Federal Register

9–28–07 Friday
Vol. 72 No. 188 Sept. 28, 2007

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

9–28–07 Friday
Vol. 72 No. 188 Sept. 28, 2007

Pages 55011–55654

I

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 72 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 72, No. 188

Friday, September 28, 2007

Editorial Note: In the printed version of the **Federal Register** for Thursday, September 27, 2007, a technical error resulted in an incomplete listing of documents in the Table of Contents. A corrected Table of Contents appears after the Reader Aids section at the back of today's **Federal Register**.

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
1782.....55011
1951.....55011
1955.....55011
1956.....55011
Proposed Rules:
718.....55105
1412.....55105
1427.....55105

10 CFR
2.....55019
171.....55019

12 CFR
202.....55020
227.....55020

14 CFR
61.....55021
63.....55021
65.....55021
187.....55021
Proposed Rules:
39 (8 documents).....55108, 55111, 55113, 55116, 55118, 55120, 55122, 55124

17 CFR
275.....55022
Proposed Rules:
275.....55126

24 CFR
214.....55638

26 CFR
Proposed Rules:
1 (2 documents).....55132, 55139

33 CFR
101.....55043
105.....55043
106.....55043

34 CFR
674.....55049
682.....55049
685.....55049

37 CFR
1.....55055

39 CFR
111.....55055

40 CFR
30.....55058
31.....55058
52.....55064
60.....55278
75.....55278
97.....55064
180 (3 documents).....55068, 55073, 55078

42 CFR
409.....55085
Proposed Rules:
406.....55152
407.....55152
408.....55152
440.....55158
447.....55158

44 CFR
64.....55089

47 CFR
0.....55089

48 CFR
52.....55089
1807.....55090
1817.....55090

49 CFR
171.....55090
173.....55091
175.....55091
178.....55091
386 (2 documents).....55100
661.....55102
1572.....55043

50 CFR
622.....55103
679.....55104
Proposed Rules:
648.....55166
660.....55170

Rules and Regulations

Federal Register
Vol. 72, No. 188
Friday, September 28, 2007

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1782

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951, 1955, and 1956

RIN 0572–AB59

Servicing of Water Programs Loans and Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS), an Agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, hereinafter referred to as Rural Development, consolidates and amends the regulations utilized to service water and waste loan and grant programs. The rule will combine the water and waste loan and grant servicing regulations found in 7 CFR parts 1951, 1955, and 1956 into one regulation. Unnecessary and burdensome requirements for water and waste loan and grant servicing under the program will be eliminated. The streamlining of the water and waste loan and grant servicing regulation will allow the Agency to provide better service to entities needing assistance in resolving financial and economic problems in their communities and, in general, improve the quality of life in rural areas. Additionally, this rule implements Section 6018 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1936a) for Rural Development's Business, Housing and Utilities programs.

EFFECTIVE DATE: October 29, 2007.

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, Water and Environmental Programs, USDA Rural Development, Room 2230 South Building, Stop 1570, 1400 Independence Ave., SW., Washington, DC 20250–1570. Telephone: (202) 690–3789, FAX: (202) 690–0649, E-mail: *anita.obrien@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. It has been determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and in accordance with sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since Rural Development is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this rule are currently approved under OMB control number 0575–0066 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Agency has submitted an information collection package to OMB to establish a new OMB control number, 0572–0137, for the information collection covered by this rule and will transfer the applicable burden from 0575–0066 to 0572–0137, when OMB approval is granted.

National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under numbers (1) 10.760—Water and Waste Disposal System for Rural Communities, (2) 10.761—Technical Assistance and Training Grants, (3) 10.762—Solid Waste Management Grants (4) 10.763—Emergency Community Assistance Grants, and (5) 10.770—section 306C Water and Waste Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under numbers (1) 10.760—Water and Waste Disposal (WWD) System for Rural Communities, (2) 10.763—Emergency Community Assistance Grants, and (3) 10.770—Water and Waste Loans and Grants (section 306C) and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on

States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States is not required.

Background

The Rural Development water and waste program is administered by Water and Environmental Programs (WEP). The water and waste loan and grant programs are authorized by various sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), as amended. The regulations for these programs have not been completely reviewed for many years. The 1994 streamlining and reorganization of the Department of Agriculture provided an opportunity to review and rewrite the water and waste loan and grant servicing regulations. A task force was formed for that purpose. The aim of the task force was to make the regulations easier to understand, eliminate unnecessary requirements, and continue to protect the interest of the U.S. taxpayer. The program provides loan servicing options for communities facing financial problems. Servicing options should result in reasonable user costs for rural residents, rural businesses, and other rural users. Additionally, in order to provide uniformity, servicing provisions for grants are addressed in the Departmental Grant Regulations cited in 1782.7.

Major changes are as follows:

1. Servicing regulations found in 7 CFR parts 1951, 1955, and 1956 are combined into one regulation.

2. The field staff is provided with more authority to service water and waste loans and grants.

3. The application process for servicing actions has been streamlined to reduce unnecessary paperwork and improve service to the rural communities. There will be fewer regulations, and the number of pages in the Code of Federal Regulations will be greatly reduced.

4. The functions of the former Farmers Home Administration (FmHA) and the Rural Development Administration (RDA) relating to the water and waste loan and grant programs authorized by various sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), have been transferred to the Rural Development Utilities programs based on the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354). Therefore, in order to enhance the delivery of borrower services and better assist the public, Rural Development is simplifying and rewriting regulations originally published by FmHA and RDA. All parts pertaining to the water and waste loan program will be moved into 7 CFR part 1782. This action will have no effect on the RHS community facilities loan program, as this action makes no policy changes in the regulation with the exception of implementing Section 6018 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1936a). The following programs are affected by these amendments: (1) Water and Waste Disposal Loans and Grants, (2) Watershed Loans and Advances, (3) Resource Conservation and Development Loans, (4) Technical Assistance and Training Grants, (5) Emergency Community Assistance Grants, (6) Solid Waste Management Grants, and (7) Section 306C Water and Waste Facility Loans and Grants to Alleviate Health Risks.

5. Implement Sec. 6018 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). This change will allow the borrower or grant recipient to use property (real and personal) purchased or improved with the loan or grant funds or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity. Rural Development has included language to implement this provision in 7 CFR 1782.23. These provisions will also be applicable to Rural Development's Business and Housing programs by adding § 1951.218 to 7 CFR 1951, subpart E.

Comments

Rural Development published a proposed rulemaking in the **Federal Register** on November 15, 2004, 69 FR 65546. One public comment was received; however, Rural Development did not receive any comments from outside Federal agencies. The one public comment received was in the form of a Web site entry. The comment pertained to the legislation authorizing the program, as follows: "Why should only rural areas get this taxpayer money? Certainly urban districts have just as many financial issues. I find this kind of legislation extremely discriminatory. A survey is unnecessary and wasteful of taxpayer dollars. There are 50 years of history of data facts—there is no reason to survey. I would appreciate having sent to me a copy of the accomplishments of this little known agency for 2003."

Response: Water and Waste Disposal Loans and Grants are authorized by the Consolidated Farm and Rural Development Act (TITLE III OF THE AGRICULTURAL ACT OF 1961) (Pub. L. 87–128; 75 Stat. 294). Rural Development makes water and wastewater loans and grants in accordance with 7 CFR 1780. The Agency has posted the most recent Annual Report for Fiscal Year (FY) 2006 at the following Web site address: *http://www.usda.gov/rus/water/*. Please view this report for an overview of the Water and Environmental Program and its accomplishments. Rural Development did not receive enough information in the comment to respond to the issue of a particular survey. No changes were made to the final regulation based on the comment received. However, changes were made to the regulation in § 1782.17. Review by the Agency of Circular No. A–129, issued by the Office of Management and Budget (OMB), led to the conclusion that subordination cannot be listed as a general option in its regulations. The Circular states that the Government's claim should generally not be subordinated to the claims of other creditors since subordination increases the risk of loss to the Government. In a special circumstance, the Agency might seek a waiver of this requirement from OMB, but this would be on a case-by-case basis as dictated by the individual facts of the case. Therefore, subordination was removed as an option from § 1782.17. Also, the Agency determined that § 1782.17 lacked the criteria needed to make the determination that granting a parity lien is in the Government's interest. The Agency has added such criteria to § 1782.17.

The Regulations

Rural Development has completed a consolidation of regulations affecting WEP loans and grants. Prior to this rule becoming effective, WEP borrowers were affected, in part, by the following regulations:

7 CFR part 1951, subpart A—Account Servicing Policies

7 CFR part 1951, subpart D—Final Payment on Loans

7 CFR part 1951, subpart E—Servicing of Community and Direct Business Programs Loans and Grants

7 CFR part 1951, subpart F—Analyzing Credit Needs and Graduation of Borrowers

7 CFR part 1951, subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

7 CFR part 1955, subpart A—Liquidation of Loans Secured by Real

Estate and Acquisition of Real and Chattel Property
7 CFR part 1955, subpart B—Management of Property
7 CFR part 1955, subpart C—Disposal of Inventory Property
7 CFR part 1956, subpart C—Debt Settlement—Community and Business Programs

All of the above-mentioned regulations include regulatory provisions of other programs of the former FmHA such as farm loans, business and industrial loans, single family housing, and multi-family housing. Rural Development is consolidating all regulatory actions in the above-mentioned regulations which affect WEP loan and grant servicing into one new regulation—7 CFR part 1782. This consolidated regulation will clarify for our borrowers and grantees the available servicing tools and the requirements to utilize these tools.

Additionally, Rural Development is removing all administrative processes from the regulations, leaving only regulatory actions that impact the public. This streamlining will make the regulation more concise and much easier to read and understand. A Staff Instruction will be issued that will include the administrative portion, which outlines agency internal processing procedures. The Staff Instruction will be available to the public upon request at no cost.

Conclusion

Rural Development believes the consolidation and streamlining of the regulations for this program will maximize the ability of the borrowers to use and understand the available servicing tools under this program. This consolidation is consistent with the Administration's efforts to streamline Government functions, improve the efficiency and effectiveness of Government activities, and strive to be more borrower-friendly. This effort will enable Rural Development to reduce regulations, streamline operations, and provide servicing assistance with fewer staff resources.

List of Subjects

7 CFR Part 1782

Accounting, Appeal procedures, Auditing, Debts, Delinquency, Grant programs—Agriculture, Insurance, Loan programs—Agriculture.

7 CFR Part 1951

Accounting, Credit, Grant programs—Agriculture, Loan Programs—Agriculture, Low and moderate-income housing loans—Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1955

Government property, Government property management, Surplus government property.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

■ Therefore, chapters XVII and XVIII of title 7, Code of Federal Regulations, are amended as follows:

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

■ 1. Part 1782 is added to read as follows:

PART 1782—SERVICING OF WATER AND WASTE PROGRAMS

Sec.

Authority: 5 U.S.C. 301; 7 U.S.C. 1981; 16 U.S.C. 1005.

§ 1782.1 Purpose.

This part outlines the Rural Utilities Service's (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, policies and procedures for servicing direct and insured Water and Waste Disposal (WWD) loans and grants; Watershed loans and advances; Resource Conservation and Development loans; Technical Assistance and Training grants; Emergency Community Water Assistance grants; Solid Waste Management grants; and section 306C WWD loans and grants.

§ 1782.2 Objectives.

Loan and grant servicing is provided by Rural Development in order to assist recipients in complying with the established objectives and requirements for loans and grants, repaying loans on schedule, acting in accordance with any necessary agreements, and protecting Rural Development's financial interest. Servicing by Rural Development includes, but is not limited to, the review of budgets, management reports, audits, and financial statements; performing operational inspections; providing, arranging, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance and graduation reviews.

§ 1782.3 Definitions.

The following definitions apply to this part:

Acceleration. A written notice informing the borrower that the total unpaid principal and interest is due and payable immediately.

Adjustment. Satisfaction of a debt, including release of liability, when acceptance by the Agency is conditioned upon completion of payment of the adjusted amount at a specific time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement have been made.

Administrator. Administrator of the Rural Utilities Service, an agency delivering the United States Department of Agriculture's Utilities Programs.

Agency. The Rural Utilities Service, an Agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, or any employee acting on its behalf in accordance with appropriate delegations of authority.

Assumption of debt. Agreement by one party to legally bind itself to pay the debt incurred by another.

Borrower. Recipient of Agency or predecessor Agency loan assistance.

Cancellation. Final discharge of debt with a release of liability.

Charge-off. Write off of a debt and termination of servicing activity without release of liability. A charge-off is a decision by the Agency to remove debt from Agency receivables, however, future payments may be received.

Compromise. Satisfaction of a debt including a release of liability by accepting a lump-sum payment of less than the total amount owed.

Defeasance. Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements from the prior issue.

Disposition of facility. Relinquishing control of a facility to another entity.

False information. Information, known by the applicant to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

Government. The United States of America, acting through the Agency. USDA, Rural Development and Agency may be used interchangeably throughout this part.

Grantee. Recipient of Agency or predecessor Agency grant assistance, technical assistance, or services.

Letter of Conditions. A written document that describes the conditions which the borrower and/or grantee must meet for funds to be advanced and the loan and/or grant to be closed.

Liquidation. Satisfaction of a debt through the sale of a borrower's assets and discharge of liabilities.

Parity Lien. A lien having an equal lien position to another lender's lien on a borrower's asset.

Reasonable rates and terms. The prevailing commercial rates and terms in the industry that borrowers are expected to pay when borrowing for similar purposes and periods of time.

Rural Development. The mission area of the Under Secretary for Rural Development. Rural Development State and local offices administer the water and waste programs on behalf of the Agency.

Rural Utilities Service (RUS). An Agency of the United States Department of Agriculture's Rural Development mission area established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).

Servicing office. The USDA office which maintains the official file of the borrower or grantee and is responsible for the routine servicing of the loan and/or grant account.

Servicing official. USDA official who has been delegated loan and grant approval and servicing authorities subject to any dollar limitations within applicable programs.

Settlement. Compromise, adjustment, cancellation, or charge-off of a debt owed USDA. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or charge-off action, individually or collectively.

Unliquidated obligations. Obligated loan or grant funds that have not been advanced.

USDA. United States Department of Agriculture.

Voluntary conveyance. A method by which title to security is voluntarily transferred to the Government.

§ 1782.4 Availability of forms and regulations.

Information about the availability of forms, regulations, bulletins, and procedures referenced in this chapter are available in any office of Rural Development USDA, Washington, DC 20250–1500 or at the Web site *http://www.usda.gov/rus/water.*

§ 1782.5 Nondiscrimination.

Each instrument of conveyance required for a transfer, assumption, sale of facility, or other servicing action under this subpart will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), Title IX of the Education Amendments of 1972 (Pub. L. 92–318), section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112), and other Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, or for so long as the purchaser owns it, whichever is later.

§ 1782.6 [Reserved]

§ 1782.7 Grants.

Servicing actions relating to Agency grants are governed by the provisions of several regulations and executive orders, including, but not limited to, 7 CFR parts 3015, 3016, 3017, 3018, 3019, 3021, and 3052 as applicable, and Executive Order (E.O.) 12803. Grantees remain responsible for property acquired with grant funds in accordance with terms of a grant agreement and applicable regulations.

§ 1782.8 Payments.

Payments will be applied in accordance with the terms of the debt instrument. Information on nontypical payments can be obtained from the Servicing official or office. All new borrowers will use pre-authorized debits as required in their Letter of Conditions.

§ 1782.9 Environmental requirements.

Servicing actions involving lease or sale of Agency-owned property will be reviewed for compliance with 7 CFR part 1794 as required in § 1794.3. The appropriate environmental review will be completed prior to approval of the servicing action.

§ 1782.10 Audit requirements.

Audits for loans will be required in accordance with § 1780.47 of this chapter. If the borrower becomes delinquent or is experiencing problems, the servicing official will require an audit or other documentation deemed necessary to resolve the delinquency. The provisions of 7 CFR 3052 address audit requirements for recipients of Federal grants.

§ 1782.11 Refinancing requirements.

If at any time it appears to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

§ 1782.12 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth in this section.

(a) *Approval conditions.* Approval may be given when the servicing official determines that:

(1) The consideration is for the full amount of the debt or the present fair market value as determined by an appraisal completed by a qualified Rural Development employee or an independent appraiser as determined appropriate by the approval official;

(2) The sale or exchange will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan and the transaction will not adversely affect the Agency's security position;

(4) If the property to be sold or exchanged will be used for similar purposes that the loan was made, the purchaser will:

(i) Execute Form RD 400–4, "Assurance Agreement." The instrument of conveyance will contain the civil rights covenant referenced in 7 CFR 1901.202(e); and

(ii) Provide the Agency with a written agreement assuming all rights and obligations of the original borrower, and

(5) Proceeds remaining after paying any reasonable and necessary selling expenses are to be used for one or more of the following purposes:

(i) To pay Agency debt, pay on debts secured by a prior lien, and pay on debts secured by a parity or subsequent lien if it is to the Agency's advantage;

(ii) To purchase or acquire property more suited to the borrower's needs, providing the Agency's security position is maintained; and

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability, place the operation on a sounder financial basis, or further the loan objectives and purposes.

(b) *Sale of assets financed with Agency grants.* The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

(c) *Release from liability.* If a borrower can no longer meet the objectives of the loan, the property may be sold. If the full amount of the borrower's debt is paid or assumed, the State Director may release the borrower from liability.

§ 1782.13 Transfer of security and assumption of loans.

It is the Agency's policy to approve transfers and assumptions to transferees that will continue the original purpose of the loan. Assistant Administrator written concurrence is required when the transfer exceeds the State Director's loan approval authority. The transfer will be approved in accordance with the following requirements:

(a) *General requirements for transferees.* The fulfillment of the following requirements for transfers will be determined by the approval official, in his or her discretion:

(1) The transferees must meet the eligibility requirements of 7 CFR part 1780 and provide the same information required in 7 CFR part 1780, subpart B, for application processing.

(2) The transfer will not be disadvantageous to the Government as determined by the approval official.

(3) If the Agency debt(s) exceeds the present market value of the security as determined by an appraisal, the transferee will assume an amount at least equal to the present market value.

(4) The Agency must concur in plans for disposition of funds in any reserve account, including project construction bank accounts. A reserve account may be considered as a transferable asset.

(5) The transferee will assume all of the borrower's responsibilities regarding loans. The transferee will also agree to accept the original loan conditions plus any conditions set forth by the Agency with regard to the transfer.

(6) A current appraisal will be completed to establish the present market value of the security when the full debt is not being assumed.

(7) There must be no lien, judgement, or similar claims of other parties against the Agency security being transferred unless the transferee is willing to accept such claims. The Agency must also determine that the claims will not prevent the transferee from repaying the Agency debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(8) A letter of conditions establishing requirements to be met in connection with the transfer will be issued, and the transferee will be required to execute Form RD 1942–46, "Letter of Intent to Meet Conditions," prior to closing of the transfer.

(9) The transferee will obtain insurance according to Agency requirements.

(10) The effective date of the transfer is the date the transfer is closed, which is the same date Form RD 1951–15, "Community Programs Assumption Agreement," or other appropriate assumption agreement which is executed and delivered by all necessary parties.

(11) Title to all assets will be conveyed from the transferor to the transferee unless all parties concerned, including the Agency, agree upon other arrangements. All instruments of conveyance will contain the necessary nondiscrimination covenant as referred to in § 1782.5.

(12) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the Government.

(13) The State Director is authorized to approve transfers to eligible transferees at the same interest rate as on the borrower's note(s) or bond(s). The maturity of the debt instrument for the assumed debt may not exceed the lesser of the repayment period authorized in 7 CFR part 1780 for a "new" loan or the expected life of the facility.

(14) Agency National Office concurrence is required for transfers not in compliance with paragraphs (a)(1) through (13) of this section.

(b) *Loan requirements for eligible transferees.* If a loan is evidenced and secured by a note and lien on real or chattel property, Form RD 1951–15, or other appropriate assumption agreement will be executed by the transferee. If a bond secures a loan, transfer documents will be developed by bond counsel and approved by the Office of the General Counsel (OGC), USDA.

(1) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, 7 CFR part 1780 will govern the preparation of any new debt instruments required.

(2) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(3) Any development funds remaining in a bank account that are not refunded to the Agency will be transferred to a bank account for the transferee. This will occur simultaneously with the closing of the transfer, and the funds will be used in completing planned development.

(c) *Release from liability.* Transferors may be released from liability when their debt is paid in full or when the debt is settled in accordance with § 1782.20 of this part.

(d) *Transfer of facility financed with Agency grants.* The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

§ 1782.14 Protection of service areas—7 U.S.C. 1926(b).

(a) 7 U.S.C. 1926(b) was enacted to protect the service area of Agency borrowers with outstanding loans, or those loans sold in the sale of assets authorized by the "Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub. L. 99–591, 100 Stat. 3341 (1986)," from loss of users due to actions or activities of other entities in the service area of the Agency financed system. Without this protection, other entities could extend service to users within the service area, and thereby undermine the purpose of the congressionally mandated water and waste loan and grant programs and jeopardize the borrower's ability to repay its Agency debt.

(b) Responsibility for initiating action in response to those actions prohibited by 7 U.S.C. 1926(b) rests with the borrower.

§ 1782.15 Mergers and consolidations.

Mergers and consolidations will be processed the same as a transfer and assumption, although approvals by the Agency will give consideration to the differences under the applicable law regarding the type of transaction under consideration and the unique facts involved in each transaction. Mergers occur when two or more entities combine in such a manner that only one remains in existence. Consolidations occur when two or more entities combine to form a new consolidated entity, and the original entities cease to exist. In both mergers and consolidations, the surviving or emerging entity acquires the assets and assumes the liabilities of the entity or entities that ceased to exist.

§ 1782.16 Defeasance of Agency indebtedness.

Defeasance, or amending outstanding loan instruments and agreements to permit defeasance of Agency debt instruments, is prohibited.

§ 1782.17 Parity lien.

In order for the Agency to agree to a parity lien position, the borrower must submit a written request to the servicing office.

(a) The written request for parity must contain the following items:

(1) An explanation of the purpose of the request for parity; amount of loan for which parity is requested; description of security property; type of security instrument; name and address of financial institution requesting the transaction; and other information determined necessary by the servicing official to evaluate the request.

(2) Current financial statements or an audit, if available or determined necessary by the servicing official.

(3) An annual operating budget which projects income and expenses for a typical year's operation. If construction is involved, the budget must be projected through the first full year of operation following completion of the planned improvements.

(4) A copy of the proposed security instrument.

(5) A certification from the borrower that the Agency debt cannot be refinanced at reasonable rates and terms.

(6) An appraisal, when the primary security is real estate or determined necessary by the servicing official in order to determine the adequacy of loan security or repayment ability.

(7) A certification that any development work will comply with subpart C of part 1780 of this chapter.

(b) Requests for parity must comply with requirements of paragraph (a) of this section, requirements as specified in the bond or loan documents, the requirements as specified in 7 CFR part 1780, subpart D, and as provided in applicable State law.

(c) If the borrower has met all of the requirements in paragraphs (a) and (b) of this section and the proposal is determined to be in the Government's interest, the Agency will then grant approval of the borrower's request for parity. The following factors will be considered in assessing whether the request is in the Government's interest:

(1) The value of the added assets compared with the amount of new debt to be secured;

(2) The value of the assets already pledged under the security documents, and any effects of the proposed transaction on the value of those assets;

(3) The ratio of the total outstanding debt secured under the security documents to the value of all assets pledged as security under the security documents;

(4) The borrower's ability to repay its debt owed to the Government;

(5) The overall financial viability of the borrower;

(6) The borrower's current relationship with the Agency (i.e. no defaults under the loan documents);

(7) Such other factors that may be relevant in individual cases, as determined by the Agency.

§ 1782.18 [Reserved]

§ 1782.19 Third party agreements.

The State Director may authorize third party operation, maintenance, and management of an Agency financed facility. The borrower's attorney must review the contract, management agreement, written lease, or other third party agreement and issue an opinion to the Agency as to their legal sufficiency. The borrower shall retain the legal authority necessary for owning, constructing, operating, and maintaining the facility.

§ 1782.20 Debt Settlement.

Pursuant to 7 U.S.C. 1981, this section prescribes policies for debt settlement of Water and Waste Disposal loans; Watershed loans and advances; Resource Conservation and Development loans; and 306 (c) Water and Waste Facility loans. Within the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134) is the Debt Collection Improvement Act of 1996. This law provides that any non-tax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be turned over to the Secretary of the Treasury for appropriate action to collect or terminate collection actions on the debt or claim. Debt that is in litigation or foreclosure, with a collection agency or designated Federal debt collection center, or that will be disposed of under an asset sales program, is exempt from transfer to the Secretary.

(a) *General requirements for debt settlement.* (1) The debt or any extension thereof on which settlement is requested must be due and payable. The debt will be due and payable either under the terms of the note or other instrument, or by acceleration, unless the debt is to be cancelled without application under paragraph (e)(2) of this section or charged off under paragraph (f) of this section.

(2) Normally, all security will be disposed of prior to the date of application for debt settlement unless it is necessary to abandon security through the debt settlement process. In such cases, debt settlement may proceed if the servicing official determines that further collection efforts would be ineffective, uneconomical, and not in the best interests of the Government.

(3) Debtors will not be permitted to sell security and use the proceeds as part or all of a compromise/adjustment debt settlement offer.

(4) Requests for debt settlement will consist of Form RD 1956–1 "Application For Settlement of Indebtedness," current financial information, description and estimated market value of collateral, and status of operation (*i.e.*, number of users, compliance with environmental issues, etc.).

(5) Office of General Counsel (OGC) advice on compliance with State or Federal statutes that may affect the debt settlement action must be requested.

(b) *Debts ineligible for settlement.* Debts will not be settled if:

(1) Referral to the Office of Inspector General and/or to OGC is contemplated or pending because of suspected criminal violation,

(2) Civil action to protect the interest of the Government is contemplated or pending,

(3) An investigation for suspected fiscal irregularity is contemplated or pending, or

(4) The debtor requests settlement of a claim that has been referred to or a judgment obtained by the United States Attorney. The settlement offer and any related payment must be submitted directly to the United States Attorney for consideration.

(c) *Types of debt settlement.* Typically, debt settlement will be accomplished through compromise/

adjustment, charge-off, or cancellation. Any debt remaining after the security has been liquidated, by sale or transfer, will be cancelled if there are no other assets from which to collect the debt. The servicing official will proceed with advice from OGC and the National Office, as required.

(d) *Compromise and adjustment.* Debts may be compromised or adjusted and security retained by the debtor, provided:

(1) The debtor is unable to pay the indebtedness in full,

(2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and

(3) The debtor has offered any additional amount that the debtor is able to pay.

(e) *Cancellation.* Non-judgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(1) *With application by the debtor.* Debts may be cancelled upon application of the debtor, subject to the following conditions:

(i) The servicing official furnishes a favorable recommendation concerning the cancellation;

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected;

(iii) The debtor is unable to pay any part of the debt, and has no reasonable prospect of being able to do so; and

(iv) The debt or any extension thereof is due and payable under the terms of the note or other instrument or due to acceleration by written notice prior to the date of application.

(2) *Without application by debtor.* Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

(i) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form RD 1956–1. A copy of the Bankruptcy Court's Discharge Order must be attached.

(ii) *Impractical to obtain debtor's signature.* Debts may be cancelled if it is impractical to obtain a signed application and the requirements of paragraphs (e)(1) of this section are met. Form RD 1956–1 will document the specific reason(s) why it was impossible or impracticable to obtain the signature of the debtor. If the debtor refused to sign the application, the reason(s) should be documented.

(f) *Charge-off*—(1) *Judgment debts.* Judgment debts, regardless of the amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

(i) The United States Attorney's file is closed, and

(ii) The requirements of paragraph (e)(2)(ii) of this section, if applicable, have been met, or 2 years have elapsed since any collections were made on the judgment. The debtor must also have no equity in the property subject to the lien or upon which a lien can be obtained.

(2) *Non-judgment debts.* Debts that cannot be settled under other sections of this part may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(i) When OGC advises in writing that the claim is legally without merit or that evidence necessary to prove the claim in court cannot be provided; or

(ii) When there is no known security for the debt, the debtor has no other assets from which the debt could be collected, and the debtor:

(A) Is unable to pay any part of the debt and has no reasonable prospect of being able to do so; or

(B) Is able to pay part or all of the debt but refuses to do so, and OGC provides an opinion to the effect that the Government cannot enforce collection of a significant amount from assets or income.

§ 1782.21 [Reserved]

§ 1782.22 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative course(s) of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. The exception decision will be documented in writing, signed by the Administrator, and retained in the files.

§ 1782.23 Use of Rural Development loans and grants for other purposes.

(a) If, after making a loan or a grant, the Administrator determines that the circumstances under which the loan or grant was made have sufficiently changed to make the project or activity for which the loan or grant was made available no longer appropriate, the Administrator may allow the borrower or grantee to use property (real and personal) purchased or improved with the loan or grant funds, or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity that:

(1) Will be carried out in the same area as the original project or activity;

(2) Meets the criteria for a loan or grant described in section 381E(d) of the Consolidated Farm and Rural Development Act (Pub. L. 87–128), as amended; and

(3) Satisfies such additional requirements as are established by the Administrator.

(b) If the new use of the property is under the authority of another USDA Agency Administrator, the other Administrator will be consulted on whether the new use will meet the criteria of the other program. Since the new project or activity must be carried out in the same area as the original project or activity, a new rural area determination will not be necessary.

(c) Borrowers and grantees that wish to use the proceeds for other purposes may make their request through the appropriate Rural Development State Office. Permission to use this option will be exercised on a case-by-case-basis on applications submitted through the State Office to the Administrator for consideration. If the proposal is approved, the Administrator will issue a memorandum to the State Director outlining the conditions necessary to complete the transaction.

§ 1782.24–1782.99 [Reserved]

§ 1782.100 OMB Control Number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0572–0137.

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS—COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1951—SERVICING AND COLLECTIONS

■ 2. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note, 7 U.S.C. 1989; 31 U.S.C. 3716, 42 U.S.C. 1480.

Subpart A—Account Servicing Policies

■ 3. Amend § 1951.1 by adding the following sentence to the end of the section:

§ 1951.1 Purpose.

* * * This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, or

Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Subpart D—Final Payment on Loans

■ 4. Revise § 1951.151 to read as follows:

§ 1951.151 Purpose.

This subpart prescribes authorizations, policies, and procedures of the Farm Service Agency (FSA), Rural Housing Service (RHS), and Rural Business-Cooperative Service (RBS), herein referred to as "Agency," for processing final payment on all loans. This subpart does not apply to Direct Single Family Housing customers or to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Program of the RHS. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

■ 5. Revise § 1951.201 to read as follows:

§ 1951.201 Purposes.

This subpart prescribes the Rural Development mission area policies, authorizations, and procedures for servicing the following programs: Community Facility loans and grants, Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Direct Business loans; Economic Opportunity Cooperative loans; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; System for Delivery of Certain Rural Development Programs panel grants; in part 4284 of this title, Rural and Cooperative Development Grants, Value-Added Producer Grants, and Agriculture Innovation Center Grants. Rural Development State Offices act on behalf of the Rural Business-Cooperative Service and the Farm Service Agency as to loan and grant programs formerly administered by the Farmers Home Administration and the Rural Development Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development Loans, which are serviced under part 1782 of this title.

■ 6. Add § 1951.218 to read as follows:

§ 1951.218 Use of Rural Development loans and grants for other purposes.

(a) If, after making a loan or a grant, the Administrator determines that the circumstances under which the loan or grant was made have sufficiently changed to make the project or activity for which the loan or grant was made available no longer appropriate, the Administrator may allow the loan borrower or grant recipient to use property (real and personal) purchased or improved with the loan or grant funds, or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity that:

(1) Will be carried out in the same area as the original project or activity;

(2) Meets the criteria for a loan or grant described in section 381E(d) of the Consolidated Farm and Rural Development Act, as amended; and

(3) Satisfies such additional requirements as are established by the Administrator.

(b) For the purpose of this section, Administrator means the Administrator of the Rural Housing Service or Rural Business-Cooperative Service that has the delegated authority to administer the loan or grant program that covers the property or the proceeds from the sale of property proposed to be used in another way.

(c) If the new use of the property is under the authority of another Administrator, the other Administrator will be consulted on whether the new use will meet the criteria of the other program. Since the new project or activity must be carried out in the same area as the original project or activity, a new rural area determination will not be necessary.

(d) Borrowers and grantees that wish to take advantage of this option may make their request through the appropriate Rural Development State Office. Permission to use this option will be exercised on a case-by-case-basis on applications submitted through the State Office to the Administrator for consideration. If the proposal is approved, the Administrator will issue a memorandum to the State Director outlining the conditions necessary to complete the transaction.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

■ 7. Revise § 1951.251 to read as follows:

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a direct borrower's need for continued Agency supervision, further credit, and graduation. All loan accounts will be reviewed for graduation in accordance with this subpart, with the exception of Guaranteed, Rural Development Loan Funds, and Rural Rental Housing loans made to build or acquire new units pursuant to contracts entered into on or after December 15, 1989, and Intermediary Relending Program loans. The term "Agency" used in this subpart refers to the Farm Service Agency (FSA), Rural Housing Service (RHS), or Rural Business-Cooperative Service (RBS), depending upon the loan program discussed herein. This subpart does not apply to RHS direct single family housing (SFH) customers. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

■ 8. Revise § 1951.701 to read as follows:

§ 1951.701 Purpose.

