Washington County, VA | 0.8000 |
| 28740 | Kingston, NY<br>Ulster County, NY | 0.9534 |
| 28940 | Knoxville, TN<br>Anderson County, TN<br>Blount County, TN<br>Knox County, TN<br>Loudon County, TN<br>Union County, TN | 0.8015 |
| 29020 | Kokomo, IN<br>Howard County, IN<br>Tipton County, IN | 0.9508 |
| 29100 | La Crosse, WI-MN<br>Houston County, MN<br>La Crosse County, WI | 0.9924 |
| 29140 | Lafayette, IN<br>Benton County, IN<br>Carroll County, IN<br>Tippecanoe County, IN | 0.9377 |
| 29180 | Lafayette, LA<br>Lafayette Parish, LA<br>St. Martin Parish, LA | 0.8516 |
| 29340 | Lake Charles, LA<br>Calcasieu Parish, LA<br>Cameron Parish, LA | 0.8000 |
| 29404 | Lake County-Kenosha County, IL-WI<br>Lake County, IL<br>Kenosha County, WI | 1.0565 |
| 29420 | Lake Havasu City - Kingman, AZ<br>Mohave County, AZ | 0.9963 |
| 29460 | Lakeland-Winter Haven, FL<br>Polk County, FL | 0.8675 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 29540 | Lancaster, PA<br>Lancaster County, PA | 0.9522 |
| 29620 | Lansing-East Lansing, MI<br>Clinton County, MI<br>Eaton County, MI<br>Ingham County, MI | 1.0099 |
| 29700 | Laredo, TX<br>Webb County, TX | 0.8508 |
| 29740 | Las Cruces, NM<br>Dona Ana County, NM | 0.9080 |
| 29820 | Las Vegas-Paradise, NV<br>Clark County, NV | 1.2174 |
| 29940 | Lawrence, KS<br>Douglas County, KS | 0.8485 |
| 30020 | Lawton, OK<br>Comanche County, OK | 0.8350 |
| 30140 | Lebanon, PA<br>Lebanon County, PA | 0.9106 |
| 30300 | Lewiston, ID-WA<br>Nez Perce County, ID<br>Asotin County, WA | 0.9626 |
| 30340 | Lewiston-Auburn, ME<br>Androscoggin County, ME | 0.9356 |
| 30460 | Lexington-Fayette, KY<br>Bourbon County, KY<br>Clark County, KY<br>Fayette County, KY<br>Jessamine County, KY<br>Scott County, KY<br>Woodford County, KY | 0.9265 |
| 30620 | Lima, OH<br>Allen County, OH | 0.9587 |
| 30700 | Lincoln, NE<br>Lancaster County, NE<br>Seward County, NE | 0.9925 |
| 30780 | Little Rock-North Little Rock-Conway AR<br>Faulkner County, AR<br>Grant County, AR<br>Lonoke County, AR<br>Perry County, AR<br>Pulaski County, AR<br>Saline County, AR | 0.8819 |
| 30860 | Logan, UT-ID<br>Franklin County, ID | 0.8914 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Cache County, UT | |
| 30980 | Longview, TX<br>Gregg County, TX<br>Rusk County, TX<br>Upshur County, TX | 0.8512 |
| 31020 | Longview, WA<br>Cowlitz County, WA | 1.1397 |
| 31084 | Los Angeles-Long Beach-Santa Ana; CA<br>Los Angeles County, CA | 1.2415 |
| 31140 | Louisville-Jefferson County, KY-IN<br>Clark County, IN<br>Floyd County, IN<br>Harrison County, IN<br>Washington County, IN<br>Bullitt County, KY<br>Henry County, KY<br>Meade County, KY<br>Nelson County, KY<br>Oldham County, KY<br>Shelby County, KY<br>Spencer County, KY<br>Trimble County, KY | 0.9406 |
| 31180 | Lubbock, TX<br>Crosby County, TX<br>Lubbock County, TX | 0.8879 |
| 31340 | Lynchburg, VA<br>Amherst County, VA<br>Appomattox County, VA<br>Bedford County, VA<br>Campbell County, VA<br>Bedford City, VA<br>Lynchburg City, VA | 0.8923 |
| 31420 | Macon, GA<br>Bibb County, GA<br>Crawford County, GA<br>Jones County, GA<br>Monroe County, GA<br>Twiggs County, GA | 0.9732 |
| 31460 | Madera, CA<br>Madera County, CA | 0.8074 |
| 31540 | Madison, WI<br>Columbia County, WI<br>Dane County, WI | 1.1153 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Iowa County, WI | |
| 31700 | Manchester-Nashua, NH<br>Hillsborough County, NH | 1.0535 |
| 31900 | Mansfield, OH<br>Richland County, OH | 0.9488 |
| 32420 | Mayagüez, PR<br>Hormigueros Municipio, PR<br>Mayagüez Municipio, PR | 0.4531 |
| 32580 | McAllen-Edinburg-Mission, TX<br>Hidalgo County, TX | 0.9162 |
| 32780 | Medford, OR<br>Jackson County, OR | 1.0418 |
| 32820 | Memphis, TN-MS-AR<br>Crittenden County, AR<br>DeSoto County, MS<br>Marshall County, MS<br>Tate County, MS<br>Tunica County, MS<br>Fayette County, TN<br>Shelby County, TN<br>Tipton County, TN | 0.9389 |
| 32900 | Merced, CA<br>Merced County, CA | 1.2451 |
| 33124 | Miami-Miami Beach-Kendall, FL<br>Miami-Dade County, FL | 0.9997 |
| 33140 | Michigan City-La Porte, IN<br>LaPorte County, IN | 0.9314 |
| 33260 | Midland, TX<br>Midland County, TX | 0.9994 |
| 33340 | Milwaukee-Waukesha-West Allis, WI<br>Milwaukee County, WI<br>Ozaukee County, WI<br>Washington County, WI<br>Waukesha County, WI | 1.0251 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 33460 | Minneapolis-St. Paul-Bloomington, MN-WI<br>Anoka County, MN<br>Carver County, MN<br>Chisago County, MN<br>Dakota County, MN<br>Hennepin County, MN<br>Isanti County, MN<br>Ramsey County, MN<br>Scott County, MN<br>Sherburne County, MN<br>Washington County, MN<br>Wright County, MN<br>Pierce County, WI<br>St. Croix County, WI | 1.1339 |
| 33540 | Missoula, MT<br>Missoula County, MT | 0.9125 |
| 33660 | Mobile, AL<br>Mobile County, AL | 0.8042 |
| 33700 | Modesto, CA<br>Stanislaus County, CA | 1.2401 |
| 33740 | Monroe, LA<br>Ouachita Parish, LA<br>Union Parish, LA | 0.8034 |
| 33780 | Monroe, MI<br>Monroe County, MI | 0.9093 |
| 33860 | Montgomery, AL<br>Autauga County, AL<br>Elmore County, AL<br>Lowndes County, AL<br>Montgomery County, AL | 0.8423 |
| 34060 | Morgantown, WV<br>Monongalia County, WV<br>Preston County, WV | 0.8673 |
| 34100 | Morristown, TN<br>Grainger County, TN<br>Hamblen County, TN<br>Jefferson County, TN | 0.8000 |
| 34580 | Mount Vernon-Anacortes, WA<br>Skagit County, WA | 1.0467 |
| 34620 | Muncie, IN<br>Delaware County, IN | 0.8633 |
| 34740 | Muskegon-Norton Shores, MI<br>Muskegon County, MI | 1.0226 |
| 34820 | Myrtle Beach-North Myrtle Beach-Conway, SC | 0.8799 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Horry County, SC | |
| 34900 | Napa, CA<br>Napa County, CA | 1.4766 |
| 34940 | Naples-Marco Island, FL<br>Collier County, FL | 0.9836 |
| 34980 | Nashville-Davidson--Murfreesboro-Franklin, TN<br>Cannon County, TN<br>Cheatham County, TN<br>Davidson County, TN<br>Dickson County, TN<br>Hickman County, TN<br>Macon County, TN<br>Robertson County, TN<br>Rutherford County, TN<br>Smith County, TN<br>Sumner County, TN<br>Trousdale County, TN<br>Williamson County, TN<br>Wilson County, TN | 0.9665 |
| 35004 | Nassau-Suffolk, NY<br>Nassau County, NY<br>Suffolk County, NY | 1.2664 |
| 35084 | Newark-Union, NJ-PA<br>Essex County, NJ<br>Hunterdon County, NJ<br>Morris County, NJ<br>Sussex County, NJ<br>Union County, NJ<br>Pike County, PA | 1.1930 |
| 35300 | New Haven-Milford, CT<br>New Haven County, CT | 1.1941 |
| 35380 | New Orleans-Metairie-Kenner, LA<br>Jefferson Parish, LA<br>Orleans Parish, LA<br>Plaquemines Parish, LA<br>St. Bernard Parish, LA<br>St. Charles Parish, LA<br>St. John the Baptist Parish, LA<br>St. Tammany Parish, LA | 0.9257 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 35644 | New York-White Plains-Wayne, NY-NJ<br>Bergen County, NJ<br>Hudson County, NJ<br>Passaic County, NJ<br>Bronx County, NY<br>Kings County, NY<br>New York County, NY<br>Putnam County, NY<br>Queens County, NY<br>Richmond County, NY<br>Rockland County, NY<br>Westchester County, NY | 1.3104 |
| 35660 | Niles-Benton Harbor, MI<br>Berrien County, MI | 0.9220 |
| 35980 | Norwich-New London, CT<br>New London County, CT | 1.1591 |
| 36084 | Oakland-Fremont-Hayward, CA<br>Alameda County, CA<br>Contra Costa County, CA | 1.6365 |
| 36100 | Ocala, FL<br>Marion County, FL | 0.8656 |
| 36140 | Ocean City, NJ<br>Cape May County, NJ | 1.1691 |
| 36220 | Odessa, TX<br>Ector County, TX | 0.9636 |
| 36260 | Ogden-Clearfield, UT<br>Davis County, UT<br>Morgan County, UT<br>Weber County, UT | 0.9308 |
| 36420 | Oklahoma City, OK<br>Canadian County, OK<br>Cleveland County, OK<br>Grady County, OK<br>Lincoln County, OK<br>Logan County, OK<br>McClain County, OK<br>Oklahoma County, OK | 0.8872 |