This subpart prescribes the policies and procedures for servicing Community and Business Program loans and/or grants made by Rural Development when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by Rural Development to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development Loans, which are serviced under part 1782 of this title.

PART 1955—PROPERTY MANAGEMENT

■ 9. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

■ 10. Revise § 1955.1 to read as follows:

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of loans to individuals and to organizations as identified in § 1955.3 of this subpart. It pertains to the Farm Credit programs of the Farm Service Agency (FSA), Multi-Family Housing (MFH) and Community Facility (CF) programs of the Rural Housing Service (RHS), and direct programs of the Rural Business-Cooperative Service (RBS). Guaranteed RBS loans are liquidated upon direction from the Deputy Administrator, Business Programs, RBS. This subpart does not apply to RHS single family housing loans, or to CF loans sold without insurance in the private sector. These CF loans will be serviced in the private sector, and future revisions to this subpart no longer apply to such loans. This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Programs of RHS. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Subpart B—Management of Property

■ 11. Revise the introductory text of § 1955.51 to read as follows:

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Farm Service Agency (FSA), herein referred to as "Agency." This subpart does not apply to RHS single family housing loans or community program loans sold without insurance to the private sector. These community program loans will be serviced by the private sector, and future revisions to this subpart no longer apply to such loans. This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Program of RHS. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title. This subpart covers:

* * * * *

Subpart C—Disposal of Inventory Property

■ 12. Revise § 1955.101 to read as follows:

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights, and chattels. It also covers the granting of easements and rights-of-way on inventory property. Credit sales of inventory property to ineligible (non-program (NP)) purchasers will be handled in accordance with Subpart J of Part 1951 of this chapter, except Community and Business Programs (C&BP) and Multi-Family Housing (MFH) which will be handled in accordance with this Subpart. In addition, credit sales of Single Family Housing (SFH) properties converted to MFH will be handled in accordance with this Subpart. This subpart does not apply to Single Family Housing (SFH) inventory property or to the Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing Programs. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

PART 1956—DEBT SETTLEMENT

■ 13. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1981; 31 U.S.C 3711; 42 U.S.C. 1480.

Subpart C—Debt Settlement—Community and Business Programs

■ 14. Revise § 1956.101 to read as follows:

§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Community Facility loans; Association Recreation loans; Rural Renewal loans; direct Business and Industry loans; and Shift-in-land-use loans. Settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Non-program loans, Rural Business Enterprise/Television Demonstration Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority, and settlement under these programs is handled pursuant to the Federal Claims Collection Joint Standards, 4 CFR parts 101–105, as described in § 1956.147 of this subpart. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Dated: September 12, 2007.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 07–4756 Filed 9–27–07; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

RIN 3150–AI15

NRC Size Standards; Revision Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct Final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 24, 2007, for a direct final rule that was published in the **Federal Register** on August 10, 2007 (72 FR 44951). This direct final rule amended the NRC's regulations concerning the size standard it uses to qualify an NRC licensee as a small entity under the Regulatory Flexibility Act and has made the same change to its annual fee rule.

DATES: *Effective Date:* The effective date of October 24, 2007 is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD 20852. These same documents are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are

problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737.

FOR FURTHER INFORMATION CONTACT: Cindy K. Bladey, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6978 (e-mail: *cxb6@nrc.gov*).

SUPPLEMENTARY INFORMATION: On August 10, 2007, (72 FR 44951), the NRC published a direct final rule amending its regulations in 10 CFR parts 2 and 171 to revise the size standards it uses to qualify an NRC licensee as a small entity under the Regulatory Flexibility Act. This amendment increases the receipts-based small business size standard from $5 million to $6.5 million. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on October 24, 2007. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 21st day of September, 2007.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E7–19255 Filed 9–27–07; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1295]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; Conforming references.

SUMMARY: The Board is publishing amendments to Regulation B (Equal Credit Opportunity Act) to update the address where questions should be directed concerning creditors for which the Federal Reserve System administers compliance with the regulation.

DATES: *Effective Date:* October 29, 2007. Compliance is optional until October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Yvonne Cooper, Manager, Consumer Complaints, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3946. For the users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* The ECOA is implemented by the Board's Regulation B.

In addition to the general prohibition against discrimination, Regulation B contains specific rules concerning the taking and evaluation of credit applications, including procedures and notices for credit denials and other adverse action. Under section 202.9 of Regulation B, notification given to an applicant when adverse action is taken must contain the name and address of the federal agency that administers compliance with respect to the creditor. Appendix A of Regulation B contains the names and addresses of the enforcement agencies where questions concerning a particular creditor shall be directed. The Board is establishing a centralized address and telephone number for receiving inquiries about creditors for which the Board enforces Regulation B. This amendment updates the address in Appendix A to reflect this change. Creditors have until October 1, 2008, the mandatory compliance date, to include the new address and telephone number on their adverse action notices.

12 CFR Chapter II

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Sex discrimination.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 202 to read as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

Authority: Section 15 U.S.C. 1691–1691f.

■ 2. Appendix A is amended by revising the following Federal Enforcement Agency address to read as follows:

Appendix A to Part 202—Federal Enforcement Agencies

* * * * *

State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act: Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480; toll-free number: (888) 851–1920, fax number: (877) 888–2520, TDD number: (877) 766–8533.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 24, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–19136 Filed 9–27–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Regulation AA; Docket No. R–1296]

Unfair or Deceptive Acts or Practices

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; conforming references.

SUMMARY: The Board is publishing amendments to Regulation AA (Unfair or Deceptive Acts or Practices) to update the address where consumer complaints regarding a state member bank may be sent.

EFFECTIVE DATE: October 29, 2007.

FOR FURTHER INFORMATION CONTACT: Yvonne Cooper, Manager, Consumer Complaints, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3946. For the users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission Act requires the Board to establish a separate division of consumer affairs to receive and take appropriate action upon complaints about unfair or deceptive acts or practices for banks under its jurisdiction. *See* 15 U.S.C. 57a(f). The procedures for submitting consumer complaints are contained in the Board's Regulation AA (12 CFR part 227). The regulation currently directs consumers

having complaints regarding a state member bank to submit the complaint to the Board or the Federal Reserve Bank of the district in which the bank is located. 12 CFR 227.2(a). The Board is establishing a centralized location for the administrative processing of consumer complaints. Accordingly, the Board is amending Regulation AA to reflect the new address where such complaints should be sent and to provide a telephone number consumers can use to submit complaints.

List of Subjects in 12 CFR Part 227

Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 227 to read as follows:

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)

■ 1. The authority citation for part 227 continues to read as follows:

Authority: Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a).

Subpart A—Consumer Complaints

■ 2. Section 227.2—Consumer-Complaint Procedure, paragraph (a)(2) is revised to read as follows:

§ 227.2 Consumer complaint procedure.

(a) * * *

(2) Consumer complaints should be made to—Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480, Toll-free number: (888) 851–1920, Fax number: (877) 888–2520, TDD number: (877) 766–8533.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 24, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–19137 Filed 9–27–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, and 187

[Docket No.: FAA–2007–27043; Amendment Nos. 61–116, 63–35, 65–49, 187–4]

RIN 2120–AI77

Fees for Certification Services and Approvals Performed Outside the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On April 12, 2007, the FAA issued a direct final rule, "Fees for Certification Services and Approvals Performed Outside the United States," which amended the regulations pertaining to payment of fees to the Federal Aviation Administration (FAA) for certification services performed outside the United States. This rule also amended the regulations where it is unclear that fees for airmen certification services apply to all applicants located outside the United States, regardless of citizenship. This notice confirms the effective date of the direct final rule.

DATES: The effective date for the direct final rule published on April 12, 2007 (72 FR 18556) is confirmed as June 11, 2007.

ADDRESS: The complete docket for the direct final rule can be identified by Docket Number FAA–2007–27043. You may examine the docket through the DOT Docket Web site at *http://dms.dot.gov* or visit the Docket Management Facility at 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–001, between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ida M. Klepper, FAA, Office of Rulemaking, ARM–100; 800 Independence Ave., SW., Washington, DC 20591, Telephone: 202–267–9677, Fax: 202–267–5075.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2007 the FAA published a direct final rule (72 FR 18556) amending § 187.15(a) to allow the use of a credit card to pay fees to the FAA for certification services performed outside the United States. Until now, fees could only be paid by check, money order, wire transfer, or draft, payable in U.S. currency and drawn on a U.S. bank. Section 187.15(d) already allows the use of a credit card to remit amounts less than $1,000 for certain aircraft flights transiting U.S. controlled airspace. The direct final rule revised sections (a) and (d) to bring consistency to the methods of payment.

In 1995 the FAA published a final rule (60 FR 19631) amending 14 CFR part 187. During this time the FAA offices were not set up to receive credit card payments and therefore credit card payments were specifically omitted from the 1995 rulemaking. As technology advanced over the years credit card payments became an accepted practice within the FAA accounting systems and offices. Therefore the FAA began collecting user fees by credit card allowing more timely receipt and providing customers with a convenient method to pay for services.

This direct final rule also revised §§ 61.13(a)(2), 63.11 and 65.11. In the 1995 final rule that amended fees under part 187, appendix A, the issue that was specifically addressed was that user fees extended to all applicants located outside the United States, regardless of citizenship. The 1995 final rule brought these regulations in line with the nondiscrimination principles of multilateral trade agreements to which the U.S. is a signatory. Those included the principles of the General Agreement on Tariffs and Trade (GATT), including the GATT Aircraft Code and the General Agreement on Trade in Services. When part 187 was initially amended in 1995, §§ 61.13(a)(2), 63.11 and 65.11 were not revised for consistency, the direct final rule corrects this inconsistency.

Before the direct final rule became effective § 61.13(a)(2) required an "applicant who is neither a citizen of the United States nor a resident alien of the United States" to show evidence of paying the correct fee prescribed in appendix A to part 187. This evidence was to be presented when the person applied for a student pilot certificate issued outside the United States or a knowledge test or practical test administered outside the United States. The direct final rule revised the wording to make it clear that an applicant's citizenship is not at issue. The revised wording now states the fees are for "airmen certification services." There is no need to enumerate those services because they are addressed in part 187, appendix A.

Before the direct final rule became effective §§ 63.11 and 65.11 stated: "Each person who is neither a United States citizen nor a resident alien and applies for written or practical test to be administered outside the United States for any certificate or rating issued under this part must show evidence the fee prescribed in appendix A of part 187 of

this chapter has been paid." The direct final rule revised the wording as follows: "Each person who applies for airmen certification services to be administered outside the United States for any certificate or rating issued under this part must show evidence that the fee prescribed in appendix A of part 187 of this chapter has been paid."

Conclusion

The FAA did not receive any adverse or negative comments or a written notice of intent to file an adverse or negative comment and therefore the rulemaking became effective on June 11, 2007.

Issued in Washington, DC on September 24, 2007.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. E7–19246 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2653; File No. S7–23–07]

RIN 3235–AJ96

Temporary Rule Regarding Principal Trades With Certain Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rule; request for comments.

SUMMARY: The Commission is adopting a temporary rule under the Investment Advisers Act of 1940 that establishes an alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. The Commission is adopting the temporary rule on an interim final basis as part of its response to a recent court decision invalidating a rule under the Advisers Act, which provided that fee-based brokerage accounts were not advisory accounts and were thus not subject to the Advisers Act. As a result of the Court's decision, which takes effect on October 1, fee-based brokerage customers must decide whether they will convert their accounts to fee-based accounts that are subject to the Advisers Act or to commission-based brokerage accounts. We are adopting the temporary rule to enable investors to make an informed choice between those accounts and to continue to have access to certain securities held in the principal accounts of certain advisory firms while remaining protected from certain conflicts of interest. The temporary rule will expire and no longer be effective on December 31, 2009.

DATES: *Effective Date:* September 30, 2007, except for 17 CFR 275.206(3)–3T will be effective from September 30, 2007 until December 31, 2009.

Comment Date: Comments on the interim final rule should be received on or before November 30, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–23–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–23–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/final.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: David W. Blass, Assistant Director, Daniel S. Kahl, Branch Chief, or Matthew N. Goldin, Attorney-Adviser, at (202) 551–6787 or *IArules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting temporary rule 206(3)–3T [17 CFR 275.206(3)–3T] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] as an interim final rule.

We are soliciting comments on all aspects of the rule. We will carefully consider the comments that we receive and respond to them in a subsequent release.

I. Background

A. The FPA Decision

On March 30, 2007, the Court of Appeals for the District of Columbia Circuit (the "Court"), in *Financial Planning Association* v. *SEC* ("*FPA* decision"), vacated rule 202(a)(11)–1 under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").[1] Rule 202(a)(11)–1 provided, among other things, that fee-based brokerage accounts were not advisory accounts and were thus not subject to the Advisers Act.[2] As a consequence of the *FPA* decision, broker-dealers offering fee-based brokerage accounts became subject to the Advisers Act with respect to those accounts, and the client relationship became fully subject to the Advisers Act. Broker-dealers would need to register as investment advisers, if they had not done so already, act as fiduciaries with respect to those clients, disclose all potential material conflicts of interest, and otherwise fully comply with the Advisers Act, including the Act's restrictions on principal trading.

We filed a motion with the Court on May 17, 2007 requesting that the Court temporarily withhold the issuance of its mandate and thereby stay the effectiveness of the *FPA* decision.[3] We estimated at the time that customers of broker-dealers held $300 billion in one million fee-based brokerage accounts.[4] We sought the stay to protect the interests of those customers and to provide sufficient time for them and their brokers to discuss, make, and implement informed decisions about the assets in the affected accounts. We also informed the Court that we would use

[1] 482 F.3d 481 (D.C. Cir. 2007).

[2] Fee-based brokerage accounts are similar to traditional full-service brokerage accounts, which provide a package of services, including execution, incidental investment advice, and custody. The primary difference between the two types of accounts is that a customer in a fee-based brokerage account pays a fee based upon the amount of assets on account (an asset-based fee) and a customer in a traditional full-service brokerage account pays a commission (or a mark-up or mark-down) for each transaction.

[3] May 17, 2007, Motion for the Stay of Mandate, in *FPA* v. *SEC*.

[4] *Id.*

the period of the stay to consider whether further rulemaking or interpretations were necessary regarding the application of the Act to fee-based brokerage accounts and other issues arising from the Court's decision. On June 27, 2007, the Court granted our motion and stayed the issuance of its mandate until October 1, 2007.[5]

B. Section 206(3) of the Advisers Act and the Issue of Principal Trading

We and our staff received several letters regarding the *FPA* decision and about particular consequences to customers who hold fee-based brokerage accounts.[6] Our staff followed up with, and has been engaged in an ongoing dialogue with, representatives of investors, financial planners, and broker-dealers regarding the implications of the *FPA* decision. During that process, firms that offered fee-based brokerage accounts informed us that, unless the Commission acts before October 1, 2007, one group of fee-based brokerage customers is particularly likely to be harmed by the consequences of the *FPA* decision: Customers who depend both on access to principal transactions with their brokerage firms and on the protections associated with a fee-based (rather than transaction-based) compensation structure. Firms explained that section 206(3) of the Advisers Act, the principal trading provision, poses a significant practical impediment to continuing to meet the needs of those customers.

Section 206(3) of the Advisers Act makes it unlawful for any investment adviser, directly or indirectly "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client * * *, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."[7] Section 206(3) requires an adviser entering into a principal transaction with a client to satisfy these disclosure and consent requirements on a transaction-by-transaction basis.[8] An adviser may provide the written disclosure to a client and obtain the client's consent at or prior to the completion of the transaction.[9]

During our discussions, firms informed our staff that the written disclosure and the client consent requirements of section 206(3) act as an operational barrier to their ability to engage in principal trades with their clients. Firms that are registered both as broker-dealers and investment advisers generally do not offer principal trading to current advisory clients (or do so on a very limited basis), and the rule vacated in the *FPA* decision had allowed broker-dealers to offer fee-based accounts without complying with the Advisers Act, including the requirements of section 206(3). Most informed us that they plan to discontinue fee-based brokerage accounts as a result of the *FPA* decision because of the application of the Advisers Act. They also informed us of their view that, unless they are provided an exemption from, or an alternative means of complying with, section 206(3) of the Advisers Act, they would be unable to provide the same range of services to those fee-based brokerage customers who elect to become advisory clients and would expect few to elect to do so.[10]

Several broker-dealers and the Securities Industry and Financial Markets Association ("SIFMA") contended that providing written disclosure before completion of each securities transaction, as required by section 206(3) of the Advisers Act, makes it not feasible for an adviser to offer customers principal transactions for several reasons. Firms explained that there are timing and mechanical

[5] *See* June 27, 2007, Order of the U.S. Court of Appeals for the District of Columbia Circuit, in *FPA* v. *SEC*.

[6] *See, e.g.*, Letter from Barbara Roper, Director of Investor Protection, Consumer Federation of America, et al., to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated April 24, 2007; E-mail from Timothy J. Sagehorn, Senior Vice President—Investments, UBS Financial Services Inc., to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated May 15, 2007; Letter from Kurt Schacht, Managing Director, CFA Institute Centre for Financial Market Integrity, to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated May 23, 2007; Letter from Joseph P. Borg, President, North American Securities Administrators Association, Inc., to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated June 18, 2007; Letter from Daniel P. Tully, Chairman Emeritus, Merrill Lynch & Co., Inc., to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated June 21, 2007; Letter, with Exhibit, from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, to Robert E. Plaze, Associate Director, Division of Investment Management, U.S. Securities and Exchange Commission, and Catherine McGuire, Chief Counsel, Division of Market Regulation, U.S. Securities and Exchange Commission, dated June 27, 2007 ("SIFMA Letter"); Letter from Raymond A. "Chip" Mason, Chairman and CEO, Legg Mason, Inc., to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated July 10, 2007; Letter from Robert J. McCann, Vice Chairman and President—Global Private Client, Merrill Lynch, to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated July 11, 2007; Letter from Samuel L. Hayes, III, Jacob Schiff Professor of Investment Banking Emeritus, Harvard Business School, to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated July 12, 2007; Letter from Duane Thompson, Managing Director, Washington Office, Financial Planning Association, to Robert E. Plaze, Associate Director, Division of Investment Management, U.S. Securities and Exchange Commission, dated July 27, 2007 ("FPA Letter"); Letter from Richard Bellmer, Chair, and Ellen Turf, CEO, National Association of Personal Financial Advisors, to Robert E. Plaze, Associate Director, Division of Investment Management, U.S. Securities and Exchange Commission, dated August 14, 2007 ("NAPFA Letter"); Letter from Congressman Dennis Moore, et al., to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated July 13, 2007; and Letter from Congressman Spencer Bachus, Ranking Member, Committee on Financial Services, to Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated July 10, 2007. Each of these letters is available at: *www.sec.gov/comments/s7-23-07*.

[7] 15 U.S.C. 80b–6(3). Section 206(3) also addresses "agency cross transactions," imposing the same procedural requirements regarding prior disclosure and consent on those transactions as it imposes on principal transactions. Agency cross transactions are transactions for which an investment adviser provides advice and the adviser, or a person controlling, controlled by, or under common control with the adviser, acts as a broker for that advisory client and for the person on the other side of the transaction. *See Method for Compliance with Section 206(3) of the Investment Advisers Act of 1940 with Respect to Certain Transactions*, Investment Advisers Act Release No. 557 (Dec. 2, 1976) [41 FR 53808] ("Rule 206(3)–2 Proposing Release").

[8] *See Commission Interpretation of Section 206(3) of the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 1732 (July 17, 1998) [63 FR 39505 (July 23, 1998)] ("Section 206(3) Release") ("[A]n adviser may comply with Section 206(3) either by obtaining client consent prior to execution of a principal or agency transaction, or after execution but prior to settlement of the transaction."). *See also* Investment Advisers Act Release No. 40 (Jan. 5, 1945) [11 FR 10997] ("[T]he requirements of written disclosure and of consent contained in this clause must be satisfied before the completion of each separate transaction. A blanket disclosure and consent in a general agreement between investment adviser and client would not suffice.").

[9] Section 206(3) Release ("Implicit in the phrase 'before the completion of such transaction' is the recognition that a securities transaction involves various stages before it is 'complete.' The phrase completion of such transaction' on its face would appear to be the point at which all aspects of a securities transaction have come to an end. That ending point of a transaction is when the actual exchange of securities and payment occurs, which is known as 'settlement.'").

[10] The firms explained that they plan to consult with their customers and obtain customers' consent to convert the fee-based accounts to one or more other types of accounts already operating on pre-existing business platforms. We understand that in most cases customers will be able to choose among different types of brokerage accounts, paying commissions for securities, and advisory accounts, paying asset-based fees. Firms indicated to us that, if we provide an alternative means of complying with section 206(3), they believe a significant number of their fee-based brokerage customers will elect to convert their accounts to non-discretionary advisory accounts. Those accounts operate in many respects like fee-based brokerage accounts, but fiduciary duties apply to the adviser, and the other obligations of the Advisers Act also apply. Firms offering these accounts provide investment advice, but clients retain decision making authority over their investment selections.

impediments to complying with section 206(3)'s written disclosure requirement. SIFMA explained that, for example, the combination of rapid electronic trading systems and the limited availability of many of the securities traded in principal markets means that an adviser may be unable to provide written disclosure and obtain consent in sufficient time to obtain such securities at the best price or, in some cases, at all.[11] Similarly, SIFMA contended that trade-by-trade written disclosure prior to execution is not practicable because "discussions between investment advisers and non-discretionary clients about a trade or strategy may occur before a particular transaction is effected, but at the time that discussion occurs the representative may not know whether the transaction will be effected on an agency or a principal basis."[12]

Firms also explained that they engage in thousands—in many cases, tens of thousands—of principal trades a day and that, due to the sheer volume of transactions, providing a written notice to all the clients with whom they conduct trades in a principal capacity may only be done using automated systems.[13] One such automated system is the system broker-dealers use to provide customers with transaction-specific written notifications, or trade confirmations, that include the information required by rule 10b–10 under the Exchange Act.[14] Under rule 10b–10, a broker-dealer must disclose on its confirmation if it acts as principal for its own account with respect to a transaction.[15] However, confirmations are provided to customers too late to satisfy the requirements of section 206(3). This is because trade confirmations are *sent*, rather than *delivered*, at completion of a transaction and much of the information required to be disclosed by rule 10b–10 may only be available at completion of a transaction, not before. Thus, even if firms were to rely on the Commission's 1998 interpretation of section 206(3), under which disclosure and consent may be obtained after execution but before settlement of a transaction,[16] no automated system currently exists that could ensure compliance.[17]

Additionally, even if an automated system existed to enable the disclosure and consent after execution of a trade but before its completion in satisfaction of section 206(3), firms indicated that they would be unlikely to trade on such a basis. The firms explained that they do not seek post-execution consent because allowing a client until settlement to consent to a trade that has already been executed creates too great a risk that intervening market changes or other factors could lead a client to withhold consent to the disadvantage of the firm.

Access to securities held in a firm's principal accounts is important to many investors. We believe, based on our discussions with industry representatives and others throughout the transition process, that many customers may wish to access the securities inventory of a diversified broker-dealer through their non-discretionary advisory accounts.[18] For example, the Financial Planning Association ("FPA") noted that principal trades in a fiduciary relationship could be beneficial to investors, stating:

> Depending on the circumstances, clients may benefit from principal trades, but only in the context of a fiduciary relationship with the best interests of the client being paramount. In favorable circumstances, advisers may obtain access to a broader range of investment opportunities, better trade execution, and more favorable transaction prices for the securities being bought or sold than would otherwise be available.[19]

As a result of the *FPA* decision, customers must elect on or before October 1, 2007, to convert their fee-based brokerage accounts to advisory accounts or to traditional commission-based brokerage accounts. Several firms emphasized to our staff that the inability of a client to access certain securities held in the firm's principal accounts—particularly municipal securities and other fixed income securities that they contend have limited availability and are dealt through a firm's account using electronic communications networks—may be a determinative factor in whether the client selects (or the firm makes available) a non-discretionary advisory account to replace the client's fee-based brokerage account. As discussed in this Release, many firms informed us that, because of the practical difficulties with complying with the trade-by-trade written disclosure requirements of section 206(3) discussed above, they simply refrain from engaging in principal trading with their advisory clients. Accordingly, customers who wish to access firms' principal inventories may, as a practical matter, have no choice but to open a traditional brokerage account in which they will pay transaction-based compensation, rather than convert their fee-based brokerage account to an advisory account.

While we do not agree with SIFMA that an exemption from section 206(3) of the Act in its entirety is appropriate, we do believe that there may be substantial benefits to many of the investors holding an estimated $300 billion in approximately one million fee-based brokerage accounts if their accounts are converted to advisory accounts instead of traditional brokerage accounts.[20] Those investors will continue to be able

[11] SIFMA Letter, at 21 ("Many fixed income securities, including municipal securities, that have limited availability are quoted, purchased and sold quickly through electronic communications networks utilized by bond dealers. * * * In today's principal markets, investment advisers do not necessarily have 'sufficient opportunity to secure the client's specific prior consent' and provide trade-by-trade disclosure, and opportunities to achieve best execution may be lost if the adviser does not act immediately on current market prices.") (quoting Rule 206(3)–2 Proposing Release).

[12] *Id.*

[13] Firms asserted that, while possible, providing written notifications by fax or email prior to a transaction is impractical. Clients may not have ready access to either at the time they wish to conduct a trade and delaying the trade in order to provide the written notification likely would not be in the client's best interest, in particular as market prices may change rapidly.

[14] 17 CFR 240.10b–10. Rule 10b–10 under the Exchange Act requires a broker-dealer, at or before completion of a transaction, to give or send to its customer a written confirmation containing specified information about the transaction.

[15] Rule 10b–10(a)(2) under the Exchange Act [17 CFR 240.10b–10(a)(2)].

[16] *See* Section 206(3) Release.

[17] It may be possible for firms to upgrade their confirmation delivery systems to provide an additional written disclosure that satisfies the content and chronological requirements of section 206(3) of the Act. Based on our experience with changes to confirmation delivery systems (largely in response to our changes to Exchange Act rule 10b–10), any such upgrade could take years to accomplish and would not be available by October 1, 2007, the date the *FPA* decision becomes effective. Furthermore, even if an automated system were developed to provide those written disclosures at or before completion of the transaction, no such automated system exists to obtain the required consent from advisory clients. We also are mindful of the burdens associated with such a system change. SIFMA has submitted to us that "[t]rade confirmation production systems are among the most expensive and most difficult to alter anywhere in the brokerage industry, because of the mass nature of confirmations, the sensitive and private nature of the information, and the extremely short deadlines for their production and mailing." Letter from Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry and Financial Markets Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, U.S. Securities and Exchange Commission, dated April 4, 2005, available at: *www.sec.gov/rules/proposed/s70604/ihammerman040405.pdf.*

[18] We have previously expressed our view that some principal trades may serve clients' best interests. *See* Section 206(3) Release.

[19] FPA Letter, at 3.

[20] SIFMA asserted that firms should be exempt entirely from section 206(3) of the Act in order to "preserve the [fee-based brokerage] client's ability to access certain securities that are best—or only—available through trades with the adviser or an affiliate of the adviser." SIFMA Letter, at 3. SIFMA further requested that we provide broker-dealers an exemption from all of the provisions of the Advisers Act with respect to their fee-based brokerage accounts. We are not adopting such a broad exemption.

to avoid transaction-based compensation and the incentives such a compensation arrangement creates for a broker-dealer, a reason they may have initially opened fee-based brokerage accounts.[21] They also will enjoy, as the Court pointed out in the *FPA* decision, the protections of the "federal fiduciary standard [that] govern[s] the conduct of investment advisers."[22]

To address the concerns described above and to protect the interests of customers who previously held fee-based brokerage accounts, we are adopting a temporary rule, on an interim final basis, that provides an alternative method for advisers who also are registered as broker-dealers to comply with section 206(3) of the Act. We believe this rule both protects investors' choice—fee-based brokerage customers would be able to choose an account that offers a similar set of services (including access to the same securities) that were available to them in fee-based brokerage accounts—and avoids disruption to, and confusion among, investors who may wish to access and sell securities only available through a firm acting in a principal capacity and who, as a result, may no longer be offered any fee-based account. We believe the temporary rule will allow fee-based brokerage customers to maintain their existing relationships with, and receive roughly the same services from, their broker-dealers. We believe further that making the rule temporary allows us an opportunity to observe how those firms use the alternative means of compliance provided by the rule, and whether those firms serve their clients' best interests.

[21] A brokerage industry committee formed in 1994 at the suggestion of then-Commission Chairman Arthur Levitt concluded that fee-based compensation would better align the interests of broker-dealers and their customers and allow registered representatives to focus on what the committee described as their most important role—providing investment advice to individual customers, not generating transaction revenues. *See Report of the Committee on Compensation Practices* (Tully Report) (Apr. 10, 1995). We already have sought and received public comment on the potential benefits to investors of fee-based accounts, *see Certain Broker-Dealers Deemed Not to be Investment Advisers*, Investment Advisers Act Release No. 2376 (Apr. 12, 2005) [70 FR 20424 (Apr. 19, 2005]; *Certain Broker-Dealers Deemed Not to be Investment Advisers*, Investment Advisers Act Release No. 2340 (Jan. 6, 2005) [70 FR 2716 (Jan. 14, 2005)]; and *Certain Broker-Dealers Deemed Not to be Investment Advisers*, Investment Advisers Act Release No. 1845 (Nov. 4, 1999) [64 FR 61226 (Nov. 10, 1999)].

[22] *FPA* decision, at 16, citing *Transamerica Mortgage Advisors Inc.* v. *Lewis*, 444 U.S. 11, 17 (1979).

II. Discussion

A. Overview of Temporary Rule 206(3)–3T

Congress intended section 206(3) of the Advisers Act to address concerns that an adviser might engage in principal transactions to benefit itself or its affiliates, rather than the client.[23] In particular, Congress appears to have been concerned that advisers might use advisory accounts to "dump" unmarketable securities or those the advisers fear may decline in value.[24] Congress chose not to prohibit advisers from engaging in principal and agency transactions, but rather to prescribe a means by which an adviser must disclose and obtain the consent of its client to the conflicts of interest involved. Congress's concerns were and continue to be significant. Self-dealing by investment advisers involves serious conflicts of interest and a substantial risk that the proprietary interests of the adviser will prevail over those of its clients.[25]

In light of these concerns and the important protections provided by section 206(3) of the Advisers Act, rule 206(3)–3T provides advisers an alternative means to comply with the requirements of that section that is consistent with the purposes, and our prior interpretations, of the section. The temporary rule continues to provide the protection of transaction-by-transaction disclosure and consent, subject to several conditions.[26] Specifically, temporary rule 206(3)–3T permits an adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) of the Advisers Act by, among other things: (i) Providing written prospective disclosure regarding the conflicts arising from principal trades; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (iii) making certain disclosures, either orally or in writing, and obtaining the client's consent before each principal transaction; (iv) sending to the client confirmation statements disclosing the capacity in which the adviser has acted and disclosing that the adviser informed the client that it may act in a principal capacity and that the client authorized the transaction; and (v) delivering to the client an annual report itemizing the principal transactions. The rule also requires that the investment adviser be registered as a broker-dealer under section 15 of the Exchange Act and that each account for which the adviser relies on this rule be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member.[27]

These conditions, discussed below, are designed to prevent overreaching by advisers by requiring an adviser to disclose to the client the conflicts of interest involved in these transactions, inform the client of the circumstances in which the adviser may effect a trade on a principal basis, and provide the client with meaningful opportunities to refuse to consent to a particular transaction or revoke the prospective general consent to these transactions. We note that we have previously stated that "Section 206(3) should be read together with Sections 206(1) and (2) to require the adviser to disclose facts necessary to alert the client to the adviser's potential conflicts of interest in a principal or agency transaction."[28] We request comment generally on the need for the rule and its potential impact on clients of the advisers. Will the advantages described above that we believe accompany rule 206(3)–3T be beneficial to investors? Have we struck an appropriate balance between investor choice and investor protection? Does the alternative means of compliance

[23] *See* Investment Trusts and Investment Companies: Hearings on S. 3580 Before the Subcomm. of the Comm. on Banking and Currency, 76th Cong., 3d Sess. 320 (1940) (statement of David Schenker, Chief Counsel, Securities and Exchange Commission Investment Trust Study) ("Senate Hearings"). As noted above, section 206(3) also addresses agency cross transactions, which raise similar concerns regarding an adviser engaging in transactions to benefit itself or its affiliates, as well as the concern that an adviser may be subject to divided loyalties.

[24] *See* Senate Hearings at 322 ("[i]f a fellow feels he has a sour issue and finds a client to whom he can sell it, then that is not right. * * *") (statement of David Schenker, Chief Counsel, Securities and Exchange Commission Investment Trust Study).

[25] As we have stated before "where an investment adviser effects a transaction as principal with his advisory account client, the terms of the transaction are necessarily not established by arm's-length negotiation. Instead, the investment adviser is in a position to set, or to exert influence potentially affecting, the terms by which he participates in such trade. The pressures of self-interest which may be present in such principal transactions may require the prophylaxis of the disclosures [required by section 206(3)]." Rule 206(3)–2 Proposing Release.