| 36500 | Olympia, WA<br>Thurston County, WA | 1.1733 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 36540 | Omaha-Council Bluffs, NE-IA<br>Harrison County, IA<br>Mills County, IA<br>Pottawattamie County, IA<br>Cass County, NE<br>Douglas County, NE<br>Sarpy County, NE<br>Saunders County, NE<br>Washington County, NE | 0.9601 |
| 36740 | Orlando-Kissimmee, FL<br>Lake County, FL<br>Orange County, FL<br>Osceola County, FL<br>Seminole County, FL | 0.9266 |
| 36780 | Oshkosh-Neenah, WI<br>Winnebago County, WI | 0.9635 |
| 36980 | Owensboro, KY<br>Daviess County, KY<br>Hancock County, KY<br>McLean County, KY | 0.8832 |
| 37100 | Oxnard-Thousand Oaks-Ventura, CA<br>Ventura County, CA | 1.2154 |
| 37340 | Palm Bay-Melbourne-Titusville, FL<br>Brevard County, FL | 0.9490 |
| 37380 | Palm Coast, FL<br>Flagler County, FL | 0.9115 |
| 37460 | Panama City-Lynn Haven, FL<br>Bay County, FL | 0.8502 |
| 37620 | Parkersburg-Marietta-Vienna, WV-OH<br>Washington County, OH<br>Pleasants County, WV<br>Wirt County, WV<br>Wood County, WV | 0.8000 |
| 37700 | Pascagoula, MS<br>George County, MS<br>Jackson County, MS | 0.8239 |
| 37764 | Peabody, MA<br>Essex County, MA | 1.0929 |
| 37860 | Pensacola-Ferry Pass-Brent, FL<br>Escambia County, FL<br>Santa Rosa County, FL | 0.8382 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 37900 | Peoria, IL<br>Marshall County, IL<br>Peoria County, IL<br>Stark County, IL<br>Tazewell County, IL<br>Woodford County, IL | 0.9191 |
| 37964 | Philadelphia, PA<br>Bucks County, PA<br>Chester County, PA<br>Delaware County, PA<br>Montgomery County, PA<br>Philadelphia County, PA | 1.1165 |
| 38060 | Phoenix-Mesa-Scottsdale, AZ<br>Maricopa County, AZ<br>Pinal County, AZ | 1.0555 |
| 38220 | Pine Bluff, AR<br>Cleveland County, AR<br>Jefferson County, AR<br>Lincoln County, AR | 0.8060 |
| 38300 | Pittsburgh, PA<br>Allegheny County, PA<br>Armstrong County, PA<br>Beaver County, PA<br>Butler County, PA<br>Fayette County, PA<br>Washington County, PA<br>Westmoreland County, PA | 0.8825 |
| 38340 | Pittsfield, MA<br>Berkshire County, MA | 1.0622 |
| 38540 | Pocatello, ID<br>Bannock County, ID<br>Power County, ID | 0.9501 |
| 38660 | Ponce, PR<br>Juana Díaz Municipio, PR<br>Ponce Municipio, PR<br>Villalba Municipio, PR | 0.4932 |
| 38860 | Portland-South Portland-Biddeford, ME<br>Cumberland County, ME<br>Sagadahoc County, ME<br>York County, ME | 1.0111 |
| 38900 | Portland-Vancouver-Beaverton, OR-WA<br>Clackamas County, OR<br>Columbia County, OR<br>Multnomah County, OR | 1.1650 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Washington County, OR<br>Yamhill County, OR<br>Clark County, WA<br>Skamania County, WA | |
| 38940 | Port St. Lucie, FL<br>Martin County, FL<br>St. Lucie County, FL | 1.0037 |
| 39100 | Poughkeepsie-Newburgh-Middletown, NY<br>Dutchess County, NY<br>Orange County, NY | 1.1105 |
| 39140 | Prescott, AZ<br>Yavapai County, AZ | 1.0394 |
| 39300 | Providence-New Bedford-Fall River, RI-MA<br>Bristol County, MA<br>Bristol County, RI<br>Kent County, RI<br>Newport County, RI<br>Providence County, RI<br>Washington County, RI | 1.0877 |
| 39340 | Provo-Orem, UT<br>Juab County, UT<br>Utah County, UT | 0.9540 |
| 39380 | Pueblo, CO<br>Pueblo County, CO | 0.8861 |
| 39460 | Punta Gorda, FL<br>Charlotte County, FL | 0.9128 |
| 39540 | Racine, WI<br>Racine County, WI | 0.9208 |
| 39580 | Raleigh-Cary, NC<br>Franklin County, NC<br>Johnston County, NC<br>Wake County, NC | 0.9984 |
| 39660 | Rapid City, SD<br>Meade County, SD<br>Pennington County, SD | 0.9761 |
| 39740 | Reading, PA<br>Berks County, PA | 0.9399 |
| 39820 | Redding, CA<br>Shasta County, CA | 1.3964 |
| 39900 | Reno-Sparks, NV<br>Storey County, NV<br>Washoe County, NV | 1.0492 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 40060 | Richmond, VA<br>Amelia County, VA<br>Caroline County, VA<br>Charles City County, VA<br>Chesterfield County, VA<br>Cumberland County, VA<br>Dinwiddie County, VA<br>Goochland County, VA<br>Hanover County, VA<br>Henrico County, VA<br>King and Queen County, VA<br>King William County, VA<br>Louisa County, VA<br>New Kent County, VA<br>Powhatan County, VA<br>Prince George County, VA<br>Sussex County, VA<br>Colonial Heights City, VA<br>Hopewell City, VA<br>Petersburg City, VA<br>Richmond City, VA | 0.9522 |