[26] We similarly provided, in a rule of analogous scope and structure to rule 206(3)–3T, an alternative means of compliance with the disclosure and consent requirements of section 206(3) relating to "agency cross transactions." *See* rule 206(3)–2 under the Advisers Act.

[27] *See* Section II.B.7 of this Release.

[28] Section 206(3) Release. For a further discussion, see Section II.B.8 of this Release.

contained in rule 206(3)–3T provide all the necessary investor protections?[29]

B. Section-by-Section Description of Rule 206(3)–3T

Rule 206(3)–3T deems an investment adviser to be in compliance with the provisions of section 206(3) of the Advisers Act when the adviser, or a person controlling, controlled by, or under common control with the investment adviser, acting as principal for its own account, sells to or purchases from an advisory client any security, provided that certain conditions discussed below are met. The scope and structure of the rule are similar to our rule 206(3)–2 under the Advisers Act, which, as noted above, provides an alternative means of complying with the limitations on "agency cross transactions," also contained in section 206(3).

We have applied section 206(3) not only to principal transactions engaged in or effected by an adviser, but also to certain situations in which an adviser causes a client to enter into a principal transaction that is effected by a broker-dealer that controls, is controlled by, or is under common control with the adviser.[30] Accordingly, rule 206(3)–3T would be available if the adviser acts as principal by causing the client to engage in a transaction with a broker-dealer that is an affiliate of the adviser—that is, a broker-dealer that controls, is controlled by, or is under common control with the investment adviser.

1. Non-Discretionary Accounts

Rule 206(3)–3T applies to principal trades with respect to accounts over which the client has not granted "investment discretion, except investment discretion granted by the advisory client on a temporary or limited basis."[31] Availability of the rule to discretionary accounts would be inconsistent with the requirement of the rule, discussed below, that the adviser obtains consent (which may be oral consent) from the client for each principal transaction.[32] In addition, we are of the view that the risk of relaxing the procedural requirements of section 206(3) of the Advisers Act when a client has ceded substantial, if not complete, control over the account raises significant risks that the client will not be, or is not in a position to be, sufficiently involved in the management of the account to protect himself or herself from overreaching by the adviser.

The rule would apply to all non-discretionary advisory accounts, not only those that were originally established as fee-based brokerage accounts.[33] As noted above, some portion of the customers converting fee-based brokerage accounts into advisory accounts will be converting those accounts into non-discretionary accounts offered by the same firm. We understand from our discussions with broker-dealers that maintaining principal trading distinctions between advisory accounts that were once fee-based brokerage accounts and those that were not would be very difficult. Trade execution routing for investment advisory programs often is derived through unified programs or electronic codes allowing or prohibiting certain kinds of trades uniformly for all accounts that are of the same type. As such, limiting relief to accounts that were formerly in fee-based brokerage programs would make the requested relief impractical for firms and would neither serve the best interests of clients (because the effect would be to limit their ability to continue to access the inventory of securities held by their brokerage firm) nor be administratively feasible to firms affected by the Court's ruling with respect to the transition and ongoing servicing of these and other accounts subject to the Advisers Act. We accordingly determined not to limit the availability of the temporary rule only to those non-discretionary advisory accounts that were fee-based brokerage accounts.

We welcome comment on this aspect of our interim final rule. Are we correct that the potential for abuse through self-dealing is less in non-discretionary accounts, where clients may be better able to protect themselves and monitor trading activity, than in accounts where clients have granted discretion and may not be in a position to protect themselves sufficiently? Should we further limit the availability of the rule so that it is only available for transactions with wealthy or sophisticated clients who, for other purposes under the Act, we have presumed are capable of protecting themselves? For example, should it apply only with respect to transactions with a "qualified client" as defined in Advisers Act rule 205–3?

Should we limit the relief provided by the rule to accounts that originally were fee-based brokerage accounts? Do the operational burdens and complexities identified by the broker-dealers support application of the rule to all non-discretionary advisory accounts?

2. Issuer and Underwriter Limitations

Rule 206(3)–3T is not available for principal trades of securities if the investment adviser or a person who controls, is controlled by, or is under common control with the adviser ("control person") is the issuer or is an underwriter of the security.[34] The rule includes one exception—an adviser may rely on the rule for trades in which the adviser or a control person is an underwriter of non-convertible investment-grade debt securities.

One benefit an investor may gain by establishing a brokerage account with a

[29] In this regard, see NAPFA Letter ("express[ing] its strong reservations regarding the possible grant of principal trading relief").

[30] *See* Section 206(3) Release at n. 3.

[31] Rule 206(3)–3T(a)(1). For purposes of the rule, the term "investment discretion" has the same meaning as in section 3(a)(35) of the Exchange Act [15 U.S.C. 78c(a)(35)], except that it excludes investment discretion granted by a customer on a temporary or limited basis. Section 3(a)(35) of the Exchange Act provides that a person exercises "investment discretion" with respect to an account if, directly or indirectly, such person: (A) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions; or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and rules and regulations thereunder.

We would view a broker-dealer's discretion to be temporary or limited within the meaning of rule 206(3)–3T(a)(1) when the broker-dealer is given discretion: (i) As to the price at which or the time to execute an order given by a customer for the purchase or sale of a definite amount or quantity of a specified security; (ii) on an isolated or infrequent basis, to purchase or sell a security or type of security when a customer is unavailable for a limited period of time not to exceed a few months; (iii) as to cash management, such as to exchange a position in a money market fund for another money market fund or cash equivalent; (iv) to purchase or sell securities to satisfy margin requirements; (v) to sell specific bonds and purchase similar bonds in order to permit a customer to take a tax loss on the original position; (vi) to purchase a bond with a specified credit rating and maturity; and (vii) to purchase or sell a security or type of security limited by specific parameters established by the customer.

[32] Rule 206(3)–3T(a)(4). *See* Section II.B.4 of this Release.

[33] We have not extended the rule to advisory accounts that are held only at investment advisers, as opposed to firms that are both investment advisers and registered broker-dealers. *See* Section II.B.7 of this Release.

[34] Rule 206(3)–3T(a)(2). The term "underwriter" is defined in section 202(a)(20) of the Advisers Act to mean "any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission."

large broker-dealer is the ability to obtain access to potentially profitable public offerings of securities. These securities are typically purchased by the broker-dealer participating in the underwriting as part of its allotment of the offering and then sold to customers in principal transactions. As noted above, many broker-dealers have not made such offerings available to advisory clients because of the requirements of section 206(3).

A broker-dealer participating in an underwriting typically has a substantial economic interest in the success of the underwriting, which might be different from the interests of investors. When a broker-dealer acts as an underwriter with respect to a security, it is compensated precisely for the service of distributing that security.[35] A successful distribution not only offers the possibility of a concession on the securities (the spread between the underwriter's purchase price from the issuer and the public offering price), but also often an over-allotment option, and potentially future business (whether as an underwriter, lender, adviser or otherwise) with the issuer. The incentives may bias the advice being provided or lead the adviser to exert undue influence on its client's decision to invest in the offering or the terms of that investment. As such, the broker-dealer's incentives to "dump" securities it is underwriting are greater for sales by a broker-dealer acting as an underwriter than for sales by a broker-dealer not acting as an underwriter of other securities from its inventory.

A broker-dealer acting as an issuer has similar, if not greater, proprietary interests that are likely to adversely affect the objectivity of its advice. We therefore are of the view that an investment adviser who (or whose affiliate) is the issuer or underwriter of a security has such a significant conflict of interest as to make such a transaction, with one exception, an inappropriate subject of the relief we are providing today.

We have, however, provided an exception for principal transactions in non-convertible investment grade debt securities underwritten by the adviser or a person who controls, is controlled by, or is under common control with the adviser.[36] Non-convertible investment grade debt securities may be less risky and therefore less likely to be "dumped" on clients. Also, it may be easier for clients to identify whether the price they are being quoted for a non-convertible investment grade debt security is fair given the relative comparability, and the significant size, of the non-convertible investment grade debt markets.

Moreover, as the staff has discussed the effects of the *FPA* decision with broker-dealers, those broker-dealers have asserted that it is in the interest of investors to permit them to conduct principal trades with their advisory clients involving these securities, even where they or their affiliates are underwriters. Those firms argue that clients may face difficulties and higher costs in obtaining these debt instruments, particularly municipal bonds, through an advisory account if the adviser is not permitted to rely on the interim final rule's alternative means of complying with section 206(3).

The limitation on issuer transactions makes the rule unavailable for principal transactions in traditional equity or debt offerings of the investment adviser or a control person of the adviser. It also makes the rule unavailable in connection with—and thus requires compliance with section 206(3)'s trade-by-trade written disclosure requirements before—non-discretionary placement by an adviser of a proprietary structured product, such as a structured note, with an advisory client.[37] We request comment on whether we should consider expanding the availability of the rule to apply to structured products, and if so, on what terms.

We also request comment on our exclusion for securities issued or underwritten by the adviser or its control persons. Do commenters agree with our assessment of the risks to clients and our interpretation of the purposes of section 206(3)? Should we consider making the rule available for principal transactions in all securities (including those issued or subject to an underwriting by the adviser or a control person) in light of the clients' interest in obtaining access to public offerings? Alternatively, is there an approach we might take that could distinguish types of underwriting arrangements that do not present unacceptable risks of conflicts for the adviser? In this regard, we request comment on the one exception we have provided for non-convertible investment grade debt securities. Is the exception appropriate under the circumstances? Are there other circumstances in which an adviser should be able to rely on the rule when it (or a control person) is an issuer or underwriter of securities in certain circumstances?

3. Written Prospective Consent Following Written Disclosure

An adviser may rely on rule 206(3)–3T only after having secured its client's written, revocable consent prospectively authorizing the adviser directly or indirectly acting as principal for its own account, to sell any security to or purchase any security from such client.[38] The consent must be obtained only after the adviser provides the client with written disclosure about: (i) The circumstances under which the investment adviser may engage in principal transactions with the client; (ii) the nature and significance of the conflicts the investment adviser has with its clients' interests as a result of those transactions; and (iii) how the investment adviser addresses those conflicts.[39] We anticipate that this consent normally would be obtained by the adviser when the client establishes the advisory account.[40]

Rule 206(3)–3T is not exclusive. An adviser would still be able to effect principal trades with a client who either never grants the prospective consent required under paragraph (a)(3) of the rule 206(3)–3T, or subsequently revokes

[35] The act of underwriting is purchasing "with a view to * * * the distribution of any security." Section 202(a)(20) of the Advisers Act [17 CFR 275.202(a)(20)].

[36] "Investment grade debt securities" are defined in the rule to mean any non-convertible debt security that is rated in one of the four highest rating categories of at least two nationally recognized statistical rating organizations (as defined in section 3(a)(62) of the Exchange Act [15 U.S.C. 78c(a)(62)]). Rule 206(3)–3T(c).

[37] There is no uniform definition of what constitutes a structured product and the term is not defined in the temporary rule. Structured products include, among other things, securitizations of pools of assets, such as asset-backed securities which are supported by a discrete pool of financial assets (*e.g.*, mortgages or other receivables). *See generally* Securities Act Release No. 8518 (Dec. 22, 2004) [70 FR 1506 (Jan. 7, 2005)]. The Financial Industry Regulatory Authority, Inc. ("FINRA"), the self-regulatory organization that oversees broker-dealers, defines structured products as "securities derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance and/or a foreign currency." FINRA Notice to Members 05–59 (Sept. 2005). FINRA has notified its members that they should consider only recommending structured products to customers who have been approved for options trading. *Id.* at 4. *See also* FINRA Notice to Members 03–71 (Nov. 2003) (expressing concern that investors, particularly retail investors, may not fully understand the risks associated with non-conventional investments—such as structured securities—and cautioning members to ensure that their sales conduct procedures fully and accurately address any of the special circumstances presented by the sale of these products).

[38] Rule 206(3)–3T(a)(3).

[39] The FPA recommended a similar condition. *See* FPA Letter, at 3.

[40] No additional disclosure regarding the principal capacity in which the adviser may be acting need be made pursuant to rule 206(3)–3T(a)(3) at the time of the transaction, provided the disclosure required by paragraph (a)(3) of the rule has been made and is correct in all material respects.

that consent after having granted it, so long as the adviser complies with the terms of section 206(3) of the Act.

Will the disclosure required by paragraph (a)(3) be meaningful for clients in understanding the conflicts and risks inherent in principal trading by a fiduciary counterparty? Are there alternative approaches that we could adopt to make the prospective disclosures more meaningful to clients? Should we require disclosure to be prominent or, alternatively, require disclosure in a separately executed document to assure that the client has separately given attention to the request for consent?

With each written disclosure, confirmation, and request for written prospective consent, the investment adviser must include a conspicuous, plain English statement clarifying that the prospective general consent may be revoked at any time.[41] Thus, the client must be able to revoke his or her prospective consent at any time, thereby preventing an adviser from relying on rule 206(3)–3T with respect to that account going forward.[42] Do these provisions adequately ensure that client consent is voluntary? Will advisers make a client's consent a condition to participation in non-discretionary advisory accounts they offer? If so, should we add a provision to the rule to address this issue, such as prohibiting advisers from doing so?

The written prospective consent need only be executed once. Should we require that the client's consent be renewed periodically? What benefit would be gained by such a provision in light of the client's right to revoke his or her consent at any time?

4. Trade-by-Trade Consent Following Disclosure

The temporary rule requires an investment adviser, before the execution of *each* principal transaction, to: (i) Inform the client of the capacity in which the adviser may act with respect to the transaction; and (ii) obtain consent from the client for the investment adviser to act as principal for its own account with respect to each such transaction.[43] The trade-by-trade disclosure and consent may be written or oral. Although representatives of the brokerage industry have requested that we eliminate the requirement for transaction-by-transaction disclosure and consent,[44] we have determined that such disclosure and consent continues to be important to alert clients to the potential for conflicted advice they may be receiving on individual transactions. In light of the conflicts inherent in these transactions, generally notifying the client that a transaction may be effected on a principal basis close in time to the carrying out of such a trade is appropriate.

Given the frequency and speed of trading in some advisory accounts as well as the increasing complexity of securities products available in the marketplace, trade-by-trade disclosure and consent, even if oral, might be a more effective protection against misunderstanding by advisory clients of the nature of a transaction and the conflicts inherent in it as well as a meaningful safeguard for investment advisers seeking to comply with their fiduciary obligations. We understand, however, that in many instances the adviser may not know whether a particular transaction will be effected on a principal basis. Accordingly, the rule permits advisers to disclose to clients that they "may" act in a principal capacity with respect to the transaction.

We do not believe the obligation to make oral disclosure will impose a significant burden on investment advisers of non-discretionary accounts who must, in most cases, obtain consent for each transaction regardless of whether the transaction will be done on a principal basis.[45] We are interested in learning from investors whether this consent requirement is informative and helpful. We also are interested in learning from advisers whether they intend to document receipt of the oral consent and, if so, whether they will be able to do so efficiently.

We request comment regarding whether investment advisers find useful the flexibility to provide oral instead of written disclosure on a trade-by-trade basis. Or, will advisers instead view the relief as unworkable?

5. Written Confirmation

The investment adviser must send to each client with which it effects a principal trade pursuant to rule 206(3)–3T a written confirmation, at or before the completion of the transaction.[46] In addition to the other information required to be in a confirmation by Exchange Act rule 10b–10,[47] the confirmation must include a conspicuous, plain English statement informing the advisory client that the adviser disclosed to the client prior to the execution of the transaction that the adviser may act in a principal capacity in connection with the transaction, that the client authorized the transaction, and that the adviser sold the security to or bought the security from the client for its own account.[48] An investment adviser need not send a duplicate confirmation. An adviser may satisfy its obligations under paragraph (a)(5) by including, or causing an affiliated broker-dealer to include, the additional required disclosure on a confirmation otherwise sent to the client with respect to a particular principal transaction.

The requirement to provide a trade-by-trade confirmation is designed to ensure that clients are given a written notice and reminder of each transaction that the investment adviser effects on a principal basis and that conflicts of interest are inherent in such transactions.[49] We request comment on our written confirmation condition. Is there additional information that should be included in the confirmation? Are there circumstances in which commenters believe it is appropriate for us to permit investment advisers to rely on rule 206(3)–3T and also deliver confirmations to clients pursuant to the alternative periodic reporting provisions of rule 10b–10(b)?

6. Annual Summary Statement

The investment adviser must deliver to each client, no less frequently than once a year, written disclosure containing a list of all transactions that were executed in the account in reliance on rule 206(3)–3T, including the date and price of such transactions.[50] The annual summary statement is designed to ensure that clients receive a periodic record of the principal trading activity in their accounts and are afforded an opportunity to assess the frequency with which their adviser engages in such trades. As with each other disclosure required pursuant to rule 206(3)–3T, to be able to rely on the rule the investment adviser must include a

[41] Rule 206(3)–3T(a)(8). The FPA recommended a similar condition. *See* FPA Letter, at 4.

[42] The right to revoke prospective consent is not intended to allow a client to rescind, after execution but prior to settlement, a particular trade to which the client provided specific consent prior to execution.

[43] Rule 206(3)–3T(a)(4).

[44] SIFMA Letter, at 3.

[45] *See* rule 206(3)–3T(a)(1) (limiting the availability of the rule to accounts over which the adviser does not exercise discretionary authority).

[46] For a discussion of the meaning of "completion" of the transaction, see Section 206(3) Release. The temporary rule does not permit advisers to deliver confirmations using the alternative periodic reporting provisions of rule 10b–10(b) under the Exchange Act.

[47] 17 CFR 240.10b–10.

[48] Rule 206(3)–3T(a)(5).

[49] Rule 206(3)–2 under the Advisers Act, our agency cross transaction rule, requires similar confirmation disclosure.

[50] Rule 206(3)–3T(a)(6). Rule 206(3)–2(a)(3) contains a similar annual report requirement with respect to agency cross transactions. In addition, the FPA recommended a similar condition. *See* FPA Letter, at 4.

conspicuous, plain English statement that its client's written prospective consent may be revoked at any time.[51]

We request comment generally on this aspect of the interim final rule. Should a summary statement be provided more or less frequently than annually? Is there additional information that we should require to be included in each summary statement? For example, we are not requiring advisers to disclose in an annual statement the total amount of all commissions or other remuneration they receive in connection with transactions with respect to which they are relying on this rule. Although that disclosure is required with respect to agency cross transactions pursuant to rule 206(3)–2(a)(3), we are concerned that disclosure of such amounts for principal trades may not accurately reflect the actual economic benefit to the adviser with respect to those trades or the consequence to the client for consenting to those trades. Are our concerns justified? Commenters are invited to submit suggestions for possible enhancements to the disclosures in annual statements that could enhance the disclosure to clients of the significance of their consenting to principal trades.

7. Advisory Account Must Be a Brokerage Account

Rule 206(3)–3T is only available to an investment adviser that also is registered with us as a broker-dealer. Each account for which the investment adviser relies on this section must be a brokerage account subject to the Exchange Act, the rules thereunder, and the rules of applicable self-regulatory organizations (*e.g.*, FINRA).[52] The rule therefore requires that the protections of both the Advisers Act and the Exchange Act apply when advisers enter into principal transactions with clients in reliance on the rule.

The temporary rule permits, subject to compliance with the rule's conditions, an adviser that also is registered as a broker-dealer to execute a principal trade directly (out of its own account) or indirectly (out of an account of another person who is a control person of the adviser). Because we have decided to apply the rule only to advisers who also are registered as broker-dealers, an adviser who is not also a registered broker-dealer would be unable to rely on rule 206(3)–3T if it causes a client to enter into a principal trade with a control person, even if that control person is a registered broker-dealer.

Our decision not to extend the rule to advisory accounts that are held only at investment advisers, as opposed to entities that are both investment advisers and broker dealers, is based on several considerations. First, firms that are both broker-dealers and investment advisers and their employees must comply with the comprehensive set of Commission and self-regulatory organization sales practice and best execution rules that apply to the relationship between a broker-dealer and its customer in addition to the fiduciary duties an adviser owes a client. We believe that it is important to maintain the application of the laws and rules regarding broker-dealers to these accounts.[53] Second, as a practical matter, advisory clients most frequently need and desire principal trading services from firms that are dually registered as an adviser and a broker-dealer because they generally carry large inventories of securities. Providing a variation in the method of complying with section 206(3) of the Advisers Act for advisers that also are registered as broker-dealers thus addresses a large category of the situations in which clients are likely to benefit from access to the inventory of the adviser/broker-dealer without sacrificing pricing or other sales practice protections.

We request comment on this aspect of the interim final rule. What will be the benefit to customers of maintaining the sales practice rules of self-regulatory organizations? What will be the impact of the rule on advisers that are not themselves registered as broker-dealers? Would they choose to register as a broker-dealer in order to take advantage of the new rule? Are there particular requirements of broker-dealer regulation that are clearly duplicative or clearly inapplicable to the regulation of investment advisers and so are unnecessary in this context?

8. Other Obligations Unaffected

Rule 206(3)–3T(b) clarifies that the temporary rule does not relieve in any way an investment adviser from its obligation to act in the best interests of each of its advisory clients, including fulfilling the duty with respect to the best price and execution for a particular transaction.[54] Compliance with rule 206(3)–3T also does not relieve an investment adviser from its fiduciary obligation imposed by sections 206(1) or (2) of the Advisers Act or by other applicable provisions of federal law.[55]

We note specifically that an adviser engaging in principal transactions is subject to rule 206(4)–7, which, among other things, requires an investment adviser registered with us to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act (and the rules thereunder) by the adviser or any of its supervised persons.[56] Thus, an adviser relying on rule 206(3)–3T as an alternative means of complying with section 206(3) must have adopted and implemented written policies and procedures reasonably designed to comply with the requirements of the rule. In addition, rule 204–2,[57] as well as Exchange Act rules 17a–3 [58] and 17a–4,[59] requires the adviser to make, keep, and retain records relating to the principal trades the adviser effects.

9. Limited Duration of Relief

Rule 206(3)–3T(d) contains a sunset provision. Absent further action by the Commission, the temporary rule will expire on December 31, 2009, which is about 27 months from its effective date.[60] Setting a termination date for the rule will necessitate further Commission action no later than the end of that period if the Commission intends to continue the same or similar relief.

We believe limiting the duration of the rule will give us an opportunity to observe how firms comply with their disclosure obligations under the rule, and whether, when they conduct principal trades with their clients, they put their clients' interests first. A significantly shorter period than the one we have established, however, may have disadvantaged former fee-based brokerage customers because of the uncertainty about the continuation of access through their advisory accounts to the securities in the inventory of their

[51] Rule 206(3)–3T(a)(8).

[52] Rule 206(3)–3T(a)(7).

[53] We note that fee-based brokerage accounts have been subject to Commission and self-regulatory organization sales practice and best execution rules since their inception.

[54] Rule 206(3)–2(e) contains a similar provision.

[55] Section 206(3) Release. *See also* SIFMA Memo at Exhibit page 23 (noting that, in connection with any relief provided under section 206(3), "[t]he adviser will continue to act in the best interests of the client, including a duty to provide best execution, and will be required to meet all disclosure obligations imposed by Sections 206(1) and (2) of the Advisers Act and by other applicable provisions of the federal securities laws and rules of SROs"); section 406 of the Employee Retirement Income Security Act of 1974 ("ERISA") (describing "prohibited transactions" of fiduciaries subject to ERISA); section 4975(c)(1) of the Internal Revenue Code (the "Code") (describing "prohibited transactions" of fiduciaries governed by the Code).

[56] Rule 206(4)–7(a) [17 CFR 275.206(4)–7(a)].

[57] 17 CFR 275.204–2.

[58] 17 CFR 240.17a–3.

[59] 17 CFR 240.17a–4.

[60] The FPA recommended a similar condition *See* FPA Letter, at 2.

brokerage firm. Those customers also could have faced renewed disruption and confusion if the rule on principal trades were abolished or substantially modified in the short term. Similarly, broker-dealers would have faced the same uncertainty about the continuation of the rule, which could have caused some broker-dealers to decide not to make the necessary expenditures and investments to offer advisory accounts with access to principal trades.

We request comment on whether the 27-month time frame is appropriate. We also welcome comment on any other aspects of the rule that commenters believe should be modified.

10. Other Matters

This rulemaking action must be: (i) Necessary or appropriate in the public interest; (ii) consistent with the protection of investors; and (iii) consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.[61] We also need to consider the effect of the rule on competition, efficiency, and capital formation, which we address below in Section VII of this Release. For the reasons described in this Release, we believe that the rule is necessary or appropriate in the public interest and consistent with the protection of investors. We also believe that the temporary rule is consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

In the *FPA* decision, the Court described the purposes of the Act, emphasizing that the "overall statutory scheme of the [Advisers Act] addresses the problems identified to Congress in two principal ways: First, by establishing a federal fiduciary standard to govern the conduct of investment advisers, broadly defined, * * * and second, by requiring full disclosure of all conflicts of interest."[62] The Congressional intent was to eliminate or expose all conflicts of interest that might incline an investment adviser, consciously or unconsciously, to render advice that was not disinterested.[63] The Court further noted that Congress's purpose in enacting the Advisers Act was to establish fiduciary standards and require full disclosure of all conflicts of interests of investment advisers.[64]

The temporary rule adopted today meets those purposes and adheres closely to the text of section 206(3), which reflects the basic conflict disclosure purposes of the Act. That section provides that an adviser, before engaging in a principal trade with an advisory client, must disclose to the client in writing before completion of the transaction the capacity in which the adviser is acting and must obtain the consent of the client to the transaction. As we have stated before, "[i]n adopting Section 206(3), Congress recognized the potential for [abuses such as price manipulation or the placing of unwanted securities into client accounts], but did not prohibit advisers entirely from engaging in all principal and agency transactions with clients. Rather, Congress chose to address these particular conflicts of interest by imposing a disclosure and client consent requirement in Section 206(3) of the Advisers Act."[65]

The temporary rule complies with Congressional intent. It provides an alternative procedural means of complying with section 206(3) that retains transaction-by-transaction disclosure and consent (as required by section 206(3) of the Act), but adds additional investor protections measures by requiring an adviser:

- At the outset of the relationship with the client, to disclose in writing the circumstances under which the investment adviser directly or indirectly may engage in principal transactions, the nature and significance of conflicts with its client's interests as a result of the transactions, and how the investment adviser addresses those conflicts;
- To obtain prospective written consent of the client in response to that initial disclosure;
- Before each transaction, to inform the advisory client, orally or in writing, that the adviser may act in a principal capacity with respect to the transaction and to obtain the consent from the advisory client, orally or in writing, for the transaction;
- To send to the client, at or before completion of the transaction, a written trade confirmation that, in addition to the information required by rule 10b-10 under the Exchange Act, discloses that the adviser informed the client prior to the execution of the transaction that the adviser may be acting in a principal capacity in connection with the transaction, that the client authorized the transaction, and that the adviser sold the security to, or bought the security from, the client for its own account;
- To send to the advisory client an annual statement listing each principal transaction during the preceding year and the date and price of each such transaction; and
- To acknowledge explicitly in each required disclosure the right of the client to revoke his or her prospective consent at any time.

We believe that these transaction-specific steps, taken together, fulfill the Congressional purpose behind section 206(3) of the Act.

Another significant protection is that, as we discuss in Section II.B.7 above, to benefit from the rule, the investment adviser must also be a broker-dealer registered with us. Therefore, the firm must comply with the comprehensive set of Commission and self-regulatory organization sales practice and best execution rules that apply to the relationship between a broker-dealer and customer in addition to the fiduciary duties an adviser owes a client.

We further believe that the temporary nature of the rule will give us an opportunity to observe how firms comply with their obligations, and whether, when they conduct principal trades with their clients, they put their clients' interests first. The rule therefore employs a range of features to achieve the transaction-by-transaction conflict disclosure and consent purposes and policies of the Advisers Act. The rule additionally enables the adviser to discharge its fiduciary duties by bolstering them with broker-dealer responsibilities.

11. Effective Date

This temporary rule takes effect on September 30, 2007. For several reasons, including those discussed above, we have acted on an interim final basis.

In the time since the *FPA* decision, the Commission staff has had numerous communications with affected customers, broker-dealers, and investment advisers about areas in which Commission action or relief might be required to protect the interests of investors as a result of the Court's decision. One area of significance identified as our deliberative process continued was the area of principal trades. Under the rule vacated in the *FPA* decision, principal trades in fee-based brokerage accounts were not subject to section 206(3) of the Act. Through the process of discussions with interested parties, it was brought to our attention that a large number of fee-based brokerage customers favor having the choice of advisory accounts with access to the inventory of a diversified broker-dealer and that for certain customers the access to such securities—many of which would otherwise be unavailable—was a critical

[61] *See* 15 U.S.C. 80b–6a.

[62] *FPA* decision, at 490.

[63] *Id.*

[64] *Id.*

[65] Section 206(3) Release at text accompanying note 5.

component of their investment strategy. We also learned that, as discussed above, the traditional method for complying with the principal trading restrictions on an adviser in section 206(3)—written disclosure and consent before completion of each securities transaction—made it not feasible for an adviser to engage in principal trading with its clients. The Commission received requests for principal trading relief from firms and the staff engaged in discussions with representatives of investors, financial planners, and broker-dealers about the terms of relief, considered their specific comments, and took those comments into account in developing the temporary rule we are adopting today.

Because of the *FPA* decision and the October 1, 2007 expiration of the stay of the issuance of the Court's mandate to vacate the former rule, investors with fee-based brokerage accounts must now consider whether they should convert their accounts to advisory accounts or to traditional commission-based brokerage accounts. It is not possible for those customers to make a meaningful, well-informed decision if they do not know what services will be offered in advisory accounts. For example, it would be critical to a customer who invests primarily in fixed income securities (which generally are traded by firms on a principal basis) to know whether he or she could continue to access a firm's inventory of those securities (or sell those securities to the firm) in an advisory account. But firms informed us that they would not permit that kind of trading without a rule that is effective and that provides an alternative means of complying with section 206(3) of the Act. Until we could publish a rule for comment, receive and analyze those comments, and adopt a final rule, that customer would be left with the choice between a traditional brokerage account without the ability to pay a fee based on assets—presumably the customer's preferred manner of payment—or a fee-based advisory account without the ability to invest in fixed income products.

Changing accounts and methods of payments can be highly disruptive and confusing to many investors, requiring a series of communications between the investor and one or more firms about the options available to give the investor the information he or she needs to make informed decisions about the services available in each type of account. We believe that it serves such investors' interests best to adopt the rule on an interim final basis, which permits them to continue the same kind of account, with similar services, that they had when they were fee-based brokerage customers.

We are aware that, as a result of the *FPA* decision, the process for converting as many as one million fee-based brokerage accounts to non-discretionary advisory or other accounts requires a great deal of time and imposes significant conversion costs on firms. For example, in order to comply with the October 1 deadline, those firms needed to draft or revise agreements, policies, and other documents, hire and train employees, and make changes to data and recordkeeping, order entry, billing, and other systems. The firms offering fee-based brokerage accounts urged us to reduce the burdens that apply to them by adopting a rule that is effective on or before October 1 and that permits an alternative method of complying with section 206(3) of the Act (or, alternatively, to exempt them from section 206(3) altogether). They informed us that this would simplify the process of communicating with their customers and reduce investor confusion. This is mostly because the services and manner of payments would be substantially similar in non-discretionary advisory accounts as they were in fee-based brokerage accounts—the firms would not have to explain why the services a customer has become accustomed to are changing, or why the manner of payment is changing.

The firms also were concerned that, without a rule that is effective by the date the *FPA* decision takes effect, fee-based brokerage customers may elect (or the firm may recommend) a commission-based brokerage account in order to have access to their firm's inventory of securities, then elect an advisory account only after a rule subject to notice and comment is finalized. This type of serial account change is costly to firms for the same reasons it is costly for them to convert accounts pursuant to the *FPA* decision. Moreover, such switching of account types can be confusing to customers if it is the firm that is recommending the changes.

Those factors led to this rule and similarly explain why the rule needs to be available at the same time the broker-dealers complete the transition from fee-based brokerage to advisory or other accounts. Otherwise, the risk of disrupting services to the investors, depriving them of the choice of an advisory account with a broker-dealer, and confusing them with a series of changes to the services available to them would have been substantial. Obtaining a further postponement of the stay of the mandate to allow advance notice and comment rulemaking did not appear feasible. For these reasons, issuance of an immediately effective rule is necessary to ameliorate the likely harm to investors.

Furthermore, we emphasize that we are requesting comments on the rule and will carefully consider and respond to them in a subsequent release. Moreover, this is a temporary rule. Setting a 27-month termination date for the rule will necessitate further Commission action no later than the end of that period if the Commission intends to continue the same or similar relief. The sunset provision will result in the Commission assessing the operation of the rule and intervening developments, as well as public comment letters, and considering whether to continue the rule with or without modification or not at all.

A significantly shorter period than the 27-month period we have established could have disadvantaged investors. They would have faced uncertainty about the continuation of having access through their advisory accounts to the securities in the inventory of their brokerage firm and could have faced renewed disruption and confusion if the rule on principal trades were abolished or substantially modified in the short term. Similarly, broker-dealers would have faced the same uncertainty about the continuation of the rule, which could have caused some broker-dealers to decide not to make the necessary expenditures and investments to offer advisory accounts with access to principal trades.

As a result, the Commission finds that it has good cause to have the rule take effect on September 30, 2007, and that notice and public procedure in advance of the effectiveness of the rule are impracticable, unnecessary, and contrary to the public interest. In addition, the rule in part has interpretive aspects and is a rule that recognizes an exemption and relieves a restriction.

III. Request for Comments

The Commission is requesting comments from all members of the public during the next 60 days. We will carefully consider the comments that we receive and respond to them in a subsequent release.

In addition, we are awaiting a report being prepared by RAND Corporation comparing how the different regulatory systems that apply to broker-dealers and advisers affect investors (the "RAND Study"). As we have previously announced, the Commission commissioned a study comparing the levels of protection afforded customers of broker-dealers and investment

advisers under the federal securities laws.[66] The Commission will have another opportunity to assess the operation and terms of the rule when it receives the results of the RAND Study comparing how the different regulatory systems that apply to broker-dealers and advisers affect investors. The RAND Study is expected to be delivered to the Commission no later than December 2007, several months ahead of schedule. The results of the RAND Study are expected to provide an important empirical foundation for the Commission to consider what action to take to improve the way investment advisers and broker-dealers provide financial services to customers. One option then available to the Commission will be making the RAND Study results available to the public and seeking comments on them and their bearing on the terms of this rule.

IV. Transition Guidance

We are today providing guidance to assist broker-dealers who have offered fee-based brokerage accounts and are seeking the consent of their clients to convert those accounts to advisory accounts and meet the requirements of this rule by October 1, 2007.

A. Client Consent

Broker-dealers have asked whether they must, before October 1, 2007, obtain written consent from each of their fee-based brokerage customers to enter into an advisory agreement that meets the requirements of the Advisers Act, in particular section 205 of the Act. Broker-dealers have informed us that, as a practical matter, it is not feasible for them to do so and, if written consent is required, many fee-based brokerage customers will experience interrupted service or will be placed in traditional commission-based brokerage accounts, which may not be best for them.

Interim final rule 206(3)–3T(a)(3) requires an adviser wishing to rely on the rule's alternative means for complying with section 206(3) of the Act to obtain a written prospective consent from each client authorizing the investment adviser to engage in principal transactions with the client. We understand that it likely will be impossible for advisers to obtain these written consents from fee-based brokerage customers who convert their accounts to non-discretionary advisory accounts prior to October 1, 2007. To make the alternative means provided in the interim final rule useful immediately upon its effective date to those customers, we will not object if an adviser obtains the required written consent no later than January 1, 2008 from each fee-based customer who converts his or her account to a non-discretionary advisory account. During this transitional period, investment advisers must comply with the other conditions of rule 206(3)–3T, including the condition in paragraph (a)(4) of the rule, which requires that the adviser make certain disclosures and obtain client consent before effecting a principal trade with the client. They also must provide a client with the written disclosure required by paragraph (a)(3) of the temporary rule prior to effecting the first trade with that client in reliance on this rule.

B. Client Brochures

Advisers Act rule 204–3 requires an investment adviser to furnish its advisory clients with a disclosure statement, or brochure, containing at least the information required to be in Part II of Form ADV at the time of, or prior to, entering into an advisory contract.[67] In light of the time constraints firms face in complying with the October 1st deadline, we will not object if, with respect to the fee-based brokerage customers that convert to non-discretionary advisory accounts, advisers deliver this statement no later than January 1, 2008.

V. Paperwork Reduction Act

A. Background

Rule 206(3)–3T contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[68] The collection of information is new. We submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. Separately, we have submitted the collection of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The OMB has approved the collection of information on an emergency basis with an expiration date of March 31, 2008. 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 title for the collection of information is: "Temporary rule for principal trades with certain advisory clients, rule 206(3)–3T" and the OMB control number for the collection of information is 3235–0630.

Rule 206(3)–3T provides an alternative method for investment advisers that are registered with us as broker-dealers to meet the requirements of section 206(3) when they act in a principal capacity with respect to transactions with certain of their advisory clients. In the absence of this rule, an adviser must provide a written disclosure and obtain consent for each transaction in which the adviser acts in a principal capacity. Rule 206(3)–3T permits an adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) by: (i) Making certain written disclosures; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal trades; (iii) making oral or written disclosure that the adviser may act in a principal capacity and obtaining the client's consent orally or in writing prior to the execution of each principal transaction; (iv) sending to the client confirmation statements disclosing the capacity in which the adviser has acted and indicating that the adviser disclosed to the client that it may act in a principal capacity and that the client authorized the transaction; and (v) delivering to the client an annual report itemizing the principal transactions.

B. Collections of Information and Associated Burdens

Under rule 206(3)–3T, there are four distinct collection burdens. Our estimate of the burden of each of the collections reflects the fact that the alternative means of compliance provided by the rule is substantially similar to the approach advisers currently employ to comply with the disclosure and consent obligations of section 206(3) of the Advisers Act and the approach that broker-dealers employ to comply with the confirmation requirements of rule 10b–10 under the Exchange Act. Thus, as discussed below, we estimate that rule 206(3)–3T will impose only small additional burdens.

Providing the information required by rule 206(3)–3T is necessary to obtain the benefit of the alternative means of complying with section 206(3) of the Advisers Act. The rule contains two types of collections of information: Information provided by an adviser to its advisory clients and information

[66] *Commission Seeks Time for Investors and Brokers to Respond to Court Decision on Fee-Based Accounts*, SEC Press Release No. 2007–95 (May 14, 2007).

[67] The Advisers Act does not specify any means by which a client must execute a new advisory contract or agree to changes in an existing one. For purposes of transitioning clients from fee-based brokerage accounts, advisers presumably must look to the terms of the contracts they have in place, as well as applicable contract law, to determine the manner in which they need to enter into new contract or amend existing contracts in order to come into compliance with the Act.

[68] 44 U.S.C. 3501 *et seq.*

collected from advisory clients by an adviser. With respect to each type of collection, the information would be maintained by the adviser. Under Advisers Act rule 204–2(e), an adviser must preserve for five years the records required by the collection of information pursuant to rule 206(3)–3T. Although the rule does not call for any of the information collected to be provided to us, to the extent advisers include any of the information required by the rule in a filing, such as Form ADV, the information will not be kept confidential. The collection of information delivered by investment advisers pursuant to rule 206(3)–3T would be provided to clients and also would be maintained by investment advisers. The collection of information delivered by clients to advisers would be subject to the confidentiality strictures that govern those relationships, and we would expect them to be confidential communications.

Collections of Information

Prospective Disclosure and Consent: Pursuant to paragraph (a)(3) of the rule, an investment adviser must provide written, prospective disclosure to the client explaining: (i) The circumstances under which the investment adviser directly or indirectly may engage in principal transactions; (ii) the nature and significance of conflicts with its client's interests as a result of the transactions; and (iii) how the investment adviser addresses those conflicts. Pursuant to paragraph (a)(8) of the rule, the written, prospective disclosure must include a conspicuous, plain English statement that a client's written, prospective consent may be revoked without penalty at any time by written notice to the investment adviser from the client. And, for the adviser to be able to rely on rule 206(3)–3T with respect to an account, the client must have executed a written, revocable consent after receiving such written, prospective disclosure.

The first part of this collection of information involves the preparation and distribution of a written disclosure statement, which we anticipate will be largely uniform for clients in non-discretionary advisory accounts with a particular firm. This collection of information is necessary to explain to investors how their interests might be different from the interests of their investment adviser when the adviser engages in principal trades with them. It is designed to provide investors with sufficient information to be able to decide whether to consent to such trades.

We anticipate that the cost of this collection will mostly be borne upfront as advisers develop and deliver the required disclosure. This will require drafting and distributing the required disclosure to clients with respect to the accounts for which the investment adviser seeks to rely on the rule.[69] Once the disclosure has been developed and is integrated into materials provided upon opening a non-discretionary advisory account, the ongoing burden will be minimal.

We estimate that the average burden for drafting the required prospective disclosure for each eligible adviser, taking into account both those advisers that previously engaged in principal trades with their non-discretionary advisory clients, will be approximately 5 hours on average. We expect that some advisers, particularly the large financial services firms, may take significantly longer to draft the required disclosure because they may have more principal trading practices, and potentially more conflicts, to describe.[70] Other advisers may take significantly less time and some eligible advisers may choose not to rely on rule 206(3)–3T. Further, we expect the drafting burden will be uniform with respect to each eligible adviser regardless of how many individual non-discretionary advisory accounts that adviser administers or seeks to engage with in principal trading. As of August 1, 2007, there were 634 advisers that were eligible to rely on the temporary rule (*i.e.*, also registered as broker-dealers), 395 of which indicate that they have non-discretionary advisory accounts.[71] We estimate that 90 percent of those 395 advisers, or a total of 356 of those advisers, will rely on this rule.[72] Of the 239 eligible advisers that do not currently provide non-discretionary advisory services, we estimate that 10 percent of these advisers, or 24 advisers, will create non-discretionary advisory programs and rely on the alternative means of compliance provided by this rule.[73] Thus, the total number of advisers we anticipate will rely on the rule is 380.[74] Accordingly, we estimate that the total drafting burden for the prospective disclosure statement for the estimated 380 advisers that will rely on the rule will be 1,900 hours.[75]

The prospective disclosure will need to be distributed to all clients who have non-discretionary advisory accounts for which an adviser seeks to rely on rule 206(3)–3T. Registration data indicates that there are approximately 3,270,000 existing non-discretionary advisory accounts held with eligible advisers.[76] Discussions with eligible advisers indicate that approximately: (i) 90 percent of these non-discretionary advisory accounts administered by them, or 2,943,000 accounts, are in programs to which the rule will not apply, such as mutual fund asset allocation programs; and (ii) 40 percent of the remaining 327,000 non-discretionary advisory accounts administered by them, or 130,800 accounts, are retirement accounts, and thus unlikely to participate in principal trading,[77] leaving 196,200 existing non-retirement non-discretionary advisory accounts administered by eligible advisers.[78]

[69] We note that disclosure about the conflicts of interest for an adviser that engages in principal trades already is required to be disclosed by investment advisers in Form ADV. *See* Item 8 of Part 1A of Form ADV; Item 9 of Part II of Form ADV; Item 7(l) of Schedule H to Part II of Form ADV.

[70] The opportunities to engage in principal trades with advisory clients will vary greatly among eligible investment advisers. We believe many of these advisers are registered as broker-dealers for limited purposes and do not engage in market-making activities or otherwise carry extensive inventories of securities. These firms likely would limit their principal trading operations significantly. For example, they may choose to engage only in riskless principal trades, which may pose limited conflicts of interest resulting in brief disclosures. Investment advisers with large inventories of securities and multi-faceted operations, however, likely will have much more extensive disclosure.

[71] IARD data as of August 1, 2007, for Items 6.A(1) and 5.F(2)(e) of Part 1A of Form ADV.

[72] We anticipate that most dually-registered advisers will make use of the rule to engage in, at a minimum, riskless principal transactions to limit the need for these advisers to process trades for their advisory clients with other broker-dealers. We estimate that 10% of these firms will determine that the costs involved to comply with the rule are too significant in relation to the benefits that the adviser, and their clients, will enjoy.

[73] We estimate that 10% of the dually-registered advisers that do not currently have non-discretionary advisory programs will create them due to a combination of market forces and the ability to enter into principal trades more efficiently as a result of the rule. We base this estimate on discussions with industry representatives.

[74] 356 dually-registered advisers that currently have non-discretionary advisory account programs + 24 dually-registered advisers that do not currently have non-discretionary advisory programs, but we expect will initiate them = 380 eligible advisers that will have non-discretionary advisory programs.

[75] 5 hours per adviser × 380 eligible advisers that will rely on the rule = 1,900 total hours.

[76] IARD data as of August 1, 2007, for Item 5.F(2)(e) of Part 1A of Form ADV.

[77] We have based this estimate on discussions with industry representatives. The Code and ERISA impose restrictions on certain types of transactions involving certain retirement accounts. We do not take a position on whether the Code or ERISA limits the availability of rule 206(3)–3T.

[78] 3,270,000 existing non-discretionary advisory accounts among eligible advisers – 2,943,000 accounts in wrap fee and other programs to which the rule will not apply – 130,800 retirement accounts = 196,200 non-retirement, non-

Continued

As noted in Section I.B of this Release and confirmed by discussions with several firms, we anticipate that most fee-based brokerage accounts will be converted to non-discretionary advisory accounts. For purposes of our analysis, we have assumed that all of the estimated 1 million fee-based brokerage accounts will be converted to non-discretionary advisory accounts.[79] Of those accounts, we estimate that substantially all of them are held at investment advisers that also are registered as broker-dealers.[80] Discussion with broker-dealers that have fee-based brokerage programs have informed us that approximately 40 percent of the existing fee-based brokerage accounts are retirement accounts, and are unlikely to engage in principal trading. We anticipate that all eligible advisers that are converting fee-based brokerage accounts to non-discretionary advisory accounts will conduct principal trading in reliance on the rule. Thus, we estimate that eligible investment advisers will distribute the prospective disclosure to approximately 600,000 former fee-based brokerage customers. When aggregated with the 196,200 existing non-retirement, non-discretionary advisory accounts we believe likely will receive the prospective disclosure, we estimate the total number of accounts for which clients will receive prospective disclosure to be 796,200.[81]

We estimate that the burden for administering the distribution of the prospective disclosure will be approximately 0.1 hours (six minutes) for every account. Based on the discussion above, we estimate that the prospective disclosure will be distributed to a total of approximately 796,200 eligible existing non-discretionary advisory accounts and eligible former fee-based brokerage accounts. We estimate the total hour burden under paragraph (a)(3) of rule 206(3)–3T for distribution of the prospective written disclosure to be 79,620 hours.[82]

We estimate an average one-time cost of preparation of the prospective disclosure to include outside legal fees for approximately three hours of review to total $1,200 per eligible adviser on average,[83] for a total of $456,000.[84] As we discuss above, advisers that rely on the rule will face widely varying numbers and severity of conflicts of interest with their clients. We believe that those advisers that engage in riskless principal trading, are unlikely to seek outside legal services in drafting the prospective disclosure. On the other hand, advisers with more significant conflicts are likely to engage outside legal services to assist in preparation of the prospective written disclosure. We also estimate a one-time average cost for printing and physical distribution of the various disclosure documents, including a disclosure and consent form and, if necessary, a revised account agreement, to be approximately $1.50 per account,[85] for a total of $1,194,300.[86]

The second part of this burden is that the adviser must receive from each client an executed written, revocable consent prospectively authorizing the investment adviser, or a broker-dealer affiliate of the adviser, to act as principal for its own account, to sell any security to or purchase any security from the advisory client. This collection of information is necessary to verify that a client has provided the required prospective consent. It is designed to ensure that advisers that wish to engage in principal trades with their clients in reliance on the rule inform their clients that they have a right not to consent to such transactions.

Compliance with this part of the temporary rule will require advisers to collect executed written, prospective consent from advisory clients. We anticipate that the bulk of the burden of this collection will be borne upfront. We expect that the consent solicitation for existing non-discretionary advisory accounts and fee-based brokerage accounts being converted to non-discretionary advisory accounts will be integrated into the prospective written disclosure. For new clients, we anticipate that the consent solicitation provision will be included in the account agreement signed by a client upon opening a non-discretionary advisory account. Once the consent solicitation has been integrated into the account-opening paperwork, the ongoing burden will be minimal.

We believe that the burden and costs to advisers of soliciting consent is included in the burdens and costs of drafting and distributing the notices described above. This is because we expect the consent solicitation to be integrated into the firm's prospective written disclosure. We estimate an average burden per accountholder of 0.05 hours (three minutes) in connection with reviewing the consent solicitation, asking questions, providing consent, and, for those that so wish, revoking that consent at a later date. Assuming that there are 796,200 accountholders who receive prospective disclosure and a prospective consent solicitation we estimate a total burden of 39,810 hours on accountholders for reviewing and/or returning consents.[87] We further estimate that 90 percent of these accountholders, or 716,580 accountholders, will execute and return the consent.[88]

Finally, we estimate that the burden of updating the disclosure, maintaining records on prospective consents provided, and processing consent revocations and prospective consents granted subsequent to the initial solicitation will be approximately 100 hours per eligible adviser per year. We estimate that the total burden for all advisers to keep prospective consent information up to date will be 38,000 hours.[89]

Trade-By-Trade Disclosure and Consent: Pursuant to paragraph (a)(4) of the rule, an investment adviser, prior to the execution of each principal

discretionary advisory accounts among eligible advisers.

[79] This assumption may result in the estimated paperwork burdens and costs of proposed rule 206(3)–3T being overstated.

[80] Industry representatives have informed us that substantially all fee-based brokerage accounts are held with twelve broker-dealers, all of which also are registered as investment advisers according to IARD data as of August 1, 2007.

[81] 196,200 existing non-retirement, non-discretionary advisory accounts we estimate are likely to receive prospective disclosures + 600,000 fee-based brokerage accounts we estimate will be converted to non-discretionary advisory accounts = 796,200 total accounts we expect to receive the prospective disclosure addressed in paragraph (a)(3) of rule 206(3)–3T.

[82] 0.1 hours (six minutes) per account × 796,200 accounts = 79,620 hours.

[83] Outside legal fees are in addition to the projected 5 hour per adviser burden discussed in note 75 and accompanying text.

[84] $400 per hour for legal services × 3 hours per adviser × 380 eligible advisers that we expect to rely on the rule = $456,000. The hourly cost estimate is based on our consultation with advisers and law firms who regularly assist them in compliance matters.

[85] This estimate is based on discussions with firms. It represents our estimate of the average cost for printing and distribution, which we expect will include distribution of hard copies for approximately 85% of accounts and distribution of electronic copies for approximately 15% of accounts.

[86] $1.50 per account × 796,200 accounts = $1,194,300.

[87] 0.05 hours (three minutes) per accountholder × 796,200 accountholders executing and returning the consent = 39,810 total burden hours on accountholders with respect to returning consents.

[88] 796,200 eligible accountholders × 90 percent = 716,580 accountholders who will return their prospective consents. We refer herein to these 716,580 accountholders who return their consents, and whose advisers are therefore eligible to rely on the rule with respect to them, as "eligible accountholders."

[89] 100 hours per eligible adviser × 380 eligible advisers that will rely on the rule = a total burden of 38,000 hours for updating disclosure, maintaining records, and processing new consents and revocations.

transaction, must inform the advisory client, orally or in writing, of the capacity in which it may act with respect to such transaction. Also pursuant to paragraph (a)(4) of the rule, an investment adviser, prior to the execution of each principal transaction, must obtain oral or written consent from the advisory client to act as principal for its own account with respect to such transaction. This collection of information is necessary to alert an advisory client that a specific trade may be executed as principal and provide the client with the opportunity to withhold its authorization for the trade to be executed on a principal basis.

We note that section 206(3) of the Advisers Act requires written trade-by-trade disclosure in connection with principal trades. We believe that complying with this part of rule 206(3)–3T provides an alternative method of compliance that is likely to be less costly than compliance with section 206(3) in many situations. However, to the extent that advisers are not currently engaging in principal trades with non-discretionary advisory accountholders (and thus are not preparing and providing written disclosure regarding conflicts of interest associated with principal trading in particular securities), advisers electing to rely on the rule will need to begin to prepare such disclosure and communicate it to clients. Based on discussions with industry and their experience with fee-based brokerage accounts and existing non-discretionary advisory programs, we estimate conservatively that non-discretionary advisory accountholders at eligible advisers engage in an average of approximately 50 trades per year and that, for purposes of this analysis, all those trades are principal trades for which the investment adviser seeks to rely on rule 206(3)–3T.[90] We estimate, based on our discussions with broker-dealers, a burden of 0.0083 hours (approximately 30 seconds) per trade on average for preparation and communication of the requisite disclosure to a client, and for the client to consent, for an estimated total burden of approximately 297,381 hours per year.[91]

Trade-By-Trade Confirmations: Pursuant to paragraph (a)(5) of the rule, an investment adviser must deliver to its client a written confirmation at or before completion of each principal transaction that includes, in addition to the information required by rule 10b–10 under the Exchange Act [17 CFR 240.10b–10], a conspicuous, plain English statement that the investment adviser: (i) Informed the advisory client that it may be acting in a principal capacity in connection with the transaction and the client authorized the transaction; and (ii) owned the security sold to the advisory client (or bought the security from the client for its own account). Pursuant to paragraph (a)(8) of the rule, each confirmation must include a conspicuous, plain English statement that the written, prospective consent described above may be revoked without penalty at any time by written notice to the investment adviser from the client. This collection of information is necessary to ensure that an advisory client is reminded that a particular trade was made on a principal basis and is given the opportunity to revoke prospective consent to such trades.

The majority of the information required in this collection of information is already required to be assembled and communicated to clients pursuant to requirements under the Exchange Act. As such, we do not believe that there will be an ongoing hour burden associated with this requirement. We estimate a one-time cost burden for reprogramming computer systems that generate confirmations to ensure that all the information required for purposes of paragraphs (a)(5) and (a)(8) of rule 206(3)–3T is included in such confirmations of $20,000 per eligible adviser for a total of $7,600,000.[92]

Principal Transactions Report: Pursuant to paragraph (a)(6) of the rule, the investment adviser must deliver to each client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the account in reliance upon the rule, and the date and price of such transactions. This report will require a collection of information that should already be available to the adviser or its broker-dealer affiliate executing the client's transactions. Pursuant to paragraph (a)(8) of the rule, each principal transactions report must include a conspicuous, plain English statement that the written, prospective consent described above may be revoked without penalty at any time by written notice to the investment adviser from the client. This collection of information is necessary to ensure that clients receive a periodic record of the principal trading activity in their accounts and are afforded an opportunity to assess the frequency with which their adviser engages in such trades.

We estimate that other than the actual aggregation and delivery of this statement, the burden of this collection will not be substantial because the information required to be contained in the statement is already maintained by investment advisers and/or broker-dealers executing trades for their clients. Advisers and broker-dealers already send periodic or annual statements to clients.[93] Thus, to comply, advisers will need to add information they already maintain to documents they already prepare and send. We expect that there will be a one-time burden associated with this requirement relating to programming computer systems to generate the report, aggregating information that is already available and maintained by advisers or their broker-dealer affiliates. We estimate this burden to be on average approximately 5 hours per eligible firm for a total of 1,900 hours.[94] We also estimate that in addition to the hour burden, firms may have costs associated with retaining outside professionals to assist in programming. We estimate these costs to average $10,000 per adviser for a total upfront cost of $3,800,000.[95] Once

[90] These assumptions may result in the estimated paperwork burdens and costs of proposed rule 206(3)–3T being overstated.

[91] 50 trades per account per year × 716,580 accountholders that will provide prospective consent and therefore enable their advisers to rely on the rule with respect to them × 0.0083 hours (approximately 30 seconds) per trade for disclosure = a burden of 297,381 hours per year.

[92] $20,000 to program system generating confirmations per adviser × 380 eligible advisers that will rely on the rule = $7,600,000 total programming costs for confirmations. Our estimate for the cost to program the confirmation system was derived from discussions with broker-dealers.

[93] For example, investment advisers that are qualified custodians for purposes of rule 206(4)–2 under the Advisers Act and that maintain custody of their advisory clients' assets must, at a minimum, send quarterly account statements to their clients pursuant to rule 206(4)–2(a)(3).

[94] 5 hours per eligible adviser for programming relating to the principal trade report × 380 advisers = a total programming burden relating to the principal trade report of 1,900 hours. Advisers that use proprietary systems will likely devote considerably more time to programming reports. However, these advisers are also likely to have already programmed systems to meet the requirements of rule 206(3)–2(a)(3), which contains a similar annual report requirement with respect to agency cross transactions. Other advisers may be using commercial software to track and report trades in accounts. These software packages should take little time for an adviser to implement, and consequently should impose significantly less than a 5 hour burden.

[95] $10,000 for retaining outside professionals to assist in programming in connection with the principal transactions report per adviser × 380 advisers = $3,800,000 in outside programming costs in connection with the principal transactions report. We based our outside programming cost estimate on a rate of $250 per hour for 40 hours of programming consultant time. We anticipate that the advisers that rely on commercial software solutions, many of which will be components to trading software they already have acquired, will not have to retain outside programming consultants.

computer systems enable these reports to be generated electronically, we estimate that the average ongoing burden of generating the reports and delivering them to clients will be 0.05 hours (three minutes) per eligible non-discretionary advisory account, or a total of 35,829 hours per year.[96]

C. Summary of Estimated Paperwork Burden

For purposes of the Paperwork Reduction Act, we estimate an annual incremental increase in the burden for investment advisers and their affiliated broker-dealers to comply with the alternative means for compliance with section 206(3) of the Advisers Act contained in rule 206(3)–3T. As discussed above, our estimates reflect the fact that the alternative means of compliance is similar to the approach advisers currently employ to comply with the disclosure and consent obligations of section 206(3) of the Advisers Act and also is similar to the approach broker-dealers employ to comply with certain of the requirements of rule 10b–10 under the Exchange Act.

Some amount of training of personnel on compliance with the rule and developing, acquiring, installing, and using technology and systems for the purpose of collecting, validating and verifying information may be necessary. In addition, as discussed above, some amount of time, effort and expense may be required in connection with processing and maintaining information. We estimate that the total amount of costs, including capital and start-up costs, for compliance with the rule is approximately $13,050,300.[97] We estimate that the hour burden will be 494,440 hours.[98]

[96] 0.05 hours (three minutes) per eligible accountholder to generate and deliver reports × 716,580 eligible accountholder = 35,829 hours total burden for generating and delivering reports to accountholders. Because, as we note above, the information required by the rule will be added to documents advisers already send to clients, we estimate that there is no added cost associated with delivering the reports to clients (*e.g.*, postage costs).

[97] $456,000 for outside professional fees associated with preparation of the prospective disclosure + $1,194,300 for printing and physical distribution costs associated with the prospective disclosure + $7,600,000 for programming costs for outside professionals for rendering trade confirmations compliant with the rule + $3,800,000 for programming costs for outside professionals to create principal trading reports = a total of $13,050,300.

[98] 1,900 hours for drafting prospective disclosure + 79,620 hours for administering distribution of prospective disclosure to accountholders + 39,810 hours for review by accountholders of the consent solicitation and returning consents + 38,000 hours for advisers maintaining and updating consent information + 297,381 hours for preparation and communication of trade-by-trade disclosure and consent + 1,900 hours for programming to create principal trading reports + 35,829 hours for ongoing generation of principal trading reports = a total of 494,440 hours.

D. Request for Comment

We invite comment on each of these estimates and the underlying assumptions. Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment with respect to the collections described in this section of this Release in order to: (i) Evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[99]

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–23–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–23–07, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, Washington, DC 20549. The OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost-Benefit Analysis

A. Background

We are adopting, as an interim final temporary rule, rule 206(3)–3T under the Advisers Act, which provides an alternative means for investment advisers that are registered with us as broker-dealers to meet the requirements of section 206(3) when they act in a principal capacity with respect to transactions with certain of their advisory clients. We are adopting this rule as part of our response to a recent court decision invalidating rule 202(a)(11)–1, which provided that fee-based brokerage accounts were not advisory accounts and were thus not subject to the Advisers Act. As a result of the court's decision, these fee-based accounts are advisory accounts subject to the fiduciary duty and other requirements of the Advisers Act, unless converted to commission-based brokerage accounts. To maintain investor choice and protect the interests of investors holding an estimated $300 billion in approximately one million fee-based brokerage accounts, we are adopting rule 206(3)–3T.

B. Summary of Temporary Rule

Rule 206(3)–3T permits an adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) by: (i) Making certain written disclosures; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal trades; (iii) making oral or written disclosure of the capacity in which the adviser may act and obtaining the client's consent orally or in writing prior to the execution of each principal transaction; (iv) sending to the client confirmation statements disclosing the capacity in which the adviser has acted and indicating that the adviser disclosed to the client that it may act in a principal capacity and that the client authorized the transaction; and (v) delivering to the client an annual report itemizing the principal transactions. These conditions are designed to require an adviser to fully apprise the client of the conflicts of interest involved in these transactions, inform the client of the circumstances in which the adviser may effect a trade on a principal basis, and provide the client with meaningful opportunities to revoke prospective consent or refuse to authorize a particular transaction.

To avoid disruption that would otherwise occur to customers who currently hold fee-based brokerage accounts, we are adopting rule 206(3)–3T on an interim final basis so that it will be available when the Court's decision takes effect on October 1, 2007.[100] For reasons explained below, we are adopting the rule on a temporary basis so that it will expire on December 31, 2009.

[99] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

[100] *See supra* note 5 and accompanying text.

C. Benefits

As discussed above, the principal benefit of rule 206(3)–3T is that it maintains investor choice and protects the interests of investors holding an estimated $300 billion in one million fee-based brokerage accounts. It is our understanding that investors favor having the choice of advisory accounts with access to the inventory of a diversified broker-dealer but that meeting the requirements set out in section 206(3) is not feasible for advisers affiliated with broker-dealers or advisers that also are registered as broker-dealers. By complying with what we believe to be relatively straightforward procedural requirements, investment advisers can avoid what they have indicated to us is a critical impediment to their providing access to certain securities which they hold in their own accounts—namely, written trade-by-trade disclosure. These advisers have communicated to us that the trade-by-trade written disclosure requirement is so impracticable in today's markets that it effectively stands in the way of their being able to give clients access to certain securities that might most cheaply or quickly be traded with a client on a principal basis. In fact, with respect to some securities, for which the risks might be relatively low (such as investment-grade debt securities), absent principal trading, clients may not have access to them at all. For other securities, execution may be improved where the adviser or affiliated broker-dealer can provide the best execution of the transaction.

A resulting second benefit of the rule is that non-discretionary advisory clients of dually registered firms will have easier access to a wider range of securities. This in turn will likely increase liquidity in the markets for these securities and promote capital formation in these areas.

A third benefit of the rule is that it provides the protections of the sales practice rules of the Exchange Act and the relevant self-regulatory organizations because an adviser relying on the rule must also be a registered broker-dealer. As a result, clients will have the benefit of the fiduciary duties imposed on the investment adviser by the Advisers Act and of the Commission's rules and regulations under the Exchange Act as well as those of the SROs.

Another benefit of Rule 206(3)–3T is that it provides a lower cost alternative for an adviser to engage in principal transactions. As discussed above, in the absence of this rule our view has been that an adviser must provide written disclosure and obtain consent for each specific principal transaction. Rule 206(3)–3T permits an adviser to comply with section 206(3) by, among other things, providing oral disclosure prior to the execution of each principal transaction. As discussed above, we understand traditional compliance is difficult and costly. This alternative means of compliance should be, consistent with the protection of investors, less costly and less burdensome.

D. Costs

Prospective Disclosure and Consent: Pursuant to paragraph (a)(3) of the rule, an investment adviser must provide written, prospective disclosure to the client explaining: (i) The circumstances under which the investment adviser directly or indirectly may engage in principal transactions; (ii) the nature and significance of conflicts with its client's interests as a result of the transactions; and (iii) how the investment adviser addresses those conflicts. Pursuant to paragraph (a)(8) of the rule, the written, prospective disclosure must include a conspicuous, plain English statement that a client's written, prospective consent may be revoked without penalty at any time by written notice to the investment adviser from the client. And, for the adviser to be able to rely on rule 206(3)–3T with respect to an account, the client must have executed a written, revocable consent after receiving such written, prospective disclosure. The principal costs associated with this requirement include: (i) Preparation of the prospective disclosure and consent solicitation; (ii) distribution of the disclosure and consent solicitation to clients; and (iii) ongoing management of information, including revocations of consent and grants of consent that occur subsequent to the account opening process.

We estimate that the costs of preparing the prospective disclosure and consent solicitation will be borne upfront. Once these items have been generated by eligible advisers, such advisers will be able to include them in other materials already required to be delivered to clients. For purposes of the Paperwork Reduction Act, we have estimated the number of hours and costs the average adviser would spend in the initial preparation of their prospective disclosure and consent solicitation.[101] Based on those estimates, we estimate that advisers would incur costs of approximately $1,480 on average per adviser, including a conflicts review process, drafting efforts and consultation with clients, and legal consultation.[102] Assuming there are 380 eligible advisers (*i.e.*, advisers that also are registered broker-dealers) that will prepare the prospective disclosure and consent solicitation, we estimate that the total costs will be $562,400.[103]

For purposes of the Paperwork Reduction Act, we have estimated the number of hours and costs the average adviser would spend on the distribution of their prospective disclosure and consent solicitation as 210 hours and $3,143.[104] We expect that the costs of distribution of the prospective disclosure and solicitation consent to existing non-discretionary advisory clients and fee-based brokerage accountholders converting their accounts to non-discretionary advisory accounts will include duplication charges, postage and other mailing related expenses. We estimate that these costs will be approximately $5.60 on average per client, for a total of $4,458,720.[105]

---

[101] *See* section V.B of this Release. We estimate the following burdens and/or costs: (i) For drafting the required prospective disclosure, approximately 5 hours on average per eligible adviser, of which we estimate there are 380, for a total of 1,900 hours; and (ii) for utilizing outside legal professionals in the preparation of the prospective disclosure, approximately $1,200 on average per eligible adviser, for a total of $456,000.

[102] We expect that the internal preparation function will most likely be performed by compliance professionals. Data from the SIFMA's *Report on Office Salaries in the Securities Industry 2006* ("Industry's Salary Report"), modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a Compliance Clerk is approximately $56 per hour. $56 per hour × 5 hours on average per adviser = $280 on average per adviser of internal costs for preparation of the prospective disclosure. $280 on average per adviser of internal costs + $1,200 on average per adviser of costs for external consultants = $1,480 on average per adviser.