| 40140 | Riverside-San Bernardino-Ontario, CA<br>Riverside County, CA<br>San Bernardino County, CA | 1.1663 |
| 40220 | Roanoke, VA<br>Botetourt County, VA<br>Craig County, VA<br>Franklin County, VA<br>Roanoke County, VA<br>Roanoke City, VA<br>Salem City, VA | 0.8807 |
| 40340 | Rochester, MN<br>Dodge County, MN<br>Olmsted County, MN<br>Wabasha County, MN | 1.1404 |
| 40380 | Rochester, NY<br>Livingston County, NY<br>Monroe County, NY<br>Ontario County, NY<br>Orleans County, NY<br>Wayne County, NY | 0.8960 |
| 40420 | Rockford, IL<br>Boone County, IL<br>Winnebago County, IL | 1.0002 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 40484 | Rockingham County, NH<br>Strafford County, NH | 1.0094 |
| 40580 | Rocky Mount, NC<br>Edgecombe County, NC<br>Nash County, NC | 0.9184 |
| 40660 | Rome, GA<br>Floyd County, GA | 0.9289 |
| 40900 | Sacramento--Arden-Arcade--Roseville, CA<br>El Dorado County, CA<br>Placer County, CA<br>Sacramento County, CA<br>Yolo County, CA | 1.3802 |
| 40980 | Saginaw-Saginaw Township North, MI<br>Saginaw County, MI | 0.8850 |
| 41060 | St. Cloud, MN<br>Benton County, MN<br>Stearns County, MN | 1.1162 |
| 41100 | St. George, UT<br>Washington County, UT | 0.9174 |
| 41140 | St. Joseph, MO-KS<br>Doniphan County, KS<br>Andrew County, MO<br>Buchanan County, MO<br>DeKalb County, MO | 1.0556 |
| 41180 | St. Louis, MO-IL<br>Bond County, IL<br>Calhoun County, IL<br>Clinton County, IL<br>Jersey County, IL<br>Macoupin County, IL<br>Madison County, IL<br>Monroe County, IL<br>St. Clair County, IL<br>Crawford County, MO<br>Franklin County, MO<br>Jefferson County, MO<br>Lincoln County, MO<br>St. Charles County, MO<br>St. Louis County, MO<br>Warren County, MO<br>Washington County, MO<br>St. Louis City, MO | 0.9159 |
| 41420 | Salem, OR<br>Marion County, OR | 1.1069 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Polk County, OR | |
| 41500 | Salinas, CA<br>Monterey County, CA | 1.5241 |
| 41540 | Salisbury, MD<br>Somerset County, MD<br>Wicomico County, MD | 0.9403 |
| 41620 | Salt Lake City, UT<br>Salt Lake County, UT<br>Summit County, UT<br>Tooele County, UT | 0.9313 |
| 41660 | San Angelo, TX<br>Irion County, TX<br>Tom Green County, TX | 0.8567 |
| 41700 | San Antonio, TX<br>Atascosa County, TX<br>Bandera County, TX<br>Bexar County, TX<br>Comal County, TX<br>Guadalupe County, TX<br>Kendall County, TX<br>Medina County, TX<br>Wilson County, TX | 0.9006 |
| 41740 | San Diego-Carlsbad-San Marcos, CA<br>San Diego County, CA | 1.1734 |
| 41780 | Sandusky, OH<br>Erie County, OH | 0.9020 |
| 41884 | San Francisco-San Mateo-Redwood City, CA<br>Marin County, CA<br>San Francisco County, CA<br>San Mateo County, CA | 1.5792 |
| 41900 | San Germán-Cabo Rojo, PR<br>Cabo Rojo Municipio, PR<br>Lajas Municipio, PR<br>Sabana Grande Municipio, PR<br>San Germán Municipio, PR | 0.5469 |
| 41940 | San Jose-Sunnyvale-Santa Clara, CA<br>San Benito County, CA<br>Santa Clara County, CA | 1.6415 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 41980 | San Juan-Caguas-Guaynabo, PR<br>Aguas Buenas Municipio, PR<br>Aibonito Municipio, PR<br>Arecibo Municipio, PR<br>Barceloneta Municipio, PR<br>Barranquitas Municipio, PR<br>Bayamón Municipio, PR<br>Caguas Municipio, PR<br>Camuy Municipio, PR<br>Canóvanas Municipio, PR<br>Carolina Municipio, PR<br>Cataño Municipio, PR<br>Cayey Municipio, PR<br>Ciales Municipio, PR<br>Cidra Municipio, PR<br>Comerío Municipio, PR<br>Corozal Municipio, PR<br>Dorado Municipio, PR<br>Florida Municipio, PR<br>Guaynabo Municipio, PR<br>Gurabo Municipio, PR<br>Hatillo Municipio, PR<br>Humacao Municipio, PR<br>Juncos Municipio, PR<br>Las Piedras Municipio, PR<br>Loíza Municipio, PR<br>Manatí Municipio, PR<br>Maunabo Municipio, PR<br>Morovis Municipio, PR<br>Naguabo Municipio, PR<br>Naranjito Municipio, PR<br>Orocovis Municipio, PR<br>Quebradillas Municipio, PR<br>Río Grande Municipio, PR<br>San Juan Municipio, PR<br>San Lorenzo Municipio, PR<br>Toa Alta Municipio, PR<br>Toa Baja Municipio, PR<br>Trujillo Alto Municipio, PR<br>Vega Alta Municipio, PR<br>Vega Baja Municipio, PR<br>Yabucoa Municipio, PR | 0.5052 |