[103] $1,480 on average per adviser in costs for preparation of the prospective disclosure × 380 advisers = $562,400 in total costs for preparation of the prospective disclosure.

[104] *See* section V.B of this Release. We estimate the following burdens and/or costs: (i) For printing the prospective disclosure (including a disclosure and consent form and, if necessary, a revised Form ADV brochure and account agreement), approximately $1.50 on average per eligible account, of which we estimate there are approximately 796,200, for a total of $1,194,300 (which, if divided by the estimated 380 eligible advisers, equals a total cost for printing of approximately $3,143 on average per adviser); (ii) for distributing the prospective disclosure, approximately 0.1 hours on average per eligible account, for a total of 79,620 hours (which, if divided by the estimated 380 eligible advisers, equals a total burden of 210 hours on average per adviser).

[105] We expect that the distribution function for the prospective written disclosure and consent solicitation will most likely be performed by a general clerk. Data from the Industry's Salary Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses,

Continued

For purposes of the Paperwork Reduction Act, we have estimated the number of hours the average accountholder would spend on reviewing the written disclosure document and, if it wishes, returning an executed consent.[106] We estimate that the costs corresponding to this hour burden will be approximately $0.50 on average per eligible accountholder. Assuming that there are 796,200 eligible accountholders who will receive the written disclosure document and 716,580 that will provide consent during the transitional solicitation, we estimate that the total cost to clients will be $398,100.[107]

For purposes of the Paperwork Reduction Act, we have estimated the number of hours the average adviser would spend in ongoing maintenance of prospective disclosure and consent solicitation efforts.[108] Based on those estimates, we estimate that the average cost of updating the written prospective disclosure, maintaining records on prospective consents provided, and processing consent revocations and consents granted subsequent to the initial solicitation will be approximately $5,600 on average per eligible adviser per year.[109] We estimate that the annual cost for all eligible advisers to keep consent information up to date will be $2,128,000.[110]

Based on the discussion above, we estimate the costs relating to paragraph (a)(3) of rule 206(3)–3T to be on average approximately: (i) $13,213 per adviser in one-time costs;[111] (ii) $5,600 per adviser in ongoing costs; and (iii) $0.50 per client account in costs. As such, we estimate the total costs associated with the prospective written disclosure and consent requirement of the rule to be $7,547,040.[112]

Trade-by-Trade Disclosure and Consent: Pursuant to paragraph (a)(4) of the rule, an investment adviser, prior to the execution of each principal transaction, must inform the advisory client, orally or in writing, of the capacity in which it may act with respect to such transaction. Also pursuant to paragraph (a)(4) of the rule, an investment adviser, prior to the execution of each principal transaction, must obtain oral or written consent from the advisory client to act as principal for its own account with respect to such transaction. Further, investment advisers likely will want to document for their own evidentiary purposes the receipt of trade-by-trade consent by their representatives.

As noted in our Paperwork Reduction Act analysis, section 206(3) of the Advisers Act already requires written trade-by-trade disclosure in connection with principal trades. We believe that complying with this requirement of rule 206(3)–3T provides an alternative method of compliance that is likely to be less costly than compliance with section 206(3). To the extent that advisers are not currently engaging in principal trades with non-discretionary advisory accountholders (and thus are not preparing and providing written disclosure regarding conflicts of interest associated with principal trading in particular securities), advisers electing to rely on the rule will need to begin to prepare such tailored disclosure and communicate it to clients.

We estimate that the costs of preparing and communicating trade-by-trade disclosures to clients and obtaining their consents could include: (i) Preparing disclosure relating to the conflicts associated with executing that transaction on a principal basis; and (ii) communicating that disclosure to clients. For purposes of the Paperwork Reduction Act, we have estimated the number of hours advisers would spend on providing trade-by-trade disclosure and consent solicitation.[113] Based on those estimates, we estimate that the cost of preparing each trade-by-trade disclosure will be approximately $0.47 on average.[114] For purposes of the Paperwork Reduction Act analysis, we have estimated that eligible clients engage in an average of approximately 50 trades per year, all of which we have conservatively assumed are principal trades. We further estimate that communicating the disclosure to clients orally will be at most a minimal cost (note that system programming costs are discussed separately under the subsection entitled "Related Costs" below). As such, we estimate the total annual cost for compliance with paragraph (a)(4) of rule 206(3)–3T to be approximately $16,662,240.[115]

Trade-by-Trade Confirmations: Pursuant to paragraph (a)(5) of the rule, an investment adviser must deliver to its client a written confirmation at or before completion of each principal transaction that includes, in addition to the information required by rule 10b–10 under the Exchange Act [17 CFR 240.10b–10], a conspicuous, plain English statement that the investment adviser: (i) Informed the advisory client that it may be acting in a principal capacity in connection with the

---

firm size, employee benefits and overhead, suggest that cost for a General Clerk is approximately $41 per hour. $41 per hour × 0.1 hours on average for distribution per account = approximately $4.10 on average per account for distribution. $1.50 on average printing cost per account + $4.10 on average distribution cost per account = $5.60 on average per account. $5.60 on average per account × 796,200 accounts to which we expect the disclosure to be distributed = a total printing and distribution cost for the prospective disclosure and consent solicitation of $4,458,720 (which, if divided by the estimated 380 eligible advisers, equals a total cost for distribution of approximately $11,733 on average per eligible adviser).

[106] *See* section V.B of this Release. We estimate that the burden per client account that will return an executed consent (eligible accountholder), of which we estimate that there will be approximately 716,580, will be 0.05 hours (3 minutes) on average, for a total burden of 35,829 hours. We do not believe there will be a significant difference in burden between those clients that consent and those that do not.

[107] $0.50 on average for each accountholder who receives a written prospective disclosure document × 796,200 eligible accountholders = $398,100. We do not believe there will be a significant difference in burden between those accountholders that consent and those that do not.

[108] *See* section V.B of this Release. We estimate that the burden per eligible adviser of ongoing maintenance of the prospective disclosure and consent solicitation efforts will be approximately 100 hours on average per year, for a total of 38,000 hours.

[109] We expect that this function will most likely be performed by compliance professionals at $56 per hour. *See* Industry's Salary Report. 100 hours on average per adviser per year × $56 per hour = $5,600 on average per adviser per year.

[110] $5,600 on average per adviser per year × 380 eligible advisers = $2,128,000.

[111] $1,480 on average per adviser in costs for preparation of the prospective disclosure and consent solicitation + $11,733 on average per adviser in costs for printing and distributing the prospective disclosure and consent solicitation = total one-time costs for preparation, printing and distribution of the prospective disclosure and consent solicitation of $13,213 on average per adviser.

[112] ($13,213 average one time cost per adviser × 380 eligible advisers) + ($5,600 average ongoing costs per adviser × 380 eligible advisers) + ($0.50 average costs per accountholder × 796,200 accountholders who will review the written disclosure) = $5,020,940 + $2,128,000 + $398,100 = $7,547,040 total cost of compliance with paragraph (a)(3) of rule 206(3)–3T.

[113] *See* section V.B of this Release. We estimate that based on discussions with industry representatives that there will be approximately 50 trades (which we conservatively assume will be principal trades) on average made per year per eligible account. We estimate a burden of 0.0083 hours (30 seconds) on average per trade for communication of the requisite disclosure to an eligible accountholder, of which we estimate there will be 716,580, for an estimated total burden of approximately 297,381 hours per year. The burden for the average adviser would thus be 297,381 total hours per year ÷ 380 eligible advisers = approximately 783 hours on average per adviser per year.

[114] We expect that this function will most likely be performed by compliance professionals at $56 per hour (*see* Industry's Salary Report) and that the preparation and communication of trade-by-trade disclosure will comprise an average burden of approximately 0.0083 hours (30 seconds) per trade. 0.0083 hours on average per trade × $56 per hour = approximately $0.47 on average per trade.

[115] 783 hours on average per adviser per year × $56 per hour = $43,848 on average per adviser per year. $43,848 on average per eligible adviser per year × 380 eligible advisers = $16,662,240 total costs per year.

transaction and the client authorized the transaction; and (ii) owned the security sold to the advisory client (or bought the security from the client for its own account). As noted above in the Paperwork Reduction Act section of this Release, the majority of the information that this provision requires to be delivered to clients is already required to be assembled and communicated to clients pursuant to requirements under the Exchange Act. We expect that the costs associated with conforming trade confirmations to the requirements of paragraph (a)(5) of rule 206(3)–3T will stem principally from programming computer systems that generate confirmations to ensure that all the required information is contained in the confirmations. Costs associated with programming are described under the subsection entitled "Related Costs" below.

Principal Transactions Report: Pursuant to paragraph (a)(6) of the rule, the investment adviser must deliver to each client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the account in reliance upon the rule, and the date and price of such transactions. This report will require advisers to aggregate and distribute information that should already be available to the adviser or its broker-dealer affiliate executing the client's transactions.

As noted in the Paperwork Reduction Act section of this Release, we estimate that other than the actual aggregation and delivery of this statement, the burden of this collection will not be substantial because the information required to be contained in the statement is already collected and maintained by investment advisers and/or broker-dealers executing trades for their clients. Advisers and broker-dealers already send periodic or annual statements to clients. Thus, to comply, advisers will need to add information they already maintain to documents they already prepare and send. We expect that there will be a one-time cost associated with this requirement relating to programming computer systems to generate the report, aggregating information that is already available and maintained by advisers or their broker-dealer affiliates. Costs associated with programming are described under the subsection entitled "Related Costs" below.

Related Costs: We expect that the bulk of the costs of compliance with rule 206(3)–3T relate to: (i) The initial distribution of prospective disclosure and collection of consents (described above); (ii) systems programming costs to ensure that trade confirmations contain all of the information required by paragraph (a)(4) of the rule; and (iii) systems programming costs to aggregate already-collected information to generate compliant principal transactions reports. For purposes of the Paperwork Reduction Act, we have estimated the cost an average adviser would incur on programming their computer systems, regardless of the size of their non-discretionary advisory account programs, to prepare compliant confirmations and principal transaction reports and to be able to track both prospective and trade-by-trade consents. For purposes of the Paperwork Reduction Act analysis, we have estimated the number of hours the average adviser would spend on programming computer systems to facilitate compliance with the rule.[116] Based on those estimates, we estimate the costs of programming, generating and delivering compliant confirmations and principal trade reports to be approximately $34,201 on average per eligible adviser,[117] for a total of $12,996,289.[118]

For those advisers that are converting fee-based brokerage accounts to non-discretionary advisory accounts, we are providing transition relief, described in section IV of this Release, that is designed, among other things, to avoid disruptions to clients and minimize costs to advisers.

Total Costs: The total overall costs, including estimated costs for all eligible advisers and eligible accounts, relating to compliance with rule 206(3)–3T are $37,205,569.[119]

E. Request for Comment

- We solicit quantitative data to assist with our assessment of the benefits and costs of rule 206(3)–3T.
- What, if any, additional costs are involved in complying with the rule? What are the types of costs, and what are the amounts? Should the rule be modified in any way to mitigate costs? If so, how?
- Does the rule's requirement that a report be provided to each client, at

[116] *See* section V.B of this Release. We estimate the following burdens and costs: (i) For programming computer systems to generate trade confirmations compliant with rule 206(3)–3T, approximately $20,000 on average per eligible adviser, of which we estimate there are approximately 380, for a total of $7,600,000; (ii) for the internal burden associated with programming computer systems relating to principal trade reports compliant with rule 206(3)–3T, approximately five hours on average per eligible adviser, for a total of 1,900 hours; (iii) for assistance of outside professionals to assist in programming computer systems to generate principal trade reports, approximately $10,000 on average per eligible adviser, for a total of $3,800,000; and (iv) for generation and delivery of annual principal trade reports each year, approximately 0.05 hours (three minutes) on average per eligible account, of which we estimate there are approximately 716,580, for a total of 35,829 hours total per year.

[117] We expect that the internal programming function most likely will be performed by computer programmers. Data from the Industry's Salary Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that cost for a Sr. Computer Operator is approximately $67 per hour. Five hours on average per adviser × $67 per hour = $335 on average per adviser (or, across all 380 eligible advisers, $127,300). We expect that the generation and delivery of annual principal trade reports will most likely be performed by general clerks at $41 per hour. $41 per hour × 35,829 total hours per year = $1,468,989 (or, if divided among all 380 eligible advisers, approximately $3,866 on average per adviser per year). $20,000 on average per adviser for programming to generate compliant trade confirmations + $335 on average per adviser for internal programming costs in connection with developing an annual principal trades report + $10,000 on average per adviser for outside computing assistance in developing the annual principal trade report + $3,866 on average per adviser for generation and delivery of annual principal trade reports per year = approximately $34,201 on average per adviser in connection with compliance with the confirmation and principal trade report requirements.

[118] $7,600,000 for programming to generate compliant trade confirmations + $127,300 for internal programming costs in connection with developing an annual principal trades report + $3,800,000 for outside computing assistance in developing the annual principal trade report + $1,468,989 for generation and delivery of annual principal trade reports per year = $12,996,289 total costs in connection with compliance with the confirmation and principal trade report requirements.

[119] $7,547,040 total costs in connection with compliance with the prospective disclosure and consent requirements of the rule + $16,662,240 total costs in connection with compliance with the trade-by-trade disclosure and consent requirements of the rule + $12,996,289 total costs in connection with compliance with the confirmation and principal trade report requirements of the rule = $37,205,569 total costs in connection with compliance with the rule.

least annually, of the transactions undertaken with the client in reliance on the rule result in a meaningful identification of an adviser's trading patterns with its clients that will enable the client to evaluate more effectively than it would simply with prospective disclosure and trade-by-trade disclosure prior to the execution of a principal transaction whether it should continue to consent, or revoke its consent, to principal trading in reliance on the rule?

- What will the effect of the rule be on the availability of account services and securities to clients who do not consent to principal transactions?
- Have we accurately estimated the costs of compliance with the rule?
- We assumed that firms already collect much of the information that the rule would require for the principal trading reports. Are we correct? We solicit comments on the extent to which firms already aggregate the information that the rule will require to be disclosed in the principal trading reports.

VII. Promotion of Efficiency, Competition and Capital Formation

Section 202(c) of the Advisers Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[120]

Rule 206(3)–3T permits an investment adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) by: (i) Making certain written disclosures; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal trades; (iii) making oral or written disclosure and obtaining the client's consent orally or in writing prior to the execution of each principal transaction; (iv) sending to the client confirmation statements for each principal trade that disclose the capacity in which the adviser has acted and indicating that the client consented to the transaction; and (v) delivering to the client an annual report itemizing the principal transactions.

Rule 206(3)–3T may increase efficiency by providing an alternative means of compliance with section 206(3) of the Advisers Act that we believe will be less costly and less burdensome. As discussed above, by permitting oral trade-by-trade disclosure, advisers may be more willing to engage in principal trades with advisory clients. As a result, advisers may provide access to certain securities the adviser or its affiliate has in inventory. Clients might want access to securities an adviser, or an affiliated broker-dealer, has in inventory, despite the conflicts inherent in principal trading, if those securities are scarce or hard to acquire. Firms have argued that purchasing such securities from, or selling them to, an adviser could lead to faster or less expensive execution, advantages a client may deem to outweigh the risks presented by principal trading with an adviser.[121]

We expect that rule 206(3)–3T will promote competition because it preserves investor choice for different types of advisory accounts. As a practical matter, advisers did not frequently engage in principal trades. By relying on the rule, advisers that are also registered broker-dealers will be able to offer advisory clients access to their (and their affiliates') inventory. Advisers that are not also registered as broker-dealers may seek to market their services without principal trades and their associated costs and benefits. We are not able to predict with certainty the effect of the rule on them, but it is possible that some advisers may elect to register as broker-dealers in order to rely on rule 206(3)–3T.

We believe that if rule 206(3)–3T has any effect on capital formation it is likely to be positive, although indirect. We understand that most investment advisers will not trade with non-discretionary advisory client accounts on a principal basis so long as they must provide trade-by-trade written disclosure. Providing an alternative to the traditional requirements of trade-by-trade written disclosure might serve to broaden the potential universe of purchasers of securities, in particular investment grade debt securities for the reasons described above, opening the door to greater investor participation in the securities markets with a potential positive effect on capital formation.

The Commission requests comment on whether the proposed amendments are likely to promote efficiency, competition, and capital formation.

VIII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with 5 U.S.C. 604. It relates to rule 206(3)–3T, which we are adopting in this Release.[122]

A. Need for and Objectives of the Rule

Sections I and II of this Release describe the reasons for and objectives of rule 206(3)–3T. As we discuss in detail above, our reasons include the need to facilitate the transition of customers in fee-based brokerage accounts in the wake of the *FPA* decision and to address the stated inability of the sponsors of those accounts to offer clients some of the services the clients desire in the non-discretionary advisory accounts to which they will be transitioned.

B. Small Entities Affected by the Rule

Rule 206(3)–3T is an alternative method of complying with Advisers Act section 206(3) and is available to all investment advisers that: (i) Are registered as broker-dealers under the Exchange Act; and (ii) effect trades with clients directly or indirectly through a broker-dealer controlling, controlled by or under common control with the investment adviser, including small entities. Under Advisers Act rule 0–7, for purposes of the Regulatory Flexibility Act an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[123]

We have opted not to make the relief available to all investment advisers, but have instead restricted it to investment advisers that are dually registered as broker-dealers under the Exchange Act. We have taken this approach because, as more fully discussed above, in the context of principal trades which implicate potentially significant conflicts of interest, and which are executed through broker-dealers, we believe it is important that the protections of both the Advisers Act and the Exchange Act, which includes well developed sales practice rules, apply to advisers entering into principal transactions with clients.

The Commission estimates that as of August 1, 2007, 597 investment advisers were small entities.[124] The Commission

[120] 15 U.S.C. 80b–2(c).

[121] *See, e.g.*, SIFMA Letter.

[122] Although the requirements of the Regulatory Flexibility Act are not applicable to rules adopted under the Administrative Procedure Act's "good cause" exception, see 5 U.S.C. 601(2) (defining "rule" and notice requirements under the Administrative Procedures Act), we nevertheless prepared a FRFA.

[123] *See* 17 CFR 275.0–7.

[124] IARD Data as of August 1, 2007.

assumes for purposes of this FRFA that 29 of these small entities (those that are both as investment advisers and broker-dealers) could rely on rule 206(3)–3T, and that all of these small entities would rely on the new rule.[125] We welcome comment on the availability of the rule to small entities. Do small investment advisers believe an alternative means of compliance with section 206(3) of the Advisers Act should be available to more of them? Do they believe that the dual registration requirement of the rule is too onerous for small advisers despite the discussion in subsection F below? If so, how do they propose replicating the additional protections afforded to clients by the broker-dealer regulations?

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The provisions of rule 206(3)–3T would impose certain new reporting or recordkeeping requirements, but are not expected to materially alter the time required for investment advisers that also are registered as broker-dealers to engage in transactions with their clients on a principal basis. Rule 206(3)–3T is designed to provide an alternative means of compliance with the requirements of section 206(3) of the Advisers Act. Investment advisers taking advantage of the rule with respect to non-discretionary advisory accounts would be required to make certain disclosures to clients on a prospective, trade-by-trade and annual basis. Specifically, rule 206(3)–3T permits an adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) of the Advisers Act by, among other things: (i) Making certain written disclosures; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal trades; (iii) making oral or written disclosure and obtaining the client's consent orally or in writing prior to the execution of each principal transaction; (iv) sending to the client confirmation statements for each principal trade that disclose the capacity in which the adviser has acted and indicating that the client consented to the transaction; and (v) delivering to the client an annual report itemizing the principal transactions. Advisers are already required to communicate the content of many of the disclosures pursuant to their fiduciary obligations to clients. Other disclosures are already required by rules applicable to broker-dealers.

[125] *Id.*

D. Agency Action To Minimize Effect on Small Entities

Small entities registered with the Commission as investment advisers seeking to rely on the rule would be subject to the same disclosure requirements as larger entities. In each case, however, an investment adviser, whether large or small, would only be able to rely on the rule if it also is registered with us as a broker-dealer. As noted above, we estimate that 25 small entities are registered as both advisers and broker-dealers and therefore those small entities are eligible to rely on the rule. In developing the requirements of the rule, we considered the extent to which they would have a significant impact on a substantial number of small entities, and included flexibility where possible, calling for disclosures that are already generated by the relevant firms in one form or another wherever possible in light of the objectives of the rule, to reduce the corresponding burdens imposed.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate or conflict with rule 206(3)–3T, which presents an alternative means of compliance with the procedural requirements of section 206(3) of the Advisers Act that relate to principal transactions.

The Commission notes, however, that rule 10b–10 under the Exchange Act is a separate confirmation rule that requires broker-dealers to provide certain information to their customers regarding the transactions they effect. Furthermore, FINRA Rule 2230 requires broker-dealers that are members of FINRA to deliver a written notification containing certain information, including whether the member is acting as a broker for the customer or is working as a dealer for its own account. Brokers and dealers typically deliver this information in confirmations that fulfill the requirements of rule 10b–10 under the Exchange Act. Rule G–15 of the Municipal Securities Rulemaking Board also contains a separate confirmation rule that governs member transactions in municipal securities, including municipal fund securities. In addition, investment advisers that are qualified custodians for purposes of rule 206(4)–2 under the Advisers Act and that maintain custody of their advisory clients' assets must send quarterly account statements to their clients pursuant to rule 206(4)–2(a)(3) under the Advisers Act.

These rules overlap with certain elements of rule 206(3)–3T, but the Commission has designed the temporary rule to work efficiently together with existing rules by permitting firms to incorporate the required disclosure into one confirmation statement.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities.[126] Alternatives in this category would include: (i) Establishing different compliance or reporting standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

The Commission believes that special compliance or reporting requirements or timetables for small entities, or an exemption from coverage for small entities, may create the risk that the investors who are advised by and effect securities transactions through such small entities would not receive adequate disclosure. Moreover, different disclosure requirements could create investor confusion if it creates the impression that small investment advisers have different conflicts of interest with their advisory clients in connection with principal trading than larger investment advisers. We believe, therefore, that it is important for the disclosure protections required by the rule to be provided to advisory clients by all advisers, not just those that are not considered small entities. Further consolidation or simplification of the proposals for investment advisers that are small entities would be inconsistent with the Commission's goals of fostering investor protection.

We have endeavored through rule 206(3)–3T to minimize the regulatory burden on all investment advisers eligible to rely on the rule, including small entities, while meeting our regulatory objectives. It was our goal to ensure that eligible small entities may benefit from the Commission's approach to the new rule to the same degree as other eligible advisers. The condition that advisers seeking to rely on the rule must also be registered as broker-dealers and that each account with respect to which a dually-registered adviser seeks to rely on the rule must be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules

[126] *See* 5 U.S.C. 603(c).

of the self-regulatory organization(s) of which it is a member, reflect what we believe is an important element of our balancing between easing regulatory burdens (by affording advisers an alternative means of compliance with section 206(3) of the Act) and meeting our investor protection objectives.[127] Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

G. General Request for Comments

We solicit written comments regarding our analysis. We request comment on whether the rule will have any effects that we have not discussed. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

IX. Statutory Authority

The Commission is adopting Rule 206(3)–3T pursuant to sections 206A and 211(a) of the Advisers Act.

Text of Rule

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The general authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.206(3)–3T is added to read as follows:

§ 275.206(3)–3T Temporary rule for principal trades with certain advisory clients.

(a) An investment adviser shall be deemed in compliance with the provisions of section 206(3) of the Advisers Act (15 U.S.C. 80b–6(3)) when the adviser directly or indirectly, acting as principal for its own account, sells to or purchases from an advisory client any security if:

(1) The investment adviser exercises no "investment discretion" (as such term is defined in section 3(a)(35) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78c(a)(35))), except investment discretion granted by the advisory client on a temporary or limited basis, with respect to the client's account;

(2) Neither the investment adviser nor any person controlling, controlled by, or under common control with the investment adviser is the issuer of, or, at the time of the sale, an underwriter (as defined in section 202(a)(20) of the Advisers Act (15 U.S.C. 80b–2(a)(20))) of, the security; *except that* the investment adviser or a person controlling, controlled by, or under common control with the investment adviser may be an underwriter of an investment grade debt security (as defined in paragraph (c) of this section);

(3) The advisory client has executed a written, revocable consent prospectively authorizing the investment adviser directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the advisory client, so long as such written consent is obtained after written disclosure to the advisory client explaining:

(i) The circumstances under which the investment adviser directly or indirectly may engage in principal transactions;

(ii) The nature and significance of conflicts with its client's interests as a result of the transactions; and

(iii) How the investment adviser addresses those conflicts;

(4) The investment adviser, prior to the execution of each principal transaction:

(i) Informs the advisory client, orally or in writing, of the capacity in which it may act with respect to such transaction; and

(ii) Obtains consent from the advisory client, orally or in writing, to act as principal for its own account with respect to such transaction;

(5) The investment adviser sends a written confirmation at or before completion of each such transaction that includes, in addition to the information required by 17 CFR 240.10b–10, a conspicuous, plain English statement informing the advisory client that the investment adviser:

(i) Disclosed to the client prior to the execution of the transaction that the adviser may be acting in a principal capacity in connection with the transaction and the client authorized the transaction; and

(ii) Sold the security to, or bought the security from, the client for its own account;

(6) The investment adviser sends to the client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon this section, and the date and price of such transactions;

(7) The investment adviser is a broker-dealer registered under section 15 of the Exchange Act (15 U.S.C. 78o) and each account for which the investment adviser relies on this section is a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member; and

(8) Each written disclosure required by this section includes a conspicuous, plain English statement that the client may revoke the written consent referred to in paragraph (a)(3) of this section without penalty at any time by written notice to the investment adviser.

(b) This section shall not be construed as relieving in any way an investment adviser from acting in the best interests of an advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any obligation that may be imposed by sections 206(1) or (2) of the Advisers Act or by other applicable provisions of the federal securities laws.

(c) For purposes of paragraph (a)(2) of this section, an *investment grade debt security* means a non-convertible debt security that, at the time of sale, is rated in one of the four highest rating categories of at least two nationally recognized statistical rating organizations (as defined in section 3(a)(62) of the Exchange Act (15 U.S.C. 78c(a)(62))).

(d) This section will expire and no longer be effective on December 31, 2009.

By the Commission.

September 24, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19191 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

[127] *See* Section II.B.7 of this Release.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101, 105 and 106

Transportation Security Administration

49 CFR Part 1572

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

RIN 1652–AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: Transportation Security Administration (TSA), United States Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS), through the Transportation Security Administration (TSA) and the United States Coast Guard (Coast Guard), issues this final rule to amend provisions of its previously issued final rule, to allow for greater participation in the TWIC program and codify final fees to obtain a TWIC. This final rule continues to further secure our Nation's ports and modes of transportation, and also implements the Maritime Transportation Security Act of 2002 (MTSA) and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act). Those statutes require credentialed merchant mariners and individuals with unescorted access to secure areas of vessels and facilities to undergo a security threat assessment and receive a biometric credential, known as a Transportation Worker Identification Credential (TWIC).

With this final rule, the Coast Guard amends its regulations on vessel and facility security, requiring the use of the TWIC as an access control measure. Specifically, the Coast Guard is amending its definition of secure areas, to take into account facilities in the Commonwealth of the Northern Mariana Islands, whose workers are not required to obtain work visas from the United States before being allowed to work.

With this final rule, TSA amends its regulations on TWIC to allow additional non-resident aliens to apply for a TWIC if they are working in a job that requires them to have unescorted access to a maritime facility regulated under 33 CFR parts 105 or 106. TSA also amends the scope provision of the rule to include additional non-resident aliens that may apply for TWIC. TSA amends its regulations to clarify those credentialed merchant mariners who may receive a TWIC at a reduced fee. TSA amends the fee portion of the regulation, increasing the replacement credential fee from $36 to $60 and codifying the other fees that were announced in the **Federal Register** on March 20, 2007. Finally, TSA announces a reduction in the fee charged by the Federal Bureau of Investigation (FBI) to conduct fingerprint-based criminal history record checks (CHRCs) that are submitted to the FBI electronically. Therefore, the standard fee for a TWIC is $132.50 and the reduced TWIC fee for applicants who have completed a comparable threat assessment is $105.25.

DATES: This final rule is effective September 28, 2007.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, 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. Until September 27, 2007, you may also find and submit electronic comments to this docket on the Internet at *http://dms.dot.gov*. You may submit documents by fax, by courier or in person until September 28 at noon. On October 1, the Federal Docket Management System (FDMS) will replace the current system and you will be able to find and submit related documents at www.regulations.gov. The mailing address and fax numbers will remain the same.

FOR FURTHER INFORMATION CONTACT: If you have questions on the TSA portions of this rule, call Christine Beyer, telephone (571) 227–2657. If you have questions on the Coast Guard portions of this rule, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, The Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled "Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License" in the **Federal Register**. 71 FR 29396. This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (hereinafter referred to as the original TWIC final rule). 72 FR 3492. The preamble to the original TWIC final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in that final rule, which became effective on March 26, 2007.

On July 13, 2007, the Coast Guard issued another final rule, extending the deadline for facilities wishing to redefine their secure areas, under 33 CFR 105.115. 72 FR 38486. This delay allowed facility owners and operators to take guidance, issued by the Coast Guard in Navigation and Vessel Inspection Circular 03–07 on July 6, 2007, into consideration before being required to submit new security plans.

II. Background and Purpose

A complete discussion of the background and purpose of the original TWIC final rule may be found beginning at 72 FR 3494. This final rule is being issued in order to make amendments to the original TWIC final rule that have become necessary due to delays in the implementation of the original TWIC final rule, or that are necessary in order to allow for a more effective implementation of the original TWIC final rule.

III. Discussion of Changes

A. Secure Areas

With this final rule, the Coast Guard amends its regulations on vessel and facility security, requiring the use of the TWIC as an access control measure. Specifically, the Coast Guard is amending its definition of secure area to take into account facilities in the Commonwealth of Northern Mariana Islands (CNMI) where non-resident alien workers are not required to obtain work visas from the United States before being allowed to work. Under the existing rule, these workers are ineligible to obtain TWICs. There are currently 12 facilities regulated by part 105 located in the CNMI. Non-resident alien workers at these facilities are not required to obtain visas from the U.S. Department of State (State Department)

before being allowed to work at facilities in CNMI. Without this amendment, these workers would be unable to obtain TWICs, and the facilities in CNMI would lose approximately 50 percent of their present workforce. Note that these facilities must continue to implement their previously approved facility security plans, which include provisions for maintaining access control. Vessels coming from the CNMI to any other port in the United States will still need to go through the same port state control screening required of a vessel coming from a foreign country. Additionally, workers provided unescorted access to facilities in the CNMI would not be eligible for unescorted access to any other part 105 facility, nor would they be eligible for unescorted access to any part 104 vessel, unless the were issued a TWIC. This amendment may be found at 33 CFR 101.105.

B. Areas Adjacent to Vessels

The Coast Guard is also adding a provision into parts 105 and 106 to mirror a provision added into part 104 in the original TWIC final rule. These provisions allow mariners serving aboard vessels to have access to those spaces immediately adjacent to their vessel when they are working in those spaces in the conduct of vessel activity, even if they do not have a TWIC. This provision was discussed in the preamble to the original TWIC final rule on 72 FR 3521, but the corresponding amendments were not made in parts 105 and 106. This final rule corrects that oversight. These amendments can be found in 105.105 and 106.105.

C. TWIC Eligibility

In the original TWIC final rule, TSA listed the categories of non-resident aliens who work in the maritime sector and would be eligible to apply for TWICs. TSA's intention was to allow lawful non-immigrants with legitimate employment authorization and lawful presence to obtain TWICs. Shortly after publication of the original TWIC final rule, Coast Guard received comments from industry questioning why B1/OCS (Outer Continental Shelf) and H2B visas were not included in the list of acceptable visas under 49 CFR 1572.105. This led TSA to re-examine the list of categories of individuals who should be able to apply for a TWIC and to make the changes described below to allow additional non-resident aliens to apply for a TWIC.

After further research, we determined that B1/OCS visas are currently in use in the maritime industry to allow specialized workers to fill open positions where U.S. employees are not available. Approximately 4,000 B1/OCS visas are issued annually to seamen who work at OCS operations. If these workers are not eligible to apply for a TWIC, they will likely not be employable in OCS operations. Further, owners/operators who currently rely on holders of B1/OCS visas will be adversely impacted if they cannot hire workers in sufficient numbers to keep the OCS facilities operating. For these reasons and in keeping with the criteria we established in the original TWIC final rule to determine which lawful non-immigrants should be eligible to apply for a TWIC, we are adding the B1/OCS visa to the list of permissible visa categories in 49 CFR 1572.105. (*See* 72 FR 3492, 3502–3505 for a full discussion of the immigration eligibility criteria.) Holders of the B1/OCS visa have restricted authorization to work and the restriction is intrinsically related to the maritime industry. Individuals who hold the visa typically will require a TWIC in order to complete their employment duties and the employers will be required to obtain the TWIC once the employment for which the visa was issued is completed.