| 42020 | San Luis Obispo-Paso Robles, CA<br>San Luis Obispo County, CA | 1.2652 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 42044 | Santa Ana-Anaheim-Irvine, CA<br>Orange County, CA | 1.2196 |
| 42060 | Santa Barbara-Santa Maria-Goleta, CA<br>Santa Barbara County, CA | 1.2111 |
| 42100 | Santa Cruz-Watsonville, CA<br>Santa Cruz County, CA | 1.6708 |
| 42140 | Santa Fe, NM<br>Santa Fe County, NM | 1.0790 |
| 42220 | Santa Rosa-Petaluma, CA<br>Sonoma County, CA | 1.5791 |
| 42340 | Savannah, GA<br>Bryan County, GA<br>Chatham County, GA<br>Effingham County, GA | 0.9307 |
| 42540 | Scranton--Wilkes-Barre, PA<br>Lackawanna County, PA<br>Luzerne County, PA<br>Wyoming County, PA | 0.8474 |
| 42644 | Seattle-Bellevue-Everett, WA<br>King County, WA<br>Snohomish County, WA | 1.1954 |
| 42680 | Sebastian-Vero Beach, FL<br>Indian River County, FL | 0.9373 |
| 43100 | Sheboygan, WI<br>Sheboygan County, WI | 0.9071 |
| 43300 | Sherman-Denison, TX<br>Grayson County, TX | 0.9177 |
| 43340 | Shreveport-Bossier City, LA<br>Bossier Parish, LA<br>Caddo Parish, LA<br>De Soto Parish, LA | 0.8585 |
| 43580 | Sioux City, IA-NE-SD<br>Woodbury County, IA<br>Dakota County, NE<br>Dixon County, NE<br>Union County, SD | 0.9066 |
| 43620 | Sioux Falls, SD<br>Lincoln County, SD<br>McCook County, SD<br>Minnehaha County, SD<br>Turner County, SD | 0.9513 |
| 43780 | South Bend-Mishawaka, IN-MI<br>St. Joseph County, IN<br>Cass County, MI | 0.9927 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 43900 | Spartanburg, SC<br>Spartanburg County, SC | 0.9178 |
| 44060 | Spokane, WA<br>Spokane County, WA | 1.0738 |
| 44100 | Springfield, IL<br>Menard County, IL<br>Sangamon County, IL | 0.9256 |
| 44140 | Springfield, MA<br>Franklin County, MA<br>Hampden County, MA<br>Hampshire County, MA | 1.0581 |
| 44180 | Springfield, MO<br>Christian County, MO<br>Dallas County, MO<br>Greene County, MO<br>Polk County, MO<br>Webster County, MO | 0.8567 |
| 44220 | Springfield, OH<br>Clark County, OH | 0.9027 |
| 44300 | State College, PA<br>Centre County, PA | 0.9089 |
| 44700 | Stockton, CA<br>San Joaquin County, CA | 1.2219 |
| 44940 | Sumter, SC<br>Sumter County, SC | 0.8397 |
| 45060 | Syracuse, NY<br>Madison County, NY<br>Onondaga County, NY<br>Oswego County, NY | 0.9953 |
| 45104 | Tacoma, WA<br>Pierce County, WA | 1.1432 |
| 45220 | Tallahassee, FL<br>Gadsden County, FL<br>Jefferson County, FL<br>Leon County, FL<br>Wakulla County, FL | 0.9116 |
| 45300 | Tampa-St. Petersburg-Clearwater, FL<br>Hernando County, FL<br>Hillsborough County, FL<br>Pasco County, FL<br>Pinellas County, FL | 0.9002 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 45460 | Terre Haute, IN<br>Clay County, IN<br>Sullivan County, IN<br>Vermillion County, IN<br>Vigo County, IN | 0.9239 |
| 45500 | Texarkana, TX-Texarkana, AR<br>Miller County, AR<br>Bowie County, TX | 0.8282 |
| 45780 | Toledo, OH<br>Fulton County, OH<br>Lucas County, OH<br>Ottawa County, OH<br>Wood County, OH | 0.9567 |
| 45820 | Topeka, KS<br>Jackson County, KS<br>Jefferson County, KS<br>Osage County, KS<br>Shawnee County, KS<br>Wabaunsee County, KS | 0.8905 |
| 45940 | Trenton-Ewing, NJ<br>Mercer County, NJ | 1.0784 |
| 46060 | Tucson, AZ<br>Pima County, AZ | 0.9386 |
| 46140 | Tulsa, OK<br>Creek County, OK<br>Okmulgee County, OK<br>Osage County, OK<br>Pawnee County, OK<br>Rogers County, OK<br>Tulsa County, OK<br>Wagoner County, OK | 0.8588 |
| 46220 | Tuscaloosa, AL<br>Greene County, AL<br>Hale County, AL<br>Tuscaloosa County, AL | 0.8640 |
| 46340 | Tyler, TX<br>Smith County, TX | 0.8953 |
| 46540 | Utica-Rome, NY<br>Herkimer County, NY<br>Oneida County, NY | 0.8547 |
| 46660 | Valdosta, GA<br>Brooks County, GA<br>Echols County, GA<br>Lanier County, GA | 0.8163 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Lowndes County, GA | |
| 46700 | Vallejo-Fairfield, CA<br>Solano County, CA | 1.4603 |
| 47020 | Victoria, TX<br>Calhoun County, TX<br>Goliad County, TX<br>Victoria County, TX | 0.8262 |
| 47220 | Vineland-Millville-Bridgeton, NJ<br>Cumberland County, NJ | 1.0542 |
| 47260 | Virginia Beach-Norfolk-Newport News, VA-NC<br>Currituck County, NC<br>Gloucester County, VA<br>Isle of Wight County, VA<br>James City County, VA<br>Mathews County, VA<br>Surry County, VA<br>York County, VA<br>Chesapeake City, VA<br>Hampton City, VA<br>Newport News City, VA<br>Norfolk City, VA<br>Poquoson City, VA<br>Portsmouth City, VA<br>Suffolk City, VA<br>Virginia Beach City, VA<br>Williamsburg City, VA | 0.9035 |
| 47300 | Visalia-Porterville, CA<br>Tulare County, CA | 1.0316 |
| 47380 | Waco, TX<br>McLennan County, TX | 0.8742 |
| 47580 | Warner Robins, GA<br>Houston County, GA | 0.9141 |
| 47644 | Warren-Troy-Farmington Hills, MI<br>Lapeer County, MI<br>Livingston County, MI<br>Macomb County, MI<br>Oakland County, MI<br>St. Clair County, MI | 1.0072 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| 47894 | Washington-Arlington-Alexandria, DC-VA-MD-WV<br>District of Columbia, DC<br>Calvert County, MD<br>Charles County, MD<br>Prince George's County, MD<br>Arlington County, VA<br>Clarke County, VA<br>Fairfax County, VA<br>Fauquier County, VA<br>Loudoun County, VA<br>Prince William County, VA<br>Spotsylvania County, VA<br>Stafford County, VA<br>Warren County, VA<br>Alexandria City, VA<br>Fairfax City, VA<br>Falls Church City, VA<br>Fredericksburg City, VA<br>Manassas City, VA<br>Manassas Park City, VA<br>Jefferson County, WV | 1.1011 |
| 47940 | Waterloo-Cedar Falls, IA<br>Black Hawk County, IA<br>Bremer County, IA<br>Grundy County, IA | 0.8634 |
| 48140 | Wausau, WI<br>Marathon County, WI | 0.9778 |
| 48260 | Weirton-Steubenville, WV-OH<br>Jefferson County, OH<br>Brooke County, WV<br>Hancock County, WV | 0.8216 |
| 48300 | Wenatchee, WA<br>Chelan County, WA<br>Douglas County, WA | 0.9706 |
| 48424 | West Palm Beach-Boca Raton-Boynton Beach, FL<br>Palm Beach County, FL | 0.9922 |
| 48540 | Wheeling, WV-OH<br>Belmont County, OH<br>Marshall County, WV<br>Ohio County, WV | 0.7998 |
| 48620 | Wichita, KS<br>Butler County, KS<br>Harvey County, KS<br>Sedgwick County, KS | 0.9223 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Sumner County, KS | |
| 48660 | Wichita Falls, TX<br>Archer County, TX<br>Clay County, TX<br>Wichita County, TX | 0.8982 |
| 48700 | Williamsport, PA<br>Lycoming County, PA | 0.8233 |
| 48864 | Wilmington, DE-MD-NJ<br>New Castle County, DE<br>Cecil County, MD<br>Salem County, NJ | 1.0877 |
| 48900 | Wilmington, NC<br>Brunswick County, NC<br>New Hanover County, NC<br>Pender County, NC | 0.9243 |
| 49020 | Winchester, VA-WV<br>Frederick County, VA<br>Winchester City, VA<br>Hampshire County, WV | 0.9967 |
| 49180 | Winston-Salem, NC<br>Davie County, NC<br>Forsyth County, NC<br>Stokes County, NC<br>Yadkin County, NC | 0.9169 |
| 49340 | Worcester, MA<br>Worcester County, MA | 1.1020 |
| 49420 | Yakima, WA<br>Yakima County, WA | 1.0117 |
| 49500 | Yauco, PR<br>Guánica Municipio, PR<br>Guayanilla Municipio, PR<br>Peñuelas Municipio, PR<br>Yauco Municipio, PR | 0.3947 |
| 49620 | York-Hanover, PA<br>York County, PA | 0.9679 |
| 49660 | Youngstown-Warren-Boardman, OH-PA<br>Mahoning County, OH<br>Trumbull County, OH<br>Mercer County, PA | 0.9066 |
| 49700 | Yuba City, CA<br>Sutter County, CA | 1.1326 |