At this time we are not adding the H2B visa to the list of permissible visas in section 1572.105. We believe approximately 78,000 H2B visas are issued annually, an indeterminate number of which are issued to maritime workers. The H2B visa is issued to temporary unskilled or skilled workers for up to one year, without regard to whether they work in the maritime industry. Workers who hold this visa are not restricted to work in the maritime industry and therefore, a maritime employer typically would have little control over when the employment for which the visa was issued is completed and the visa expires. This fact would make it difficult for the employer to retrieve the TWIC if the employee ceased working at that location.

Even though TSA is not adding the H2B visas explicitly to the list of permissible visa categories at this time, we may consider permitting H2B visa holders to apply for a TWIC under a new provision of the rule. We are adding new subparagraph 1572.105(a)(7)(x) to the immigration standards to permit TSA to determine whether additional categories of lawful non-immigrants not explicitly listed in 49 CFR 1572.105(a)(7) may apply for a TWIC. We believe this provision is necessary to avoid the chance that we will inadvertently exclude aliens who possess lawful U.S. presence and are prevalent in or important to the maritime industry. Also, given the national interest in immigration reform legislation, there may be new visa categories created in the future that should be eligible for TWIC. Under this new provision, TSA may permit individuals to apply for TWIC if they possess an authorization that confers legal status, and the legal status is comparable to those listed in paragraphs (a)(7)(i)–(ix) of this section.

TSA will evaluate whether to add new categories of lawful non-immigrants using the same criteria by which we created the list of permissible categories in the original TWIC final rule. (See 72 FR 3492, 3502–3505 for a full discussion of the immigration eligibility criteria.) The critical issues we examined and on which we rely to determine whether an alien should be permitted to apply for a TWIC or hazardous materials endorsement (HME) are: (1) The statutory language regarding immigration status; (2) the degree to which TSA can complete a thorough threat assessment both initially and perpetually on the applicant; (3) the duration of the applicant's legal status as of the date he or she enrolls and the degree to which we can control possession of a TWIC once legal status ends; (4) the restrictions, if any, that apply to the applicant's immigration status; (5) particular maritime professions that commenters stated often involve aliens; and (6) the checks done by the State Department or other federal agency relevant to granting alien status.

TSA would make such determinations after careful evaluation and in consultation with the Coast Guard, the State Department, and other pertinent agencies within DHS. TSA would notify affected populations and provide the appropriate training to TWIC enrollment personnel to ensure that only the appropriate applicants are permitted to enroll.

With respect to H2B visas, commenters have informed Coast Guard and TSA that there may be particular operations or locations, such as large construction projects at port facilities, that rely heavily on H2B visa holders for completion. Although we are not amending the immigration standards to permit all H2B visa holders to apply for TWIC, we may consider permitting workers at these locations to apply for a TWIC to prevent adverse economic or security impacts on maritime operations. Employers in these kinds of operations should notify their respective Captain of the Port to discuss potential solutions to immigration eligibility problems. There may be methods to have the H2B visas holders complete the

work without requiring a TWIC. *See,* for example, Navigation and Inspection Circular 03–07, issued by the Coast Guard on July 2, 2007, enclosure (3) at 3.3 c.(6). If that is not possible, TSA may consider permitting the workers to apply for a TWIC, ensuring that the employer is in a position to retrieve all credentials TSA issues when the project is complete.

In addition to amending 49 CFR 1572.105(a)(7), TSA amends the scope provision to include other individuals that TSA may consider eligible to apply for a TWIC, such as holders of a visa not specifically listed in 49 CFR 1572.105(a)(7) that TSA has determined should be permitted to hold a TWIC. As discussed in the paragraph above, there may be other or new visas or similar authorizations that we have not anticipated that serve as legitimate grounds for lawful presence in the United States and justification for holding a TWIC. By adding this language to the scope provision of the rule, we remove unnecessary restrictions on broadening the applicant pool, if the need arises in the future due to the discovery of other visa holders or with the passage of new legislation. Also, in the future TSA may wish to expand the TWIC program to non-maritime modes of transportation and this new scope provision facilitates extending coverage to other populations. For instance, there may be situations in which a transportation worker who seeks access to a secure or otherwise prohibited area would wish to voluntarily undergo the threat assessment described in part 1572 to gain the benefit of access. The expanded scope provision would facilitate this. TSA also may wish to make the threat assessment mandatory, not voluntary, for a new population. If so, we would provide notice to the public and an opportunity to comment before implementing an expansion of the requirement to a new population.

TSA also amends the scope provision of part 1572 to include commercial drivers licensed in Canada or Mexico who apply for a TWIC so that they may transport hazardous materials in the United States in accordance with 49 CFR 1572.201. This population is permitted to apply for a TWIC under the original final rule, but was inadvertently omitted from the scope provision.

TSA is also amending its regulations to clarify which credentialed merchant mariners who may receive a TWIC at a reduced fee. The original TWIC final rule contained a separate implementation schedule for mariners, which allowed a mariner who had already undergone a security threat assessment by the Coast Guard to apply for their TWIC but forego an additional security threat assessment by TSA. This would allow mariners to obtain their TWIC at a reduced fee, but would also mean that their TWIC would be given the same expiration date as the credential for which the Coast Guard conducted their security assessment. This provision, found at 49 CFR 1572.19(b), incorrectly limited those mariners who may take advantage of this provision by including an end date of March 26, 2007 (*i.e.*, the effective date of the original TWIC final rule). That date should have been the September 25, 2008 date, calculated to mark the compliance date for mariners, to allow all mariners who receive their Coast Guard security assessment before they are required to obtain a TWIC the opportunity to receive a reduced fee and not have to undergo an additional security threat assessment. We are amending 49 CFR 1572.19(b) to reflect the September 25, 2008 compliance date.

D. TWIC Fees

TSA is amending the TWIC Card Replacement Fee, codifying the exact fee amounts for the Standard and Reduced TWIC Fees, and codifying a change the FBI is making to its fees for electronic submission of fingerprint-based criminal history record checks (CHRC).

1. Card Replacement Fee

TSA is increasing the Card Replacement Fee for lost, damaged, or stolen TWICs to $60.00 and is amending § 1572.501(d) to include the revised amount. In the original TWIC final rule, TSA established the Card Replacement Fee at $36.00 as was proposed in the TWIC NPRM. However, TSA stated that a re-evaluation of the costs associated with card replacement revealed that the actual cost should be $60.00. For a detailed discussion of the increased Card Replacement Fee, see the preamble of the original TWIC final rule at 72 FR 3505–3508.

In summary, the per-person cost for the Card Replacement Fee is derived from four of the cost components that make up the total TWIC fee: Enrollment/Issuance,[1] the TWIC information data management system (IDMS), Card Production, and Program Support. The Enrollment/Issuance cost component increased by approximately one percent to account for the contractor fee of $5 associated with replacing a credential. The IDMS cost component increased by $19 per credential produced due to: (1) The need to increase the hardware and software required to obtain a Security Certification & Accreditation, and to support the full volume of TWIC applicants; (2) system changes required to address security vulnerabilities; and (3) increases in contractor support necessary for systems operations and maintenance.

The Card Production cost increased by approximately 39 percent based on the need to add a third work shift at the production facility to produce cards more rapidly during the initial enrollment phase. This increase was necessary to address concerns from stakeholders that cards must be produced very quickly to minimize adverse impacts on commerce. Also, this increase was necessary to cover technology and product improvements for the TWIC system, credentials, and readers in the future. Including the cost of technology and system improvements is a common practice for programs that rely heavily on software and hardware to collect and transmit large amounts of information.

Finally, the Program Support cost decreased by approximately 17 percent based on reduced program staff levels and the cost of interagency communications. This resulted in a $2 per card decrease.

We invited comment on raising the Card Replacement fee from $36 to $60 and received comments from four entities. One entity stated that replacement cards should cost no more than the actual card stock and personalization, which it asserts is $14, shipping and handling at $10, and a reasonable contractor issuance fee of $5—a total of $29.

We developed the fees by spreading all of the program costs (enrollment/issuance, IDMS, threat assessment, card production, and program support) over 5 years and according to whether a particular cost component is related to the corresponding fee. If we failed to calculate the fees in this way, there would be an unfair distribution of the costs among the population and over the time period, and the regular applicant fee during initial enrollment would be significantly higher. Thus, the card replacement fee includes a portion of the program costs that relates to issuing a replacement card, including the IDMS and program support costs. Therefore, we are not accepting the recommended change—we must take into account the cost of the IDMS, enrollment/issuance, card production, and program support

[1] Although the majority of the Enrollment/Issuance requirements have already been satisfied by the applicant through initial enrollment, there are still some enrollment/issuance functions associated with card replacements, such as overhead.

because producing a replacement card involves all of these program components. As stated in the original final TWIC rule, the IDMS cost increased by 135 percent from the NPRM due to the need for more hardware and software, and additional security features. In addition, card production costs increased by 39 percent due to the need to add a third worker shift to cover card production during initial enrollment. These increased the Card Replacement Fee.

Another entity stated that increasing the Card Replacement Fee based on the need for three shifts rather than two at the card production facility during the initial enrollment phase should not apply to replacement cards at all, because most replacement cards will be issued after the initial enrollment phase. This argument is similar to the one immediately above. We disagree. We calculated the fees by spreading the costs of the program over 5 years to prevent the unfair result of having people who enroll in TWIC in the first year pay a much higher fee than those who apply in the third year.

An entity stated that using three shifts rather than two in the card production process should decrease, not increase, TSA's card production costs because the fixed costs would remain and the cost per card would be lower. We disagree. Even assuming the fixed costs remain constant with the addition of a third shift, which would not necessarily be the case, there are increased labor costs associated with adding a third shift that increase TSA's costs.

An entity suggested that TSA should conduct a cost-comparison between the federally-managed card production facility and an established commercial card production facility, such as a credit card facility, where high-volume services around the clock are typical. We agree. Under the terms of the enrollment provider contract, we permit our contractor to seek out and use other card production facilities that offer high quality products that meet the TWIC specifications at lower cost.

An entity commented that if a TWIC card malfunctions as a result of normal wear, TSA should replace it free of charge. TSA is purchasing card stock that is designed to remain operable under normal conditions for 5 years. If TSA determines that the card stock does not perform satisfactorily under normal handling conditions or fails to meet the design warranty, TSA will replace the cards at no charge to applicants.

Finally, an entity claimed that technology improvements should decrease, not increase, costs associated with the TWIC system, credentials and card production. We agree that technology improvements that occur in the future will improve efficiency and are likely to reduce some costs. However, equipment and software changes will be necessary to take advantage of the improved technology, and therefore, those costs must be accounted for in the TWIC fee. If TSA's overall costs decrease, TSA will reduce the TWIC fees accordingly.

2. FBI Fee

The Criminal Justice Information Services (CJIS) Division of the FBI recently notified government agencies and other entities of revised interim fees for fingerprint-based CHRCs, effective October 1, 2007. The revised interim fees will remain in effect until the FBI announces final fees through a Notice in the **Federal Register**. However, the FBI does not anticipate significant changes to the interim fee structure.

The FBI is reducing its fee for electronically submitted CHRCs from $22.00 to $17.25. The existing rule text in § 1572.501(b)(3) states that if the FBI changes its fee for CHRCs, TSA will collect the amended FBI fee. Therefore, it is not necessary to change the rule text to authorize TSA to collect $17.25 from applicants rather than $22.00. Nonetheless, to avoid confusion, TSA is amending the rule text by removing the old fee amount—"$22"— from § 1572.501(b)(3). We are retaining the language stating that if the FBI amends its fees in the future, TSA will collect the amended FBI fee.

3. Standard and Reduced TWIC Fees

In this final rule, TSA also codifies the exact Standard TWIC and Reduced TWIC Fee amounts. When the original TWIC final rule was published, we provided ranges for these fees in the preamble as follows: the Standard TWIC Fee would be $139–$159, and the Reduced TWIC Fee would be $107–$127. TSA could not provide exact figures at that time because the contract for enrollment services was not yet finalized and thus some of the costs could not be determined with specificity. We noted that we would publish a notice in the **Federal Register** announcing the exact fee amounts as soon as possible.

On March 20, 2007, TSA announced the exact fee amounts. 72 FR 13026. For the Standard TWIC Fee, the Enrollment Segment Fee would be $43.25, the Full Card Production/Security Threat Assessment Segment Fee would be $72, and the FBI Fee would be $22. We announced the Standard TWIC Fee total as $137.25 ($43.25 + $72 + $22) to obtain a TWIC. In this final rule, we are codifying the Enrollment Segment Fee ($43.25) and the Full Card Production/Security Threat Assessment Segment Fee ($72). However, since the FBI is changing its fee as of October 1, 2007, as discussed in detail above, the new Standard TWIC Fee total for a TWIC is $132.50. We are codifying these fees in § 1572.501(b).

In March, TSA also announced that the Reduced TWIC Fee for applicants who have completed a comparable threat assessment and can forego a new FBI criminal check would total $105.25. This includes the Enrollment Segment Fee of $43.25 and the Reduced Card Production/Security Threat Assessment Segment Fee of $62. We are codifying these fee amounts in § 1572.501(c).

IV. Regulatory Requirements

A. Administrative Procedure Act

TSA and the Coast Guard provided the public an opportunity to comment on the bases for the TWIC fee calculations. However, we did not publish a notice of proposed rulemaking (NPRM) regarding other amendments in this final rule. Under 5 U.S.C. 553(b)(B), the Coast Guard and TSA find that good cause exists for not publishing an NPRM with respect to these amendments, because providing opportunity for public comment is unnecessary and would be contrary to the public interest. Each of the provisions being amended by this final rule without prior notice and comment ease a restriction on the public, in some cases by removing regulatory requirements completely, or by expanding the pool of persons allowed to apply for a TWIC in a manner that meets the rule's original intent. These immediate revisions are in the public interest because they expand the pool of workers who are lawfully present in the United States and will perform needed services. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard and TSA also find that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

We note that the fee provisions of this final rule were subject to notice and comment, and therefore we need not claim good cause for the amendments to 49 CFR 1572.501.

B. Executive Order 12866 (Regulatory Planning and Review)

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be

minimal and a full Regulatory Evaluation is unnecessary.

This rule provides technical clarifications and additional flexibility for some mariners and vessel and facility owners and operators to comply with TWIC requirements. The rule better clarifies the definition of secure areas and corrects for omissions from the original TWIC final rule. The rule extends the end date for mariners who may receive a TWIC at a reduced fee. To the extent that deadlines have changed, affected parties may incur some TWIC-related costs later rather than sooner.

With this final rule, TSA is amending provisions to allow TSA to evaluate and decide if individuals holding other visa types are eligible for a TWIC on a case-by-case basis. TSA is also formally publishing final fee changes after considering public comments and assessing final impacts in the original TWIC final rule.

We anticipate that these changes will not substantially increase TWIC-related compliance costs to the affected entities and in most cases will provide them advantages through deadline extensions, technical clarifications, and flexibility.

C. 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.

We do not expect this rule to substantially increase TWIC-related compliance costs. This rule provides technical clarification and adds flexibility for some mariners and vessel and facility owners and operators affected by the TWIC requirements. The Coast Guard and TSA certify under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

Under sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 and TSA will not retaliate against small entities that question or complain about the rule or any policy of the Coast Guard or TSA.

E. 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).

F. Federalism

A rule has implications for federalism under E.O. 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.

G. 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.

H. Taking of Private Property

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

I. Civil Justice Reform

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

J. Protection of Children

We have analyzed this rule under E.O. 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.

K. Indian Tribal Governments

This rule does not have tribal implications under E.O. 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.

L. Energy Effects

We have analyzed this rule under E.O. 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 E.O. 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 E.O. 13211.

M. 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.

N. Environment

The provisions of this rule have been analyzed under the Department of Homeland Security (DHS) Management Directive (MD) 5100.1, Environmental Planning Program, which is the DHS policy and procedures for implementing the National Environmental Policy Act (NEPA), and related E.O.s and requirements. The changes being made by this final rule have no effect on the

environmental analysis that accompanied the promulgation of the original TWIC final rule. That analysis can be found at 72 FR 3576–3577.

Accordingly, there are no extraordinary circumstances presented by this rule that would limit the use of a categorical exclusion (CATEX) under MD 5100.1, Appendix A, paragraph 3.2. The implementation of this rule, like the implementation of the original TWIC final rule, is categorically excluded under the following CATEX listed in MD 5100.1, Appendix A, Table 1: CATEX A1 (personnel, fiscal, management and administrative activities); CATEX A3 (promulgation of rules, issuance of rulings or interpretations); and CATEX A4 (information gathering, data analysis and processing, information dissemination, review, interpretation and development of documents). CATEX B3 (proposed activities and operations to be conducted in an existing structure that would be compatible with and similar in scope to ongoing functional uses) and CATEX B 11 (routine monitoring and surveillance activities that support law enforcement or homeland security and defense operations) would also be applicable.

List of Subjects

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 105

Facilities, Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 106

Facilities, Maritime security, Outer Continental Shelf, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1572

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

The Final Rule

■ For the reasons set forth in the preamble, the Coast Guard amends Chapter I of Title 33, Code of Federal Regulations, parts 101, 105, and 106 and the Transportation Security Administration amends Chapter XII, Title 49, Code of Federal Regulations, part 1572 to read as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD

PART 101—MARITIME SECURITY: GENERAL

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 101.105, revise the definition of "secure area" to read as follows:

§ 101.105 Definitions.

* * * * *

Secure area means the area on board a vessel or at a facility or outer continental shelf facility over which the owner/operator has implemented security measures for access control in accordance with a Coast Guard approved security plan. It does not include passenger access areas, employee access areas, or public access areas, as those terms are defined in §§ 104.106, 104.107, and 105.106, respectively, of this subchapter. Vessels operating under the waivers provided for at 46 U.S.C. 8103(b)(3)(A) or (B) have no secure areas. Facilities subject to part 105 of this subchapter located in the Commonwealth of Northern Mariana Islands have no secure areas. Facilities subject to part 105 of this subchapter may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure areas.

* * * * *

PART 105—MARITIME SECURITY: FACILITIES

■ 3. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 4. Amend § 105.105 by adding paragraph (d) to read as follows:

§ 105.105 Applicability.

* * * * *

(d) The TWIC requirements found in this part do not apply to mariners employed aboard vessels moored at U.S. facilities only when they are working immediately adjacent to their vessels in the conduct of vessel activities.

PART 106—MARITIME SECURITY: OUTER CONTINENTAL SHELF (OCS) FACILITIES

■ 5. The authority citation for part 106 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 6. Amend § 106.105 by re-designating the introductory paragraph and paragraphs (a), (b), and (c) as (a), (1), (2), and (3), respectively, and adding paragraph (b) to read as follows:

§ 106.105 Applicability.

* * * * *

(b) The TWIC requirements found in this part do not apply to mariners employed aboard vessels moored at U.S. OCS facilities only when they are working immediately adjacent to their vessels in the conduct of vessel activities.

Title 49—Transportation

Chapter XII—Transportation Security Administration

PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

■ 7. The authority citation for part 1572 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

Subpart A—Procedures and General Standards

■ 8. Revise § 1572.3(b)(2) to read as follows:

§ 1572.3 Scope.

* * * * *

(b) * * *

(2) Is applying to obtain or renew a TWIC in accordance with 33 CFR parts 104 through 106 or 46 CFR part 10; is a commercial driver licensed in Canada or Mexico and is applying for a TWIC to transport hazardous materials in accordance with 49 CFR 1572.201; or other individuals approved by TSA.

■ 9. Revise § 1572.19(b) to read as follows:

§ 1572.19 Applicant responsibilities for a TWIC security threat assessment.

* * * * *

(b) *Implementation schedule for certain mariners.* An applicant, who holds a Merchant Mariner Document (MMD) issued after February 3, 2003, and before September 25, 2008, or a Merchant Marine License (License) issued after January 13, 2006, and before

September 25, 2008, must submit the information required in this section, but is not required to undergo the security threat assessment described in this part.

* * * * *

Subpart B—Qualification Standards for Security Threat Assessments

■ 10. Revise § 1572.105(a)(7) to read as follows:

§ 1572.105 Immigration status.

(a) * * *

(7) An alien in the following lawful nonimmigrant status who has restricted authorization to work in the United States—

(i) B1/OCS Business Visitor/Outer Continental Shelf;

(ii) C–1/D Crewman Visa;

(iii) H–1B Special Occupations;

(iv) H–1B1 Free Trade Agreement;

(v) E–1 Treaty Trader;

(vi) E–3 Australian in Specialty Occupation;

(vii) L–1 Intracompany Executive Transfer;

(viii) O–1 Extraordinary Ability;

(ix) TN North American Free Trade Agreement; or

(x) Another authorization that confers legal status, when TSA determines that the legal status is comparable to the legal status set out in paragraphs (a)(7)(i)–(viii) of this section.

* * * * *

■ 11. Amend § 1572.501 by revising paragraphs (b), (c), and (d) to read as follows:

§ 1572.501 Fee collection.

* * * * *

(b) *Standard TWIC Fee.* The fee to obtain or renew a TWIC, except as provided in paragraphs (c) and (d) of this section, is made up of the total of the following segments:

(1) The Enrollment Segment covers the cost for TSA or its agent to enroll applicants. The Enrollment Segment fee is $43.25.

(2) The Full Card Production/Security Threat Assessment Segment covers the costs for TSA conduct security threat assessment and card production. The Full Card Production/Security Threat Assessment Segment fee is $72.

(3) The FBI Segment covers the cost for the FBI to process fingerprint identification records. The FBI Segment fee is the amount collected by the FBI under Pub. L. 101–515. If the FBI amends this fee, TSA or its agent will collect the amended fee.

(c) *Reduced TWIC Fee.* The fee to obtain a TWIC when the applicant has undergone a comparable threat assessment in connection with an HME, FAST card, other threat assessment deemed to be comparable under 49 CFR 1572.5(e) or holds a Merchant Mariner Document or Merchant Mariner License is made up of the total of the following segments:

(1) The Enrollment Segment covers the cost for TSA or its agent to enroll applicants. The Enrollment Segment fee is $43.25.

(2) The Reduced Card Production/Security Threat Assessment Segment covers the cost for TSA to conduct a portion of the security threat assessment and card production. The Reduced Card Production/Security Threat Assessment Segment fee is $62.

(d) *Card Replacement Fee.* The fee to replace a TWIC that has been lost, stolen, or damaged is $60.00.

* * * * *

Issued in Arlington, Virginia, on September 21, 2007.

Kip Hawley,

Assistant Secretary, Transportation Security Administration.

F.J. Sturm,

Captain, U.S. Coast Guard, Acting Director, Inspections and Compliance.

[FR Doc. 07–4750 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682 and 685

RIN 1840–AC88

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is amending the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations to implement the changes to the Higher Education Act of 1965, as amended (HEA), resulting from enactment of the Third Higher Education Extension Act of 2006 (THEEA), Pub. L. 109–292. These final regulations reflect the provisions of the THEEA that authorize the discharge of the outstanding balance of certain Perkins, FFEL, and Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks.

DATES: *Effective Date:* These final regulations are effective October 29, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Smith, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 502–7551 or via the Internet at: *Brian.Smith@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On December 28, 2006, the Secretary published in the **Federal Register** (71 FR 78075) interim final regulations for the Federal Perkins Loan, FFEL, and Direct Loan programs. The interim final regulations were effective on January 29, 2007.

The December 28, 2006, interim final regulations included a request for public comment. This document contains a discussion of the comments we received and revisions to the interim final regulations that we made as a result of these comments.

These final regulations contain several significant changes from the interim final regulations. We fully explain the changes in the Analysis of Comments and Changes section elsewhere in this preamble.

Analysis of Comments and Changes

In response to the Secretary's invitation in the interim final regulations, 8 parties submitted comments on the interim final regulations.

An analysis of the comments and of the changes in the regulations since publication of the interim final regulations follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make. We also do not respond to comments that address issues that were outside the scope of the interim final regulations.

Rights of a Borrower if an Application Is Denied

Comments: One commenter noted that, while there is no formal appeals process for a borrower whose application for a discharge is denied under the interim final regulations, if a borrower disputes the lender's decision,

the borrower may contact the Secretary to ask her to look into the situation. The commenter urged the Secretary to work proactively to ensure that each potential applicant for the discharge of student loans for survivors of victims of the attacks of September 11, 2001 is presented with all necessary information regarding how to apply, the application process, and the applicant's rights in the event the discharge application is denied.

Discussion: The discharge application form will describe the eligibility requirements for the discharge and explain what information needs to be included with the application. The process to apply for the discharge—where to send the application, contact information if the borrower has questions, and so on—is different for each loan holder. The Secretary expects loan holders to provide information about the process and eligibility requirements to borrowers who apply for a discharge. If a borrower is not satisfied with the information provided by a lender in response to a discharge application, the borrower may contact the Department of Education's (Department's) Office of the Ombudsman.

Changes: None.

Eligibility of a Defaulted Perkins Loan for a Discharge (§ 674.52(c)(3))

Comments: One commenter asked whether a defaulted Perkins Loan would qualify for a discharge under the interim final regulations.

Discussion: If a borrower meets the eligibility criteria for a discharge, the borrower qualifies for the discharge regardless of the repayment status of the loan.

Changes: We have modified § 674.52(c)(3) to specify that a borrower may qualify for a discharge of a defaulted Perkins Loan.

Use of the Term "Permanently and Totally Disabled" (§§ 674.64(a), 682.407(a), and 685.218(a))

Comments: Several commenters questioned why the interim final regulations use the term "permanently and totally disabled", while § 682.402 of the FFEL Program regulations uses the term "totally and permanently disabled". The commenters requested using "totally and permanently disabled" in § 682.407, to be consistent with § 682.402.

Discussion: The interim regulations mirror the language used in the THEAA, which uses the term "permanently and totally disabled." We believe that using the term "permanently and totally disabled" helps to distinguish the September 11-related discharges from the total and permanent disability discharge addressed in § 682.402. Although the criteria for the two discharges are similar, they are not identical. An individual who is "totally and permanently disabled" must meet additional eligibility criteria to be considered "permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001." Therefore, we believe that it is useful to maintain different terminology for the two discharges. Accordingly, for purposes of the September 11-related discharges and these regulations, and in accordance with the THEEA, we are using the term "permanently and totally disabled".

Changes: None.

Extending the Timeframe for Receipt of Medical Treatment (§§ 674.64(a), 682.407(a), and 685.218(a))

Comments: Several commenters recommended that we extend the timeframe by which an eligible victim or an eligible public servant must have received medical treatment in order to qualify as "permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001." The interim final regulations specified that medical treatment must have been received within 24 hours of the time the injury was sustained, or within 24 hours of the rescue. The commenters point out that the September 11th Victim Compensation Fund regulations, on which many of the definitions in the interim final regulations are based, provide a timeframe of 72 hours for receipt of medical treatment in certain circumstances.

These commenters also recommended that we allow individuals who did not receive medical treatment within 72 hours to qualify as eligible victims or eligible public servants on a case-by-case basis.

Discussion: We agree with the recommendation to extend the timeframe for receipt of medical treatment from 24 hours to 72 hours. However, we do not agree that the final regulations should provide for exceptions to the 72-hour timeframe on a case-by-case basis. The discharge established by the THEEA applies to the survivors of individuals who died or became permanently and totally disabled "due to injuries suffered in" the terrorist attacks on September 11, 2001. We believe that evidence that the individual sought medical treatment within the 72-hour timeframe is necessary to determine whether an individual died or became permanently and totally disabled due to injuries suffered in the September 11, 2001 terrorist attacks and that exceptions to the timeframe would not be appropriate.

The Department considered whether exceptions made to this rule by the September 11th Victim Compensation Fund would also merit exceptions here. We found that most of the recipients of a case-by-case exception by the September 11th Victim Compensation Fund were rescue workers, whose injuries occurred not from the crashes, but in their efforts afterward. Since they would not therefore be eligible for this discharge under statute, we do not believe the case-by-case exceptions provided for in the September 11th Victim Compensation Fund regulations are relevant to this program.

Furthermore, we believe that allowing case-by-case exceptions could lead to inequities. The September 11th Victim Compensation Fund permitted case-by-case exceptions because the Special Master decided all the cases and could ensure fair treatment for all applicants. In the student loan programs, however, it would be difficult to ensure equal treatment of all borrowers, because the case-by-case exceptions would by made by lenders and guaranty agencies in the FFEL program, Perkins institutions in the Perkins Loan program, and the Department in the Direct Loan program. We believe that the interim final regulations treat borrowers fairly and in accordance with Congressional intent and that an exception process would undercut achieving these goals.

Changes: We have revised §§ 674.52(a)(3)(i)(A), 682.407(a)(5)(i)(A), and 685.218(a)(5)(i)(A) to extend the timeframe for receipt of medical treatment from 24 hours to 72 hours.

Limiting Discharge to Physical Injuries (§§ 674.64(a), 682.407(a), 682.218(a))

Comments: Under the interim final regulations, an eligible victim's or eligible public servant's disability must be "the result of a physical injury to the individual." Several commenters recommended expanding the definition of "permanently and totally disabled due to injuries suffered in the attacks on September 11" to include non-physical injuries.

One commenter recommended extending the timeframe for receipt of medical treatment for an unspecified period beyond the 24 hours established in the interim final regulations for individuals with psychological or emotional disabilities.

Discussion: The THEEA provides for discharges to the survivors of individuals whose death or permanent and total disability is attributable to

"injuries suffered" in the September 11 terrorist attacks. The Secretary has interpreted this provision of the statute to limit the definitions of "eligible victim" and "eligible public servant" to individuals who were physically injured or died in the September 11 attacks. This approach is also consistent with the September 11th Victim Compensation Fund regulations, which limited compensation to individuals who experienced physical harm.

Changes: None.

Certification That an Eligible Victim Was Present at the Crash Site (§§ 674.64(a), 682.407(a), 682.407(e)(2)(ii), and 685.218(a))

Comments: Several commenters noted that the interim final regulations did not specify who should sign the certification that an eligible victim was present at one of the September 11, 2001 crash sites at the time of the attacks, but that the draft discharge application specified that the certification should be signed by the borrower. The commenters recommended revising the FFEL regulations to reflect the requirement on the draft application form.

Discussion: We agree. In addition we realized that the certification that an individual was "present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site", as that term is defined in the interim final regulations, would not include individuals who were on board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001. To simplify the discharge application process, we believe that the certification should cover all individuals present at the crash sites, whether they were in the buildings, in areas contiguous to the crash sites, or on board the airplanes.

Changes: We have revised § 682.407(e)(2)(ii) to specify that the certification must be signed by the borrower. We have also modified the definition of "Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site" in §§ 674.64(a)(5), 682.407(a)(7), and 685.218(a)(7) to include individuals who were on board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001. This change makes the references to individuals who died on board the flights in the definition of "Died due to injuries suffered in the terrorist attacks on September 11, 2001" redundant. Therefore, we've removed the references to American Airlines flights 11 and 77, and United Airlines flights 93 and 175 from §§ 674.64(a)(2)(ii), 682.407(a)(1)(ii), and 685.218(a)(4)(ii).

Eligibility Determinations (§§ 682.407(b)(4), 682.407(c)(1), 685.218(b)(4), and 685.218(c)(1))

Comments: Some commenters noted that the September 11-related discharge identifies several new categories of borrowers, with different eligibility requirements and different discharge benefits. Several commenters requested clarification on which benefits apply to which category of borrowers.

Discussion: We agree that the interim final regulations could be clearer as to which discharge benefits apply to each of the different categories of borrowers.

Changes: We have revised § 682.407(c)(1) of the FFEL regulations to clarify that under these regulations: The spouse of an eligible public servant may receive a discharge of a FFEL loan; a parent of an eligible victim may receive a discharge of a PLUS Loan incurred on behalf of the eligible victim; a parent of an eligible victim may receive a discharge of the portion of a FFEL Consolidation Loan that repaid a PLUS Loan incurred on behalf of an eligible victim; and a spouse of an eligible victim may receive a discharge of the portion of a joint FFEL Consolidation Loan obtained on behalf of the eligible victim.

In addition, we have added a new § 682.407(b)(4), specifying that the parent of an eligible public servant may receive the same benefits with regard to the discharge of PLUS Loans and Consolidation Loans that the parent of an eligible victim receives. The parent of the eligible public servant must apply for the discharge under the procedures, eligibility criteria, and documentation requirements of a parent of an eligible victim.

We have also made comparable changes in §§ 685.218(c)(1) and 685.218(b)(4) of the Direct Loan Program regulations. We have not made similar changes to the Perkins Loan Program regulations since this issue relates only to PLUS Loans and Consolidation Loans.

Discharge Benefits for the Spouse or Parent of an Eligible Victim (§§ 674.64(b), 682.407(b), 685.218(b))

Comments: Several commenters asked whether the spouse of an eligible victim is entitled to any additional discharges under the interim final regulations. They pointed out that the portion of a Consolidation Loan incurred on behalf of a borrower who has become totally and permanently disabled or has died is already dischargeable under the procedures specified in § 682.402.

In addition, these commenters pointed out that there is no requirement under § 682.402 that a borrower of a joint Consolidation Loan must still be married to the co-borrower, or must have been married to the co-borrower at the time of his or her death. To qualify for a partial discharge of a joint Consolidation Loan under § 682.407, the co-borrowers must still be married, or must have been married at the time of the death of one of the co-borrowers. These commenters recommended eliminating this requirement from § 682.407.

Discussion: The spouse of an eligible victim may apply for a discharge of the portion of a joint Consolidation Loan attributable to an eligible victim under the procedures in § 682.402 or under the procedures in § 682.407. If the borrower obtains a partial discharge of a joint Consolidation Loan under § 682.402, the borrower may also qualify for a refund of payments, as provided for in §§ 682.402(b)(5) or 682.402(c)(1)(i). Under § 682.407, the September 11-related discharge does not provide for a refund of payments to a borrower who has made payments. However, unlike a discharge under § 682.402, a borrower who applies for a partial discharge of a Consolidation Loan due to permanent and total disability under § 682.407 is not subject to a three-year conditional discharge period prior to the discharge.

A borrower may apply for a partial discharge of a joint Consolidation Loan under either § 682.402 or § 682.407. If the borrower of a joint Consolidation Loan has made payments on the loan that would be refunded if the discharge were granted, it would be more advantageous for the borrower to apply for a partial discharge of the joint Consolidation Loan under § 682.402. If the borrower has not made payments that would be refunded, it would be more advantageous for the borrower to apply for a discharge of the joint Consolidation Loan under § 682.407.

A similar situation exists for a parent borrower of a PLUS Loan. A PLUS Loan may be discharged due to the death of the student for whom the PLUS Loan was obtained. If the student for whom a parent borrowed a PLUS Loan died in the September 11 attack, the parent could either apply for a death discharge on the PLUS Loan under § 682.402(b) or apply for a September 11-related discharge under § 682.407.

With regard to the marital status of co-borrowers of joint Consolidation Loans, under the THEEA, the September 11-related survivor's discharge applies to eligible parents, and to the spouses of

eligible victims or eligible public servants. The THEEA does not provide for a discharge to former spouses of eligible victims or eligible public servants.

Changes: We have added provisions to § 682.407(g) of the FFEL regulations clarifying that a borrower with a joint Consolidation Loan may apply for a partial discharge under either § 682.407 or § 682.402 and that a parent PLUS Loan borrower may apply for a discharge due to the death of the student under either § 682.407 or § 682.402. We have also added similar provisions to § 685.218(g) of the Direct Loan regulations. No change is required in the Perkins Loan regulations because there are no Consolidation Loans or PLUS Loans in the Perkins Loan program.

Discharge Eligibility of a Parent PLUS Borrower Who Obtained Loans on Behalf of an Eligible Public Servant (§§ 682.407(b) and 685.218(b))

Comments: The parent of an eligible victim who borrowed a PLUS Loan on behalf of an eligible victim may qualify for a discharge of the PLUS Loan under these regulations. Several commenters asked whether a parent who has obtained a PLUS Loan on behalf of an eligible public servant would also qualify for a discharge.

Discussion: The parent of an eligible public servant may qualify for a discharge of a PLUS Loan under these regulations. However, the parent need not provide the additional documentation required to demonstrate that the individual qualifies as an eligible public servant. The eligibility criteria for the parent of an eligible victim also apply to the parent of an eligible public servant.

Changes: In the FFEL Program regulations, we have added a new § 682.407(b)(4) to clarify that a parent who has borrowed a PLUS Loan on behalf of an eligible public servant may qualify for a discharge under the same procedures, eligibility criteria, and documentation requirements that apply to an eligible parent applying for a discharge of a loan incurred on behalf of an eligible victim. We have also added a comparable provision to § 685.618(b)(4) of the Direct Loan Program regulations.

Payment of Discharge Claims by a Guaranty Agency (§§ 682.407(c)(8) and 682.407(c)(10))

Comments: Several commenters stated that the regulations should specify how a guaranty agency should treat unpaid interest on a loan that accrues during the claim filing and claim approval process when the agency pays an approved discharge claim.

Discussion: We agree.

Changes: We have added a new § 682.407(c)(10) to the FFEL Program regulations, providing rules for payment of interest that accrues during the period after the lender determines that the borrower qualifies for a discharge and before the claim is filed; during the period following the lender's receipt of a claim returned by the guaranty agency for additional documentation; and during the period required by the guaranty agency to approve or return the claim. These changes will address the interest accrued in these circumstances in a manner consistent with § 682.402(h)(3)(i) through (iii) of the FFEL Program regulations.

In addition, we have replaced the cross-reference in § 682.407(c)(8) with text to improve the clarity of the regulations. The cross-reference to § 682.402(h)(1)(i)(B) established a timeframe of 90 days for a guaranty agency to pay a lender a September 11-related discharge claim. The new regulatory language maintains the 90-day timeframe, but eliminates the need to refer to a different section of the regulations.

Requiring a Lender To Provide a Guaranty Agency a Promissory Note (§ 682.407(c)(4))

Comments: Several commenters recommended that we remove the requirement that a lender provide an original or true and exact copy of the promissory note to the guaranty agency when filing a September 11-related discharge claim. The commenters stated that the guaranty agency doesn't need the promissory note to process the claim, and the information provided on the promissory note is not needed to determine a borrower's eligibility for a discharge.

Discussion: We agree.

Changes: We have removed the requirement that a lender provide an original or true and exact copy of the promissory note to the guaranty agency from § 682.407(c)(4).

Resumption of Payment When a Discharge Is Denied (§ 682.407(c)(7))

Comments: Several commenters noted that if a borrower's discharge application is denied, the suspension of collection activity is converted to a forbearance. The interim final regulations state that the forbearance ends on the "first payment due date". The commenters noted that the forbearance should end on the "next payment due date".

Discussion: We agree.

Changes: We have revised § 682.407(c)(7) by replacing "first payment due date" with "next payment due date".

Documentation of the Death of an Eligible Victim (§§ 682.407(d)(5)(i) and 685.218(d)(5)(i))

Comments: In the course of our review of the public comments, we discovered an error in the provisions of the regulations that establish documentation requirements for the death of an eligible victim. In both the FFEL and Direct Loan versions of the current regulations, §§ 682.407(d)(5)(i) and 685.218(d)(5)(i) require the borrower to provide the documentation described in paragraphs (d)(2)(ii), (d)(2)(iii), and (d)(3) of those sections. Paragraph (d)(2)(ii) refers to requiring an original or certified copy of a death certificate. Paragraph (d)(3) refers to an alternative to an original or certified copy of a death certificate. There is no need to require both an original or certified copy of a death certificate, and an alternative to an original or certified copy of a death certificate.

Changes: We have revised §§ 682.407(d)(5)(i) and 685.218(d)(5)(i) to require either a certified or original copy of a death certificate, or, as an alternative, documentation that the individual received a death discharge on a Title IV loan.

Executive Order 12866

Regulatory impact analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this regulatory action will not have an annual effect on the economy of more than $100 million. We believe that approximately 1,000 borrowers are eligible for discharge of their loans under these provisions and that the costs incurred by the Department, lenders, and guaranty agencies to make the necessary systems changes to implement the discharge will approximate $1,350,000. Therefore, this action is not "economically significant" and is not subject to OMB review under section 3(f)(1) of Executive Order 12866. However, this action is subject to OMB review under section 3(f)(4) of the Executive order.

Need for Federal regulatory action

These final regulations are needed to implement recent amendments to the HEA that affect students, borrowers and program participants in the Federal student aid programs authorized under Title IV of the HEA.

The Secretary has limited discretion in implementing these provisions. The changes included in these final regulations simply modify the Department's regulations implementing loan discharges for the outstanding balance of certain Perkins, FFEL, and Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001 terrorist attacks.

Paperwork Reduction Act of 1995

As noted in the interim final regulations, the Department has been developing the application necessary to implement the provisions of this rulemaking activity. The **Federal Register** notice implementing the interim final regulations also served as a Notice inviting comment on the collection of information associated with these regulations.

We have received 23 comments on the new Perkins, FFEL, and Direct Loan Discharge Application for September 11, 2001 Survivors. We are currently in the process of making revisions to the discharge application, based on the public comment that we have received and on changes made by these final regulations. We will make the discharge application available shortly after publication of the final regulations.

Assessment of Education Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

List of Subjects in 34 CFR Parts 674, 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student Aid.

Dated: September 25, 2007.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

§ 674.52 [Amended]

■ 2. Section 674.52 is amended in paragraph (c)(3) by removing the word "cancellation" and adding, in its place, the word "discharge" and by adding the words ", or, if the borrower is the spouse of an eligible public servant as defined in § 674.64(a)(1), on account of the death or disability of the borrower's spouse," immediately after the words "death or disability of the borrower".

■ 3. Section 674.64 is amended by:

■ A. Revising paragraph (a)(2).

■ B. In paragraph (a)(3)(i)(A), removing the number "24" both times it appears, and adding, in its place, the number "72".

■ C. In paragraph (a)(5)(i), removing the word "or" at the end of the paragraph.

■ D. In paragraph (a)(5)(ii), removing the punctuation ".", and adding, in its place, the words "; or".

■ E. Adding a new paragraph (a)(5)(iii).

■ F. In paragraph (b)(4), removing the word "lender" and adding, in its place, the word "institution".

■ G. In paragraph (c)(3), removing the words "If the individual owed" and adding, in their place, the words "If the eligible public servant owed".

■ H. In paragraph (f)(1), adding the word "outstanding" immediately after the word "Only".

■ The revision and addition read as follows:

§ 674.64 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

* * * * *

(a) * * *

(2) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

* * * * *

(5) * * *

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 4. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

■ 5. Section 682.407 is amended by:

■ A. Revising paragraph (a)(4).

■ B. In paragraph (a)(5)(i)(A), removing the number "24" both times it appears, and adding, in its place, the number "72".

■ C. In paragraph (a)(7)(i), removing the word "or".

■ D. In paragraph (a)(7)(ii), removing the punctuation ".", and adding, in its place, the words "; or".

■ E. Adding a new paragraph (a)(7)(iii).

■ F. Adding a new paragraph (b)(4).

■ G. Revising paragraph (c)(1).

■ H. Removing paragraph (c)(4)(i).

■ I. Redesignating paragraph (c)(4)(ii) as (c)(4)(i).

■ J. Redesignating paragraph (c)(4)(iii) as (c)(4)(ii).

■ K. In paragraph (c)(7), removing the word "first" and adding, in its place, the word "next".

■ L. In paragraph (c)(8), removing the words "within the timeframe

established for payment of disability claims in § 682.402(h)(1)(i)(B)." and adding, in their place, the words "not later than 90 days after the claim was filed by the lender."

■ M. Redesignating paragraphs (c)(10) through (c)(13) as paragraphs (c)(11) through (c)(14), respectively.

■ N. Adding a new paragraph (c)(10).

■ O. In paragraph (d)(5)(i), removing the parentheticals "(d)(2)(ii), (d)(2)(iii), and (d)(3)" and adding, in their place, the parentheticals, "(d)(2)(ii) or (d)(3), and (d)(2)(iii)".

■ P. In paragraph (e)(2)(ii), adding the words "signed by the borrower" immediately after the words "A certification".

■ Q. In paragraph (g)(1), adding the word "outstanding" immediately after the word "Only", and adding the word "outstanding" immediately after the words "were owed on September 11, 2001, or,".

■ R. Redesignating paragraph (g)(2) as paragraph (g)(2)(i).

■ S. Adding a new paragraph (g)(2)(ii).

■ T. Adding a new paragraph (g)(2)(iii).

■ The additions and revisions read as follows:

§ 682.407 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

* * * * *

(a) * * *

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

* * * * *

(7) * * *

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

* * * * *

(b) * * *

(4) The parent of an eligible public servant may qualify for a discharge of a FFEL PLUS loan incurred on behalf of the eligible public servant, or the portion of a FFEL Consolidation Loan that repaid a FFEL or Direct PLUS Loan incurred on behalf of the eligible public servant, under the procedures, eligibility criteria, and documentation requirements described in this section for an eligible parent applying for a discharge of a loan incurred on behalf of an eligible victim.

(c) *Applying for discharge.* (1) In accordance with the procedures in paragraphs (c)(2) through (c)(13) of this section, a discharge may be granted on—

(i) A FFEL Program Loan owed by the spouse of an eligible public servant;

(ii) A FFEL PLUS Loan incurred on behalf of an eligible victim;

(iii) The portion of a FFEL Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim; and

(iv) The portion of a joint Consolidation Loan incurred on behalf of an eligible victim.

* * * * *.

(10) The amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed 60 days from the date the lender determines that the borrower qualifies for a discharge under this section.

(ii) During a period not to exceed 30 days following the date the lender receives a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation, not to exceed 90 days.

* * * * *

(g) * * *

(2) * * *

(ii) A borrower may apply for a partial discharge of a joint Consolidation loan due to death or total and permanent disability under the procedures in § 682.402(b) or (c). If the borrower is granted a partial discharge under the procedures in § 682.402(b) or (c) the borrower may qualify for a refund of payments in accordance with § 682.402(b)(5) or § 682.402(c)(1)(i).

(iii) A borrower may apply for a discharge of a PLUS loan due to the death of the student for whom the borrower received the PLUS loan under the procedures in § 682.402(b). If a borrower is granted a discharge under the procedures in § 682.402(b), the borrower may qualify for a refund of payments in accordance with § 682.402(b)(5).

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 6. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

■ 7. Section 685.218 is amended by:

■ A. Revising paragraph (a)(4).

■ B. In paragraph (a)(5)(i)(A), removing the number "24" both times it appears, and adding, in its place, the number "72".

■ C. In paragraph (a)(7)(i), removing the word "or" at the end of the paragraph.

■ D. In paragraph (a)(7)(ii), removing the punctuation ".", and adding, in its place, the words "; or".

■ E. Adding a new paragraph (a)(7)(iii).

■ F. Adding a new paragraph (b)(4).

■ G. Revising paragraph (c)(1).

■ H. In paragraph (d)(5)(i), removing the parentheticals "(d)(2)(ii), (d)(2)(iii), and (d)(3)" and adding, in their place, the parentheticals, "(d)(2)(ii) or (d)(3), and (d)(2)(iii)".

■ I. In paragraph (e)(2)(ii), adding the words "signed by the borrower" immediately after the words "A certification".

■ J. In paragraph (g)(1), adding the word "outstanding" immediately after the word "Only", and adding the word "outstanding" immediately after the words "were owed on September 11, 2001, or".

■ K. Redesignating paragraph (g)(2) as paragraph (g)(2)(i).

■ L. Adding a new paragraph (g)(2)(ii).

■ M. Adding a new paragraph (g)(2)(iii).

The additions and revisions read as follows:

§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001 attacks.

* * * * *

(a) * * *

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

* * * * *

(7) * * *

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

* * * * *

(b) * * *

(4) The parent of an eligible public servant may qualify for a discharge of a Direct PLUS loan incurred on behalf of the eligible public servant, or the portion of a Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan incurred on behalf of the eligible public servant, under the procedures, eligibility criteria, and documentation requirements described in this section for an eligible parent applying for a

discharge of a loan incurred on behalf of an eligible victim.

(c) *Applying for discharge.* (1) In accordance with the procedures in paragraphs (c)(2) through (c)(4) of this section, the Secretary discharges—

(i) A Direct Loan owed by the spouse of an eligible public servant;

(ii) A Direct PLUS Loan incurred on behalf of an eligible victim;

(iii) The portion of a Direct Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim; and

(iv) The portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim.

* * * * *

(g) * * *

(2) * * *

(ii) A borrower may apply for a partial discharge of a joint Direct Consolidation loan due to death or total and permanent disability under the procedures in § 685.212(a) or § 685.213. If the borrower is granted a partial discharge under the procedures in § 685.212(a) or § 685.213 the borrower may qualify for a refund of payments in accordance with § 685.212(g)(1) or § 685.212(g)(2).

(iii) A borrower may apply for a discharge of a Direct PLUS loan due to the death of the student for whom the borrower received the PLUS loan under the procedures in § 685.212(a). If a borrower is granted a discharge under the procedures in § 685.212(a), the borrower may qualify for a refund of payments in accordance with § 685.212(g)(1).

* * * * *

[FR Doc. E7–19237 Filed 9–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–C–2006–0015]

RIN 0651–AB81

Revision of Patent Fees for Fiscal Year 2007

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (Office) published a final rule in the **Federal Register** of August 22, 2007, adjusting patent fees for fiscal year 2007 to reflect fluctuations in the Consumer Price Index (CPI). This document corrects errors in that final rule.

EFFECTIVE DATE: September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Richard R. Cole, Senior Legal Examiner, Office of PCT Legal Administration (OPCTLA) directly by telephone at (571) 272–3281, or by facsimile at (571) 273–0459.

SUPPLEMENTARY INFORMATION: The Office published a final rule in the **Federal Register** of August 22, 2007 (72 FR 46899), entitled "Revision of Patent Fees for Fiscal Year 2007." In that final rule, there was a mathematical error in the computation of fees payable under 37 CFR 1.17(a)(4) and (a)(5). This document amends the final rule with the correct fees. Additionally, the text of existing 37 CFR 1.492(b)(2) through (b)(4) was inadvertently changed in that final rule. This document corrects the text of 37 CFR 1.492(b)(2) through (b)(4) in that final rule.

Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) ordinarily requires a 30-day delay in the 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. The changes in 37 CFR 1.17(a)(4) and (a)(5) reflect a technical error in the computation of the payable fee. The changes in 37 CFR 1.492(b)(2) through (b)(4) do not change the fee amounts from the final rule published on August 22, 2007, but merely correct the language consistent with the existing and intended text. The Office finds it impracticable to have a 30-day delayed effective date for these technical corrections as the Office must charge the correct fees as of the effective date. Furthermore, the Office finds that it is in the public's interest to correct the changes in text where no change is intended. Therefore, the Office is waiving the 30-day delay in effective date for the technical and computational corrections in this notice.

■ In rule FR Doc. E7–16574, August 22, 2007 (72 FR 46899), make the following corrections:

§ 1.17 [Corrected]

■ 1. On page 46902, in the first column, § 1.17(a)(4) through (a)(5) are corrected to read as follows:

§ 1.17 Patent application and reexamination processing fee.

(a) * * *

(4) For reply within fourth month:

By a small entity (§ 1.27(a))	$820.00
By other than a small entity ...	$1,640.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a))	$1,115.00
By other than a small entity ...	$2,230.00

* * * * *

§ 1.492 [Corrected]

■ 2. On page 46902, in the third column, § 1.492(b)(2) through (b)(4) are corrected to read as follows:

§ 1.492 National stage fees.

* * * * *

(b) * * *

(2) If the search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a))	$50.00
By other than a small entity	$100.00

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a small entity (§ 1.27(a))	$205.00
By other than a small entity	$410.00

(4) In all situations not provided for in paragraphs (b)(1), (b)(2), or (b)(3) of this section:

By a small entity (§ 1.27(a))	$255.00
By other than a small entity	$510.00

* * * * *

Dated: September 25, 2007.

Barry K. Hudson,

Chief Financial Officer.

[FR Doc. E7–19326 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 111

New Move Update Standards for First-Class Mail and Standard Mail

AGENCY: United States Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ is extending its effort to improve the percentage of deliverable mail by revising Move Update standards in the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM). The Move Update standards provide ways for mailers to reduce the number of mailpieces that require forwarding or return by the periodic matching of a mailer's address records with customer-filed change-of-address orders. Our final rule includes the following changes related to Move Update processing: increase the

minimum frequency of Move Update processing from 185 days to 95 days prior to the date of mailing and extend the revised Move Update requirement to include all Standard Mail.

EFFECTIVE DATE: November 23, 2008.

FOR FURTHER INFORMATION CONTACT: Charles B. Hunt, 901–681–4651; or Bert Olsen, 202–268–7276.

SUPPLEMENTARY INFORMATION: On May 23, 2007, we published a proposed rule in the **Federal Register** (72 FR 28908–28911), about two initiatives: (1) Extending the Move Update requirement to all Standard Mail and, (2) increasing the minimum frequency of Move Update processing from 185 days to 95 days prior to the date of mailing. The revised timeframe also will apply to all pieces in Standard Mail mailings. The proposed notice also invited public comment concerning the changes. The Postal Service received eight customer comments on the proposals.

We believe that the revised standards in this final rule are crucial to the continued vitality of the postal system as well as the business interests of mailers. In Fiscal Year 2004 the Postal Service handled 9.7 billion pieces of Undeliverable-as-Addressed Mail (UAA) mail at a cost of $1.979 billion dollars. This change will result in better address quality by removing incorrectly addressed pieces from subsequent mailings, which will reduce UAA mail.

In cooperation with the mailing industry, we are committed to reducing UAA mail volume in order to create and maintain a cost-efficient mailstream. Over the years, we have invested heavily in creating an automated mailstream to help drive costs out of the delivery system. However, an efficient automated mailstream works best when mailpieces have complete, correct, and current addresses. As discussed in the proposed rule, revisions to the Move Update standard are needed to improve the percentage of deliverable addresses for mailings entered at discounted rates. High quality addressing, best possible depth of ZIP+4 Codes, and accurate barcodes that result in the delivery of the mailpiece to the intended recipient in an efficient manner, should be primary tools that mailers use to reduce UAA mail volume.

In addition to revisions to DMM standards, the proposed rule also addressed the timing of the changes. When the Move Update requirement for First-Class Mail was instituted in 1997, a 9-month readiness period was provided. The Postal Service recognizes the magnitude of the adjustments to be made by the mailing industry to implement the revisions in this notice and believes that an 18-month period from the date of proposed rulemaking notice (May 23, 2007) to implementation of the changes provides ample time. The Postal Service also believes that the changes improve the overall cost effectiveness of mail delivery and contribute to rate stability and do not create unreasonable barriers to discount rate qualifications.

Part A of this final rule summarizes the new requirements and provides an analysis of the eight comments received to the Proposed Rule Notice. Part B contains the text of the proposed DMM standards.

Part A

1. Move Update Requirement for All Standard Mail

The Move Update standard, which previously applied only to First-Class Mail, will be extended to include all Standard Mail. A key reason for this extension is that one of the conclusions of an independent study of the cost, volume, and characteristics of UAA mail pointed out that mail entered as Standard Mail accounted for 62.8 percent of all UAA mail volume.

Two commenters expressed full support for the proposed expansion of the Move Update requirement beyond presorted and automation rate First-Class Mail to Standard Mail. However, several commenters voiced concerns or made alternative recommendations regarding the proposed expansion.

One commenter voiced concern regarding the difficulty of complying with the Move Update requirement for small local businesses and nonprofit organizations. The Postal Service feels that there are many methods mailers can use in order to qualify and make this fit any business model. The list of authorized methods upon implementation of these requirements will include the following:

NCOA^{Link} processing
FASTforward MLOCR processing (for letters)
Address Change Service (ACS)
On-piece ancillary service endorsements, except "Forwarding Service Requested"

Additionally, two commenters proposed postponing implementation until the benefits of the recent CASS™ Cycle L changes, which were effective August 1, 2007, are realized. CASS Cycle L requires the integration and use of Delivery Point Validation (DPV™) and Locatable Address Conversion System (LACS^{Link} ™) as part of CASS certification and processing in order for mailers to be eligible for automation discounts. Most UAA mail is attributed to Standard Mail move-related reasons. CASS Cycle L changes do not affect move-related UAA problems.

Another commenter expressed concern that the alternative Move Update method was not listed as a stand-alone option to meet the Move Update requirement for Standard Mail. The alternative method is allowed for First-Class Mail due to mailer's concerns about incorporating change-of-address information into their mailing lists for mailpieces containing personal information. Therefore, the Postal Service does not consider alternative methods applicable to Standard Mail. However, addresses that have been processed through any Move Update method, including alternative methods for First-Class Mail, automatically meet the Move Update standard for Standard Mail. And lastly, one commenter asked if addresses received directly from their customers or clients may be claimed within a mailing at the First-Class Mail or Standard Mail discounted rates. The answer is yes, if mailed within the first 185 days of acquiring the address. When this final rule is implemented, the current requirement to perform Move Update processing within 185 days before mailing will be changed to 95-days.

As information, in addition to the four authorized Move Update methods listed above, addresses utilizing any of the three alternative addressing formats in DMM 602.3.0 (for example, "John Doe or Current Resident," "Occupant," "Postal Customer" etc.) will not be subject to the Move Update standard.

2. Frequency of Use of Move Update Processing

The Postal Service will increase the minimum frequency of Move Update processing from 185 days to 95 days prior to the date of mailing for First-Class Mail and for Standard Mail.

Two commenters voiced general support for the proposal, but expressed concerns about the 95-day window for processing addresses. One suggested keeping Move Update processing for First-Class Mail at 185 days and requiring Move Update processing for Standard Mail at an annual interval. The other commenter suggested requiring Move Update processing within 120 days instead of 95 days, asserting that the reduced window for processing will have a negative effect due to the planning cycles in use by many mailers.

We understand that certain operational changes may be necessary for the mailing industry to implement this proposal. However, the UAA mail problem is of such magnitude that it is

in the best interests of all stakeholders to modify current practices in order to mitigate the problem. We also recognize that some mailers who are successfully reducing UAA mail within their operations have already set quarterly production cycles for their Move Update and Address Matching processing.

Reducing the processing window from 185 days to 95 days prior to the mailing date will lessen the effect of the natural deterioration of address currency, resulting in a significant decrease in UAA volume and the costs associated with the redirecting, re-handling, and disposing of mail.

Part B

Effective November 23, 2008, we will adopt the following amendments to the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1., 111.4.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

* * * * *

200 Discount Letters and Cards

* * * * *

230 First-Class Mail

233 Rates and Eligibility

* * * * *

3.0 Basic Standards for First-Class Mail Letters

* * * * *

3.5 Move Update Standard

3.5.1 Basic Standards

* * * * *

[Revise item a in 3.5.1 as follows:]

a. Each address and associated occupant name used on the mailpieces in a mailing must be updated within 95 days before the mailing date, with one of the USPS-approved methods in 3.5.2.

* * * * *

[Revise item c in 3.5.1 as follows:]

c. The Move Update standard is met when an address used on a mailpiece, in a mailing at any class of mail, is updated with an approved method in 3.5.2, and the same address is used in a First-Class Mail mailing within 95 days after the address has been updated.

* * * * *

240 Standard Mail

243 Rates and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Letters

* * * * *

[Add new item 3.9 as follows:]

3.9 Move Update Standard

3.9.1 Basic Standards

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding, return, or discard by the periodic matching of a mailer's address records with customer-filed change-of-address orders received and maintained by the USPS. For the purposes of this standard, "address" means a specific address associated with a specific occupant name. Addresses subject to the Move Update standard must meet these requirements:

a. Each address and associated occupant name used on the mailpieces in a mailing must be updated within 95 days before the mailing date, with one of the USPS-approved methods in 3.9.2.

b. Each individual address in the mailing is subject to the Move Update standard.

c. The Move Update standard is met when an address used on a mailpiece, in a mailing for any class of mail, is updated with an approved method in 3.9.2, and the same address is used in a Standard Mail mailing within 95 days after the address has been updated.

d. Except for mail bearing an alternative address format, addresses used on pieces claiming Standard Mail rates, regardless of any required surcharge, must meet the Move Update standard.

3.9.2 USPS-Approved Methods

The following methods are authorized for meeting the Move Update standard:

a. Address Change Service (ACS).

b. National Change of Address Linkage System (NCOA^{Link}).

c. FASTforward MLOCR processes if used each time before mail entry (for letter mail only). If a mailpiece that initially uses *FASTforward* MLOCR processing is rejected and then entered into a Direct View Encoding Desk (DVED) operation (or similar system), the piece does not meet the Move Update standard. The name and address information on the piece must then be processed through a *FASTforward* RVE system to meet the Move Update standard. *FASTforward* RVE processes also meet the Move Update standard if used each time before mail entry.

d. Ancillary service endorsements under 507.1.5.3, Standard Mail, except "Forwarding Service Requested."

3.9.3 Mailer Certification

The mailer's signature on the postage statement certifies that the Move Update standard has been met for each address in the corresponding mailing presented to the USPS.

* * * * *

300 Discount Flats

* * * * *

330 First-Class Mail

333 Rates and Eligibility

* * * * *

3.0 Eligibility Standards for First-Class Mail Flats

* * * * *

3.5 Move Update Standard

3.5.1 Basic Standards

* * * * *

[Revise item a in 3.5.1 as follows:]

a. Each address and associated occupant name used on the mailpieces in a mailing must be updated within 95 days before the mailing date, with one of the USPS-approved methods in 3.5.2.

* * * * *

[Revise item c in 3.5.1 as follows:]

c. The Move Update standard is met when an address used on a mailpiece, in a mailing for any class of mail, is updated with an approved method in 3.5.2, and the same address is used in a First-Class Mail mailing within 95 days after the address has been updated.

* * * * *

340 Standard Mail

343 Rates and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

[Add new item 3.9 as follows:]

3.9 Move Update Standard

3.9.1 Basic Standards

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding, return, or discard by the periodic matching of a mailer's address records

with customer-filed change-of-address orders received and maintained by the USPS. For the purposes of this standard, "address" means a specific address associated with a specific occupant name. Addresses subject to the Move Update standard must meet these requirements:

a. Each address and associated occupant name used on the mailpieces in a mailing must be updated within 95 days before the mailing date, with one of the USPS-approved methods in 3.9.2.

b. Each individual address in the mailing is subject to the Move Update standard.

c. The Move Update standard is met when an address used on a mailpiece, in a mailing for any class of mail, is updated with an approved method in 3.9.2, and the same address is used in a Standard Mail mailing within 95 days after the address has been updated.

d. Except for mail bearing an alternative address format, addresses used on pieces claiming Standard Mail rates, regardless of any required surcharge, must meet the Move Update standard.

3.9.2 USPS-Approved Methods

The following methods are authorized for meeting the Move Update standard:

a. Address Change Service (ACS).

b. National Change of Address Linkage System (NCOA^{Link}).

c. Ancillary service endorsements under 507.1.5.3, Standard Mail, except "Forwarding Service Requested."

3.9.3 Mailer Certification

The mailer's signature on the postage statement certifies that the Move Update standard has been met for each address in the corresponding mailing presented to the USPS.

* * * * *

400 Discount Parcels

* * * * *

430 First-Class Mail

433 Rates and Eligibility

* * * * *

3.0 Basic Standards for First-Class Mail Parcels

* * * * *

3.5 Move Update Standard

3.5.1 Basic Standards

* * * * *

[Revise item a in 3.5.1.as follows:]

a. Each address and associated occupant name used on the mailpieces in a mailing must be updated within 95 days before the mailing date, with one of the USPS-approved methods in 3.6.2.

* * * * *

[Revise item c in 3.5.1 as follows:]

c. The Move Update standard is met when an address used on a mailpiece, in a mailing at any class of mail, is updated with an approved method in 3.6.2, and the same address is used in a First-Class Mail mailing within 95 days after the address has been updated.

* * * * *

440 Standard Mail

443 Rates and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Parcels

* * * * *

[Add new item 3.9 as follows:]

3.9 Move Update Standard

3.9.1 Basic Standards

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding, return, or discard by the periodic matching of a mailer's address records with customer-filed change-of-address orders received and maintained by the USPS. For the purposes of this standard, "address" means a specific address associated with a specific occupant name. Addresses subject to the Move Update standard must meet these requirements:

a. Each address and associated occupant name used on the mailpieces in a mailing must be updated within 95 days before the mailing date, with one of the USPS-approved methods in 3.9.2.

b. Each individual address in the mailing is subject to the Move Update standard.

c. The Move Update standard is met when an address used on a mailpiece, in a mailing for any class of mail, is updated with an approved method in 3.9.2, and the same address is used in a Standard Mail mailing within 95 days after the address has been updated.

d. Except for mail bearing an alternative address format, addresses used on pieces claiming Standard Mail rates, regardless of any required surcharge, must meet the Move Update standard.

3.9.2 USPS-Approved Methods

The following methods are authorized for meeting the Move Update standard:

a. Address Change Service (ACS).

b. National Change of Address Linkage System (NCOA^{Link}).

c. Ancillary service endorsements under 507.1.5.3, Standard Mail, except "Forwarding Service Requested."

3.9.3 Mailer Certification

The mailer's signature on the postage statement certifies that the Move Update standard has been met for each address in the corresponding mailing presented to the USPS.

* * * * *

Neva Watson,

Attorney, Legislative.

[FR Doc. E7–19151 Filed 9–27–07; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30 and 31

[FRL–8472–1]

Award of United States-Mexico Border Program and Alaska Rural and Native Villages Program Grants Authorized by the Revised Continuing Appropriations Resolution, 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Grant Guidelines.

SUMMARY: This notice provides guidelines on the Award of United States-Mexico Border Program and Alaska Rural and Native Villages Program Grants Authorized by the Revised Continuing Appropriations Resolution, 2007. This notice provides information and guidelines on how the EPA will award and administer the United States-Mexico Border Program and the Alaska Rural and Native Villages Program in accordance with the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5). The Revised Continuing Appropriations Resolution, 2007, provides budget authority for funding the United States-Mexico Border Program and the Alaska Rural and Native Villages Program. Each grant recipient will receive a copy of this notice from EPA.

ADDRESSES: The subject notice and associated documents may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/owm0330.pdf.*

FOR FURTHER INFORMATION CONTACT: Benjamin J. Hamm, Chief, Municipal Assistance Branch, Municipal Support Division, Office of Wastewater Management (4204M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0648; e-mail address: *hamm.ben@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Affected Entities: This action applies to State Agencies, nonprofit institutions, international organizations, and Alaska

rural and native villages which are eligible to receive grants from funds included in EPA's State and Tribal Assistance Grants account pursuant to the Revised Continuing Appropriations Resolution, 2007, and the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–54).