| CBSA Code | Urban Area (Constituent Counties)[1] | Wage Index[2] |
|---|---|---|
| | Yuba County, CA | |
| 49740 | Yuma, AZ<br>Yuma County, AZ | 0.9438 |

[1]This column lists each CBSA area name and each county or county equivalent, in the CBSA area. Counties not listed in this Table are considered to be rural areas. Wage index values for these areas are found in Addendum B.

[2]Wage index values are based on FY 2005 hospital cost report data before reclassification. These data form the basis for the pre-floor, pre-reclassified hospital wage index. The budget neutrality adjustment factor (BNAF) or the hospice floor is then applied to the pre-floor, pre-reclassified hospital wage index to derive the hospice wage index. Wage index values greater than or equal to 0.8 are subject to a BNAF. The hospice floor calculation is as follows: Wage index values below 0.8 are adjusted to be the greater of a) the 75 percent reduced BNAF OR b) the minimum of the pre-floor, pre-reclassified hospital wage index value x 1.15, or 0.8000.
For the FY 2010 hospice wage index, the BNAF was reduced by 75 percent.

[3]Because there are no hospitals in this CBSA, the wage index value is calculated by taking the average of all other urban CBSAs in Georgia.

**Addendum B. Proposed Hospice Wage Index for Rural Areas by CBSA- FY 2010**

| CBSA Code | Nonurban Area | Wage Index |
|---|---|---|
| 1 | Alabama | 0.8000 |
| 2 | Alaska | 1.2100 |
| 3 | Arizona | 0.8596 |
| 4 | Arkansas | 0.8000 |
| 5 | California | 1.2483 |
| 6 | Colorado | 0.9732 |
| 7 | Connecticut | 1.1203 |
| 8 | Delaware | 1.0131 |
| 10 | Florida | 0.8648 |
| 11 | Georgia | 0.8000 |
| 12 | Hawaii | 1.1186 |
| 13 | Idaho | 0.8000 |
| 14 | Illinois | 0.8528 |
| 15 | Indiana | 0.8617 |
| 16 | Iowa | 0.8953 |
| 17 | Kansas | 0.8189 |
| 18 | Kentucky | 0.8000 |
| 19 | Louisiana | 0.8000 |
| 20 | Maine | 0.8791 |
| 21 | Maryland | 0.9034 |
| 22 | Massachusetts[1] | 1.1868 |
| 23 | Michigan | 0.9038 |
| 24 | Minnesota | 0.9213 |
| 25 | Mississippi | 0.8000 |
| 26 | Missouri | 0.8117 |
| 27 | Montana | 0.8805 |
| 28 | Nebraska | 0.8878 |
| 29 | Nevada | 0.9541 |
| 30 | New Hampshire | 1.0392 |
| 31 | New Jersey[2] | ------ |
| 32 | New Mexico | 0.8961 |
| 33 | New York | 0.8283 |

| CBSA Code | Nonurban Area | Wage Index |
|---|---|---|
| 34 | North Carolina | 0.8721 |
| 35 | North Dakota | 0.8000 |
| 36 | Ohio | 0.8734 |
| 37 | Oklahoma | 0.8000 |
| 38 | Oregon | 1.0391 |
| 39 | Pennsylvania | 0.8507 |
| 40 | Puerto Rico[3] | 0.4654 |
| 41 | Rhode Island[2] | ------ |
| 42 | South Carolina | 0.8683 |
| 43 | South Dakota | 0.8749 |
| 44 | Tennessee | 0.8000 |
| 45 | Texas | 0.8028 |
| 46 | Utah | 0.8407 |
| 47 | Vermont | 1.0250 |
| 48 | Virgin Islands | 0.8000 |
| 49 | Virginia | 0.8000 |
| 50 | Washington | 1.0354 |
| 51 | West Virginia | 0.8000 |
| 52 | Wisconsin | 0.9532 |
| 53 | Wyoming | 0.9473 |
| 65 | Guam | 0.9774 |

[1] There are no hospitals in the rural areas of Massachusetts, so the wage index value used is the average of the contiguous Counties.
[2] There are no rural areas in this State.
[3] Wage index values are obtained using the methodology described in this proposed rule.

[FR Doc. E9–9417 Filed 4–21–09; 4:15 pm]
BILLING CODE 4120–01–C


# Federal Register

Friday,
April 24, 2009

Part V

# The President

Federal Register
Vol. 74, No. 78
Friday, April 24, 2009

# Presidential Documents

Title 3—

The President

**Proclamation 8363 of April 21, 2009**

## National Volunteer Week, 2009

**By the President of the United States of America**

**A Proclamation**

Our Nation's story begins with a call to volunteer. Confronting the injustices of tyranny and small odds of victory, patriots rallied one another to serve a cause greater than themselves. As the beneficiaries of this legacy, we possess an obligation to volunteer and serve our fellow citizens with similar selflessness and optimism.

Americans keep this proud tradition alive every day across our country. They are protecting us in uniform, feeding the hungry, tutoring children, comforting seniors, and reaching out to veterans. They are providing critical support to schools, shelters, hospitals, and nursing homes, through faith-based and community organizations, at home and abroad. Volunteers change lives and strengthen our Nation and our world.

My Administration is committed to supporting and supplementing the crucial efforts that Americans make to volunteer. The Edward M. Kennedy Serve America Act, which I signed into law today, will help millions of Americans of all ages to volunteer and to direct that service towards meeting our most pressing challenges. It truly will usher in a new era of service.

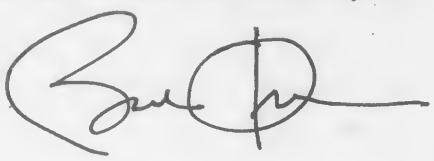
This landmark law recruits an army of 250,000 per year to engage in intensive service, and it focuses that work on today's challenges, including clean energy, education, health, veterans care, and economic opportunity. It creates new service opportunities for seniors, baby boomers, and young adults, and improves service learning in our schools.

The law also creates a Social Innovation Fund. This fund looks for new ideas in communities and leverages private, nonprofit, and faith-based support to invest in local innovation. The fund also allows us to test the impact of new ideas and expand successful programs to scale.

Volunteering provides the opportunity to join and better a community. Every American who volunteers can become an integral part of a school, a hospital, or a neighborhood. Those who give of their time also join our Nation's proud history of service and help preserve this tradition for generations ahead. During National Volunteer Week, we express heartfelt thanks to all who have worked hard in this effort, and we urge more Americans to reach out and meet the manifold unmet needs of fellow Americans.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 19–25, 2009 as National Volunteer Week. I call upon all Americans to join ongoing volunteer service efforts, and to create new ones.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.



[FR Doc. E9–9621
Filed 4–23–09; 11:15 am]
Billing code 3195–W9–P

# Presidential Documents

**Proclamation 8364 of April 22, 2009**

## Earth Day, 2009

**By the President of the United States of America**

**A Proclamation**

The story of the United States is inextricably tied to our vital natural resources. As we enter a new era filled with challenges and promise, we must protect our land, wildlife, water and air—the resources that have fueled our growth and prosperity as a Nation and enriched our lives. Doing this not only fulfills a sacred obligation to our children and grandchildren, but also provides an opportunity to stimulate economic growth.

To achieve these ends, no issue deserves more immediate attention than global warming. Scientists have already observed alarming shifts in the natural world, including thawing permafrost, melting glaciers, and rising sea levels.

Climate change presents a serious test for humankind, but it also provides an opportunity for great innovation and adaptation. The United States has risen to such challenges before, and Earth Day inspires us to transcend differences among nations so we may lead the world in protecting our planet from this global threat.

Americans across the country are working hard to help limit the pollutants that cause climate change and reduce their impact on the environment, but we must do more. Individuals and organizations can plant trees, use energy efficient lightbulbs, drive fuel efficient cars, hold clean-up drives, and teach young people about environmental preservation. Small changes in our daily lives can have a big impact on our environment. Individuals can walk, bike, and use public transportation; buy products with less packaging; and recycle and reuse paper, plastic, glass, and aluminum more often. American families can also save money by choosing energy efficient products, turning lights off, unplugging appliances, and cutting back on heating and air conditioning.

Government and business alike must also take serious and sustained action to protect our valuable natural inheritance. Through investments in scientific research and development, and the vigorous pursuit of alternative and renewable energy, we can create millions of green jobs that allow us to reduce greenhouse gases and excel in a competitive global economy. My Administration is committed to increasing fuel economy standards and putting more Plug-In Hybrid cars on the road, weatherizing millions of homes, and catalyzing private efforts to build a clean energy future. My Administration is also working to achieve a comprehensive energy and climate policy, one that will lessen our dependence on foreign oil, make the U.S. the global leader in clean energy technology, and prevent the worst impacts of climate change.

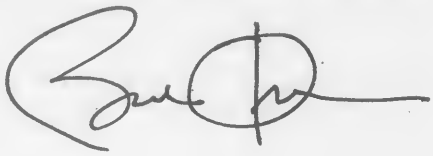
President Theodore Roosevelt emphasized our obligation to future Americans, saying, "of all the questions which can come before this nation, short of the actual preservation of its existence in a great war, there is none which compares in importance with the great central task of leaving this land even a better land for our descendants than it is for us." Heeding President Roosevelt's call, and carrying forward his spirit of determination, we must commit ourselves to protecting our environment and ensuring the health

of our planet so we may share the magnificent blessings of our Earth with our grandchildren.

We do this not only to acknowledge the environment's central role in the development of our Nation but also to recognize the strong ecological interdependence among nations. History has shown that as we sow, so too shall we reap. Let us rededicate ourselves to a world that provides bountiful harvests for us all not just today, but for many generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 22, 2009, as Earth Day. I encourage all citizens to help protect our environment and contribute to a healthy, sustainable world.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.



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Vol. 74, No. 78

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**111th Congress**

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