II. Background

The Revised Continuing Appropriations Resolution, 2007, Pub. L. 110–5, making further continuing appropriations for the fiscal year 2007, and for other purposes, states, in relevant part:

> The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for fiscal year 2007, and for other purposes, namely: * * * (a) Such amounts as may be necessary, at the level specified in subsection (c) and under the authority and conditions provided in the applicable appropriations Act for fiscal year 2006, for projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise provided for and for which appropriations, funds, or other authority were made available in the following appropriations Acts: * * * (4) The Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006.

The Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54, also referred to as the Agency's fiscal year (FY) 2006 Appropriations Act, included $50,000,000 for the United States-Mexico Border Program and $35,000,000 for the Alaska Rural and Native Villages Program in the State and Tribal Assistance Grants (STAG) account. Pursuant to the Revised Continuing Appropriations Resolution, 2007, these funding levels are maintained for FY 2007.

The specific requirements governing the award of the program grants are contained in the following documents: the Revised Continuing Appropriations Resolution, 2007, and the FY 2006 Appropriations Act. The requirements contained in these documents have been incorporated into this notice.

The Revised Continuing Appropriations Resolution, 2007, also states, in relevant part:

> (c) The level referred to in subsection (a) shall be the amounts appropriated in the appropriations Acts referred to in such subsection, including transfers and obligation limitations, except that—* * * (2) such level shall be calculated without regard to any rescission or cancellation of funds or contract authority, other than—(A) the 1 percent government-wide rescission made by section 3801 of division B of Pub. L. 109–148; [and] (B) the 0.476 percent across-the-board rescission made by section 439 of Pub. L. 109–54, relating to the Department of the Interior, Environment, and Related Agencies * * *.

The original amount appropriated for each program, as well as the actual amount available for grant award after the reduction due to the 1 percent rescission and the .476 percent rescission are as follows:

Program	Appropriation	1% rescission	.476% rescission	Grant amount
Alaska Rural and Native Villages Program	$35,000,000	$350,000	$164,934	$34,485,066
United States-Mexico Border Program	50,000,000	500,000	235,620	49,264,380

The United States-Mexico Border Program funds and the Alaska Rural and Native Villages Program funds will be awarded and administered by the Regional Offices. On September 28, 2000, the Assistant Administrator for Water and the Regional Administrators were delegated the authority to award grants and cooperative agreements for funds included in the STAG account. Accordingly, the Regions and Headquarters have the necessary authority to award grants and cooperative agreements for the United States-Mexico Border Program and the Alaska Rural and Native Villages Program.

III. Program Specific Guidelines

The Agency's FY 2006 Appropriations Act contains the authorizing language for and requirements applicable to the United States-Mexico Border Program and the Alaska Rural and Native Villages Program.

A. United States-Mexico Border Program

The Agency's FY 2006 Appropriations Act provides $49,264,380, after rescission, for "architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission." Pursuant to the Revised Continuing Appropriations Resolution, 2007, this funding level is maintained for FY 2007, The scope of work for grants awarded for the United States-Mexico Border Program must conform to the language contained in the Appropriations Act and the grant file should include documentation that describes the results of the discussions and consultations with the appropriate border commission. In implementing this program, EPA generally provides grant funding to the Border Environmental Cooperation Commission (BECC) for the Project Development Assistance Program (PDAP) and to the North American Development Bank (NADBank) for the Border Environment Infrastructure Fund (BEIF). Subgrants from BECC and NADBank should also contain documentation of the discussions with the appropriate border commission.

EPA cost participation on projects funded from the United States-Mexico Border appropriation item will be decided on a project-by-project basis. The EPA cost share will depend on a number of factors which have been separately defined within the context of the United States-Mexico Border Program.

On May 2, 1997, the Agency issued a memorandum [1] concerning "Program Requirements for Mexican Border Area Projects Funded under the Authority of this Agency's FY 1995, 1996 and 1997 Appropriations Acts." That memorandum applies to the United States-Mexico Border Area projects funded under the authority of the Revised Continuing Appropriations Resolution, 2007, and the Agency's FY 2006 Appropriations Act.

B. Alaska Rural and Native Villages Program

The Agency's FY 2006 Appropriations Act provides $34,485,066, after rescission, for:

> Grants to the State of Alaska to address drinking water and waste infrastructure needs of rural and Alaska Native Villages: *Provided*, That, of these funds: (1) The State of Alaska shall provide a match of 25 percent; (2) no more than 5 percent of the funds may be used for administrative and overhead expenses; and (3) not later than

[1] This document is available on the internet at *www.epa.gov/owm/mab/owm0327.pdf.*

October 1, 200[7] [2] the State of Alaska shall make awards consistent with the State-wide priority list established in 2004 for all water, sewer, waste disposal, and similar projects carried out by the State of Alaska that are funded under section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) or the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et. seq.*) which shall allocate not less than 25 percent of the funds provided for projects in regional hub communities.

Pursuant to the Revised Continuing Appropriations Resolution, 2007, this funding level is maintained for FY 2007. The cost share for the State of Alaska pursuant to Item (1) of the Appropriations Act is $11,495,022.

Additionally, the Alaska Rural and Native Villages Program funds may be used to pay for activities specified in the Safe Drinking Water Act of 1996, (Pub. L. 104–182, Section 303), specifically: "training, technical assistance, and educational programs relating to the operation and management of sanitation services in rural and Native villages." These include the Remote Maintenance Worker (RMW) and the Rural Utility Business Advisory (RUBA) programs.

Pursuant to the 2006 Alaska Rural and Native Villages Program Memorandum of Understanding, the State of Alaska has agreed to utilize the State's Environmental Review Process (SERP) for all projects funded by the program.

IV. Federal Funds as a Source of Matching Funds

Federal funds from other programs may be used as all or part of the match for the United States-Mexico Border Program only if the statute authorizing those other programs specifically allows the funds to be used as a match for other Federal grants. Additionally, the other Federal programs must allow their appropriated funds to be used for the planning, design and/or construction of water, wastewater or groundwater infrastructure projects. Listed below are the major United States Federal programs whose grant funds can be used to provide all or part of the match for the United States-Mexico Border Program:

- Department of Agriculture, Rural Development program; and
- Department of Housing and Urban Development, Community Development Block Grant program.

For Mexican projects, Federal, state or local grants may be used to match United States-Mexico Border Program grant funds.

[2] In order to maintain consistency with past appropriations acts language, the Agency assumes Congress intended to state "October 1, 2007".

As previously stated, Federal funds may be used as all or part of the match for other Federal grant programs only if the authorizing legislation includes such authority. The United States-Mexico Border Program funds and the Alaska Rural and Native Villages Program funds cannot be used as a source of matching funds for other Federal programs.

V. Pre-Award Costs

The Grants and Interagency Agreement Management Division (GIAMD) issued a policy memorandum (GPI 00–02) on March 30, 2000, that applies to all grants, including United States-Mexico Border Program grants and Alaska Rural and Native Villages Program grants awarded on or after April 1, 2000. Additionally, a clarification to the policy memorandum (GPI 00–02(a)) was issued by GIAMD on May 3, 2000. The two memorandums revised the Agency's interpretation of a provision contained in the general grant regulations at 40 CFR 31.23(a) concerning the approval of pre-award costs.

In essence, the GIAMD memorandums state that:

- Recipients may incur pre-award costs [up to] 90 calendar days prior to award provided they include such costs in their application, the costs meet the definition of pre-award costs and are approved by the EPA Project Officer and EPA Award Official.
- The award official can approve pre-award costs incurred more than 90 calendar days prior to grant award, in appropriate circumstances, if the pre-award costs are in conformance with the requirements set forth in OMB Circular A–87 and with applicable Agency regulations, policies and guidelines.

The GIAMD memorandums state that the award official can approve pre-award costs incurred prior to grant award in appropriate situations if the approval of the pre-award costs is consistent with the intent of the requirements for pre-award costs set forth in OMB Circular A–87 and are in conformance with Agency regulations, policies and guidelines. The following two situations meet these requirements:

- Any allowable costs incurred after the start of the fiscal year for which the funds were appropriated but before grant award (for FY 2007 projects, this date is October 1, 2006).
- Allowable facilities planning and design costs associated with the construction portions of the project included in the grant that were incurred before the start of the fiscal year for which the funds were appropriated (for FY 2007 projects, this date is October 1, 2006).

Accordingly, effective April 1, 2000, the Regions have the authority to approve pre-award costs for the two situations described above. Any approval, of course, is contingent on the Regional Office determination that the pre-award costs in question are in conformance with the applicable Federal laws, regulations and executive orders that govern EPA grant awards and are allowable, reasonable and allocable to the project.

The Regions may not approve any pre-award costs for United States-Mexico Border Program grants or Alaska Rural and Native Villages Program grants, other than those that involve the two situations discussed above, without written approval from Headquarters. The request, with sufficient supporting documentation, should be submitted to the Director, Office of Wastewater Management, (Mail Code 4201M), USEPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The Office of Wastewater Management will consult, in appropriate circumstances, with the GIAMD and the Office of General Counsel. If appropriate, a deviation from 40 CFR 31.23(a) will be processed and issued.

VI. Laws, Regulations and Requirements

The Federal Laws and Executive Orders that apply to all EPA grants, including the United States-Mexico Border Program and the Alaska Rural and Native Villages Program which are authorized by the Revised Continuing Appropriations Resolution, 2007, and the Agency's FY 2006 Appropriations Act, are as follows:

A. Environmental Authorities

- Archeological and Historic Preservation Act, Pub. L. 93–291, as amended.
- Clean Air Act, Pub. L. 95–95, as amended.
- Clean Water Act, Titles III, IV and V, Pub. L. 92–500, as amended.
- Coastal Barrier Resources Act, Pub. L. 97–348.
- Coastal Zone Management Act, Pub. L. 92–583, as amended.
- Endangered Species Act, Pub. L. 93–205, as amended.
- Environmental Justice, Executive Order 12898.
- Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148.
- Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608.
- Farmland Protection Policy Act, Pub. L. 97–98.

- Fish and Wildlife Coordination Act, Pub. L. 85–624, as amended.
- Magnunson-Stevens Fishery Conservation and Management Act, Pub. L. 94–265.
- National Environmental Policy Act, Pub. L. 91–190.
- National Historic Preservation Act, Pub. L. 89–655, as amended.
- Safe Drinking Water Act, Pub L. 93–523, as amended.
- Wild and Scenic Rivers Act, Pub. L. 90–54, as amended.

B. Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549.
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89–754, as amended, and Executive Order 12372.
- Drug-Free Workplace Act, Pub. L. 100–690.
- Government Neutrality Toward Contractor's Labor Relations, Executive Order 13202 as amended by Executive Order 13208.
- New Restrictions on Lobbying, Section 319 of Pub. L. 101–121.
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738.
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91–646, as Amended.

C. Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- Age Discrimination Act, Pub. L. 94–135.
- Equal Employment Opportunity, Executive Order 11246.
- Section 13 of the Clean Water Act, Pub. L. 92–500.
- Section 504 of the Rehabilitation Act, Pub. L. 93–112 supplemented by Executive Orders 11914 and 11250.
- Title VI of the Civil Rights Act, Pub. L. 88–352.

D. Disadvantaged Business Enterprise Authorities

- EPA's FY 1993 Appropriations Act, Pub. L. 102–389.
- Section 129 of the Small Business Administration Reauthorization and Amendment Act, Pub. L. 100–590.
- Small, Minority and Women Owned Business Enterprises, Executive Orders 11625, 12138 and 12432.

Some of the authorities only apply to grants that include construction, *e.g.*, EO 13202. A more detailed description of the Federal laws, Executive Orders, OMB Circulars and their implementing regulations is contained in Module No. 2 of the EPA Assistance Project Officers Training Course which is available through the Regional Grants Management Offices.

The regulations at 40 CFR Part 31 apply to grants and cooperative agreements awarded to State and local (including tribal) governments. The regulations at 40 CFR Part 30 apply to grants with nonprofit organizations and with non-governmental for-profit entities. In appropriate circumstances, such as grants for demonstration projects, the research and demonstration grant regulations at 40 CFR Part 40 can be used to supplement either 40 CFR Part 30 or Part 31.

The Agency issued a memorandum [3] in January 1995, concerning the applicability of 40 CFR Part 29 (Intergovernmental Review) to the special projects authorized by the Agency's FY 1995 Appropriations Act. That memorandum also applies to the United States-Mexico Border Program and the Alaska Rural and Native Villages Program which are authorized by the Revised Continuing Appropriations Resolution, 2007, and the Agency's FY 2006 Appropriations Act.

The Davis-Bacon Act does not apply to grants awarded under the authority of the Revised Continuing Appropriations Resolution, 2007, and the Agency's FY 2006 Appropriations Act because neither the Resolution nor the Act includes language that makes it apply. However, if FY 2007 funds are used to supplement funding of a construction contract that includes Clean Water Act title II requirements (*e.g.*, contracts awarded under the construction grants or coastal cities programs), the entire contract is subject to Davis-Bacon Act requirements, including the portion funded with FY 2007 funds.

VII. Specific Environmental Requirements

The National Environmental Policy Act (NEPA) and other relevant applicable statutes and Executive Orders, such as the Endangered Species Act (ESA), apply to the United States-Mexico Border Program. The applicable NEPA regulations are the Council of Environmental Quality's implementing regulations at 40 CFR Parts 1500–1508 and EPA's NEPA regulations at 40 CFR Part 6, Subparts A–D.

The Agency issued a memorandum [4] on January 20, 1995, concerning NEPA compliance for the Special Appropriations Act Projects authorized by the Agency's FY 1995 Appropriations Act. That memorandum also applies to the United States-Mexico Border Program which is authorized by the Revised Continuing Appropriations Resolution, 2007, and the Agency's FY 2006 Appropriations Act.[5]

The development of information needed to determine compliance with NEPA and other cross-cutting Federal requirements is an allowable cost that can, and should, be included in the scope of work of the grant if not performed prior to grant award. These activities can be funded on an incremental basis, by awarding a grant that only includes these activities, or as part of the entire project (i.e., planning, design and construction) with the stipulation, in the form of a grant condition, stating that EPA will not approve or fund any work beyond the conceptual design point [6] until the applicable requirements of such authorities have been met. The Agency issued a memorandum [7] on July 29, 2003, that contains a model grant condition that should be used in this situation.[8]

It should be noted that NEPA and other cross-cutting Federal requirements that apply to the major Federal action (i.e., the approval and/or funding of work beyond the conceptual design point) cannot be delegated. Although EPA can fund the grantee or state/tribal development of an Environmental Information Document (EID) or other analysis to provide supporting information, EPA has the legal obligation to issue the NEPA documents, to sign NEPA determinations, and to fulfill other cross-cutting Federal requirements before approving or paying for design and/or construction.

When both EPA and another Federal agency are funding the same project, the agencies may negotiate an agreement for one to be the lead agency for performing grant oversight and management activities, including those related to NEPA and other cross-cutting Federal requirements. The lead agency can be the one which is providing the most funds for the project, or the agency that

[3] This document is available on the internet at *www.epa.gov/owm/mab/own0326.pdf.*

[4] This document is available on the internet at *www.epa.gov/owm/mab/owm0330.pdf.*

[5] EPA is in the process of revising the NEPA implementing regulations (40 CFR Part 6). Accordingly, the final rule, once promulgated, will supersede and replace the memoranda on NEPA compliance.

[6] Completion of conceptual design is essentially the same as completion of facility planning as defined in EPA's Construction Grants program.

[7] This document is available on the internet at *www.epa.gov/owm/mab/owm0330.pdf.*

[8] See Footnote 5, supra.

provided the initial funds for the project. If an environmental impact statement (EIS) is required, EPA should be a co-lead or cooperating agency so that it can adopt the EIS without recirculating it. If the project requires an environmental assessment (EA), EPA may adopt the other agency's EA and use it as a basis for its finding of no significant impact (FONSI), provided EPA has independently reviewed the EA and agrees with the analysis and circulates the FONSI and attached EA for the requisite 30-day comment period. Note that EPA may not use a categorical exclusion of another Federal agency unless EPA's regulations at 40 CFR Part 6 also provide for the categorical exclusion.

VIII. Operating Guidelines

The authority for awarding grants for the United States-Mexico Border Program is the Revised Continuing Appropriations Resolution, 2007, and the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–54). The authority for awarding grants for the Alaska Rural and Native Villages Program is section 303 of the Safe Drinking Water Act Amendments of 1996 (Pub. L. 104–182), the Revised Continuing Appropriations Resolution, 2007, and Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–54).

The Catalog of Federal Domestic Assistance (CFDA) number for the United States-Mexico Border Program and the Alaska Rural and Native Villages Program is 66.202 "Congressionally Mandated Projects." The Integrated Grants Management System (IGMS) code for the United States-Mexico Border Program and the Alaska Rural and Native Villages Program is XP, titled "Water Infrastructure Grants as authorized by EPA Appropriations." The Object Class Code (budget and accounting information) for the United States-Mexico Border Program and the Alaska Rural and Native Villages Program is 41.83. Applicants should use Standard Form 424 to apply for the grants.

A. Location of Project

To be able to report on environmental and public health benefits, the Agency has decided to collect, and store in an appropriate database, the geographic location for grant funded infrastructure projects. Accordingly, all United States-Mexico Border Program grants and Alaska Rural and Native Villages Program grants authorized by the Revised Continuing Appropriations Resolution, 2007, and the FY 2006 Appropriations Act should include a term and condition stating that locational information must be submitted. For most projects, the specific information needed is the National Pollutant Discharge Elimination System (NPDES) number(s) or the Safe Drinking Water Information System (SDWIS) number(s). EPA's information technology (IT) systems will use the NPDES and the SDWIS numbers to determine the specific geographic parameters of the project. For those situations where NPDES and SDWIS identifiers are not appropriate, the longitude and latitude of the project should be provided.

B. Intermunicipal Projects and Service Agreements

Although a United States-Mexico Border Program grant may be awarded to one entity, the successful operations of the grant funded project may depend on the support and cooperation of other entities, municipalities, or utility districts. This is especially evident when one entity is providing wastewater treatment services or supplying drinking water to another entity. Accordingly, for projects involving interactions between two or more entities, the applicant should provide assurances that the grant funded project will function as intended for its expected life. Adequate assurance may be met through the creation of special service districts, regionalization of systems, or intermunicipal service agreements.

Special service districts and regionalization of systems are considered to be obligations in perpetuity to serve the customers of the newly created authority and automatically meet the expected lifetime requirements. The intermunicipal service agreement or contract is a legal document for cooperative ventures between separate entities, both of which wish to continue functioning with a large degree of independent control in their respective service areas. Such agreements will need to extend for a minimum number of years for an EPA funded project to be considered viable. For the purposes of the United States-Mexico Border Program, EPA will accept the following contract lifetimes as meeting the *minimum* standard [9]:

ITEM	LIFE (years)
Land	(1)
Wastewater/Water Conveyance Structures: collection systems pipes, interceptors, force mains, tunnels, distribution lines, etc.	40
Other Structures: plant buildings, concrete tankage, basins, lift station and pump station structures, inlet structures, etc.	30
Wastewater and Drinking Water Process Equipment	15
Auxiliary Equipment	10

[1] Permanent.

A shorter time frame may be accepted if suitably justified and approved by EPA.

C. Non-Construction Costs

The scope of work of a grant may include planning, design and administrative activities, and the cost of land. Land need not be an "integral part of the treatment process" as in the Clean Water Act title II construction grant program. However, all elements included within the scope of work of the grant must conform to the requirements of 40 CFR Parts 30 or 31. This means, if planning, design and administrative activities are included in the grant, the procurement of those services and the contracts must comply with the applicable sections of Parts 30 or 31. If land is included, there will be a Federal interest in the land regardless of when it was purchased and the purchase must be (must have been) in accordance with the applicable sections of Parts 30 or 31 and the Uniform Relocation Assistance and Real Property Acquisition regulations for Federal and Federally assisted programs at 49 CFR Part 24.

As of August, 2006, the United States-Mexico Border Program established a policy that land would not be an allowable BEIF cost, even if it is an eligible item under the Appropriations Act. This policy was issued by the Deputy Director, Office of Wastewater Management, on August 3, 2006.

D. Refinancing

Funds appropriated for the United States-Mexico Border Program or the Alaska Rural and Native Villages Program may not be awarded solely to repay loans received from a State Revolving Fund or other indebtedness unless the facts of the case are such that this is the only way to award the funds that were appropriated for the project. Any request to use United States-Mexico Border Program or Alaska Rural and Native Villages Program funds to repay a loan, in whole or in part, must

[9] The anticipated useful life of the facility components is based on the low end of the assumed service life for items in EPA's Construction Grants Program and past experience with the award and administration of special Appropriations Act projects.

be approved, in writing, by EPA Headquarters. The request, with sufficient supporting documentation, should be submitted to the Director, Office of Wastewater Management, (Mail Code 4201M), USEPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

IX. Environmental Results Under EPA Assistance Agreements

A. Introduction

EPA Order 5700.7,[10] "Environmental Results Under Assistance Agreements," applies to all non-competitive funding packages/funding recommendations submitted to the Grants Management Offices after January 1, 2005. The Order requires EPA Program Offices to: (1) Link proposed assistance agreements to the Agency's Strategic Plan/Government Performance and Results Act (GPRA) architecture; (2) ensure that outputs and outcomes are appropriately addressed in assistance agreement work plans [11] and funding recommendations; and (3) ensure that progress in achieving agreed-upon outputs and outcomes is adequately addressed in recipient progress reports and advanced monitoring activities.

B. The Strategic Plan/GPRA Architecture

EPA's *2006–2011 Strategic Plan* [12] sets out five long-term goals. Each of these five goals is supported by a series of objectives and sub-objectives that identify, as precisely as possible, what environmental outcomes or results the EPA seeks to achieve within a defined time frame using resources expected to be available. The objectives and sub-objectives established in EPA's Strategic Plan are part of the "GPRA architecture" that is used to measure the EPA's progress in meeting its strategic goals.

Program offices must include in the funding package for a proposed assistance agreement a description of how the project fits within the EPA's Strategic Plan/GPRA architecture. In developing the aforementioned descriptions, a project officer must list all applicable EPA strategic goals and objectives and, where available, sub-objectives. The project officer must ensure that the Program Results Code(s) (PRCs) listed on the commitment notice is consistent with the selected strategic goals, objectives and sub-objectives. The Strategic Plan/Program Results Code Crosswalk, which summarizes the strategic goals, objectives, sub-objectives, and the PRCs for every EPA assistance agreement program, is attached to Appendix A of EPA Order 5700.7. Additionally, program offices must include in the funding package for a proposed assistance agreement an assurance that the program office has reviewed, or will review, the assistance agreement work plan [13] and that the work plan includes, or will include, well-defined outputs and, to the maximum extent practicable, well-defined outcomes.

C. EPA Review of Recipient Performance Reports

EPA Order 5700.7 also establishes requirements for program office review of construction and non-construction interim and final recipient performance reports for progress in achieving outputs and outcomes contained in assistance agreement work plans. Under 40 CFR Parts 30 and 31, EPA may require recipients to submit performance/progress reports as frequently as quarterly but no less frequently than annually. These regulations also require recipients to provide the EPA with an acceptable final performance report at the end of a project. While performance reports are one way for the EPA to obtain information on a recipient's progress toward achievement of agreed-upon outputs and outcomes, program offices may also conduct mid-year and end-of-year reviews to evaluate recipient performance.

The review of recipient performance reports is largely the responsibility of the EPA project officer. The project officer must review interim [14] and final [15] performance reports to determine whether they adequately address the achievement of agreed-upon outputs/outcomes, including providing a satisfactory explanation for insufficient progress or a failure to meet planned accomplishments (when compared with the most recently approved project schedule and completion dates for project milestones). This review must be documented in the official project file. If a report does not adequately address the achievement of outputs/outcomes, the project officer should seek further explanation from the recipient and require appropriate corrective action.

D. Advanced Monitoring

EPA Order 5700.7 directs program offices, when conducting on-site reviews or desk reviews under EPA Order 5700.6, *Policy on Compliance, Review and Monitoring*, to include an assessment of the recipient's progress in achieving the outputs and outcomes set forth in the assistance agreement work plan.[16] If the assessment reveals significant problems in meeting agreed-upon outputs/outcomes, the project officer must require the recipient to develop and implement an appropriate corrective action plan and implementation schedule. The results of the assessment must be documented in the Grantee Compliance Database in a format determined by the Director of the GIAMD.

X. Grants Management

Grants awarded under the authority of an Appropriations Act are subject to assistance agreement regulations, OMB cost principles and Agency policies. The grants must be awarded and managed as any other assistance agreement.

The GIAMD has developed Grants Policy Issuances (GPIs) and directives to assist project officers and program offices in fulfilling and understanding their responsibilities. Three GPIs that are directly related to the award and management of United States-Mexico Border Program grants or Alaska Rural and Native Villages Program grants are GPI–07–01 "Management of Earmark Grants," GPI–03–01—Attachment VI "Policy and Procedures for Funding Assistance Agreements," and GPI–00–05 "Cost Review Guidance." [17]

OGD issued guidance "Assessing Grants Management Performance under the 2007 Performance Appraisal and Recognition System (PARS)" on January 17, 2007, to be used for 2007 PARS performance agreements/appraisals of project officers who are managing at least one active grant during the rating period and their supervisors/managers. This guidance requires that project officers and their supervisors/managers

[10] The Order is available on the internet at http://www.epa.gov/ogd/grants/award/5700.7.pdf.

[11] Throughout this section, the term "work plan" is used for convenience. For construction projects, outputs/outcomes are normally included in a Facility Plan, Preliminary Engineering Report, or an Environmental Information Document. In many cases these documents may not exist at the time of grant application. In those situations the development of the documents will be included in the scope of work of the assistance agreement.

[12] The Strategic Plan is available on the internet at *http://www.epa.gov/ocfo/plan/2006/entire_report.pdf.*

[13] See Footnote 11, supra.

[14] For construction projects, on-site technical inspections and certified percentage of construction data meet the interim reporting requirements, see 40 CFR 31.40(c).

[15] For construction projects, the final inspection report or other final performance report should include a comparison of the actual outcomes/outputs with those incorporated into the assistance agreement.

[16] See Footnote 11, supra.

[17] These GPIs are available at *http://intranet.epa.gov/ogd/policy/7.0-GPI-GPI–07–01.htm, http://intranet.epa.gov/ogd/policy/7.0-GPI-GPI–03–01–0.htm and http://www.epa.gov/ogd/grants/award/CostReview.htm.*

adequately address grants management responsibilities through the Agency's PARS process. A directive outlining roles and responsibilities for all EPA staff with grants management responsibilities is found at *http://intranet.epa.gov/rmpolicy/ads/updates.htm.*

EPA Order 5700.6A1, issued January 8, 2004,[18] streamlines post-award management of assistance agreements and helps ensure effective oversight of recipient performance and management. The Order encompasses both the administrative and programmatic aspects of the Agency's financial assistance programs. It requires each EPA program office providing assistance to develop and carry out a post-award monitoring plan, and conduct basic monitoring for every award. From the programmatic standpoint, this monitoring should ensure satisfaction of five core areas: (1) Compliance with all programmatic terms and conditions, (2) correlation of the recipient's work plan/application and actual progress under the award, (3) availability of funds to complete the project, (4) proper management of and accounting for equipment purchased under the award, and (5) compliance with all statutory and regulatory requirements of the program. If during monitoring it is determined that there is reason to believe that the grantee has committed or commits fraud, waste and/or abuse, then the project officer must contact the Office of the Inspector General. Advanced monitoring activities must be documented in the official grant file and the grantee compliance database.

In addition to the general requirements contained in EPA Order 5700.6A1, the following types of activities, which are directly related to construction projects, should be considered in the development of a post-award monitoring plan:

—Review periodic payment requests.
—Compare actual completion percentages and milestones with the approved project schedule
—Compare actual costs incurred with the approved project budget.
—Conduct interim inspections.
—Review change orders and claims.
—Review and approve final payment requests as required by the Program.
—Determine that the project is capable of meeting the objectives for which it was planned, designed and built and is operational.

[18] The Order is available on the internet at *http://www.epa.gov/ogd/manual6/Library/5700_6A1.pdf.*

XI. Project Officer Responsibilities

The project officers must review the grant application to determine that:

—the scope of work of the grant is clearly defined;
—the scope of work is in conformance with the project description;
—project schedule and milestones are addressed;
—there is a clearly stated environmental or public health objective;
—the applicant has the programmatic capability to successfully manage the project;
—it is expected that the project will achieve its objective(s); and
—the costs are reasonable, necessary and allowable.

Grant applications should be carefully reviewed and processed in a timely manner. Additionally, the Regions may impose reasonable requirements through grant conditions in those situations considered necessary.

XII. Actions

If you have not already done so, you and your staff should initiate discussions with the appropriate grant applicants to develop a detailed scope of work and to explain the grant application and review process. Additionally, the grant applicant should be provided with this Notice prior to grant award to ensure that the applicant is on notice of the applicable requirements before the grant is awarded.

XIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and 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 notice in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: September 17, 2007.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

[FR Doc. E7–18960 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2007–0651; FRL–8473–5]

Approval and Promulgation of Implementation Plans; Louisiana; Clean Air Interstate Rule Nitrogen Oxides Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana on August 20, 2007, as the Louisiana Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Trading Programs abbreviated SIP. The abbreviated SIP revision includes the Louisiana methodology for allocation of annual and ozone season NO_X allowances. EPA has determined that the Louisiana CAIR NO_X Trading Programs abbreviated SIP revision satisfies the applicable requirements of a CAIR abbreviated SIP revision. EPA is also approving revisions to the Louisiana SIP that establish administrative reporting requirements for all Louisiana CAIR programs; these revisions were submitted on September 22, 2006, as part of the Louisiana CAIR Sulfur Dioxide (SO_2) Trading Program SIP. EPA has also determined that the Louisiana CAIR NO_X Annual and Ozone Season Abbreviated SIP satisfies Louisiana's Clean Air Act (CAA) Section 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another State's air quality through interstate transport.

The intended effect of this action is to reduce NO_X emissions from the State of Louisiana that are contributing to nonattainment of the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS or standard) in downwind states. This action is being taken under section 110 of the CAA.

DATES: This rule is effective on September 28, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2007–0651. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this **Federal Register** to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Louisiana Department of Environmental Quality, Office of Environmental Quality Assessment, 602 N. Fifth Street, Baton Rouge, Louisiana 70802.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's approval, please contact Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever any reference to "we," "us," or "our" is used, we mean EPA.

Table of Contents

I. What Action Is EPA Taking?

EPA is approving a revision to the Louisiana SIP, the Louisiana CAIR NO_X Trading Programs abbreviated SIP revision, submitted on August 20, 2007, by the State of Louisiana at Louisiana Administrative Code Title 33, Part III, Chapter 5, Sections 506 (A) and (B) (LAC 33:III.506 (A) and (B)). We are also approving revisions to the Louisiana SIP establishing administrative reporting requirements for the Louisiana CAIR programs; these revisions were submitted with the Louisiana CAIR SO_2 Trading Program on September 22, 2006 (LAC 33:III.506 (D) and (E)). Louisiana is covered by the CAIR NO_X Annual and Ozone Season FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade programs for NO_X annual and ozone emissions. Under this abbreviated SIP revision and consistent with the flexibility given to Louisiana in its CAIR NO_X Annual and Ozone Season FIPs' provisions, the Louisiana provisions for allocating allowances under the Louisiana CAIR FIPs' NO_X annual and ozone season trading programs are approved as part of the Louisiana SIP. EPA has determined that the abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p)(1) and (ee)(2) with regard to NO_X annual and ozone season allowance allocations. EPA, by ministerial action, will note in Appendix A.1. to Subpart EE of 40 CFR Part 97 that Louisiana has an approved SIP revision providing for NO_X annual allowance allocations. Similarly, EPA will note in Appendix A to Subpart EEEE of 40 CFR Part 97 that Louisiana has an approved SIP revision providing for NO_X ozone season allowance allocations. Since 40 CFR part 97 provides for automatic revision of the Louisiana CAIR FIP for NO_X annual and ozone season emissions (under 40 CFR 52.984) upon approval of such an abbreviated SIP revision, the Louisiana rules for NO_X annual and ozone season allowance allocations apply, rather than the Federal rules governing allocations, upon the effective date of approval.

EPA has also determined that this SIP revision adequately addresses the required elements of section 110(a)(2)(D)(i) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(D)(i). The SIP revision contains provisions that address significant contribution, interference with maintenance, prevention of significant deterioration, and protection of visibility. The protection of visibility requirement will be re-evaluated after the regional haze SIP revision is completed and submitted to EPA.

EPA proposed to approve Louisiana's request to amend the SIP on August 15, 2007 (72 FR 45705). In that proposal, EPA also stated its intent to amend the CAIR FIP NO_X Annual and Ozone Season Trading Programs through ministerial action and proposed the finding as to section 110(a)(2)(D)(i), as described above. The comment period closed on September 14, 2007. EPA received one comment from a regulated entity in support of our proposed approval. EPA is finalizing the approval as proposed based on the rationale stated in the proposal and the accompanying Technical Support Document (TSD). The TSD is available as specified in the section of this document identified as **ADDRESSES**.

Also in today's action, EPA is providing a technical correction to the amendatory language for the Louisiana CAIR Sulfur Dioxide (SO_2) Trading Program at 40 CFR part 52, subpart T, section 52.970. On July 20, 2007 (72 FR 39741), EPA published direct final rulemaking action approving the Louisiana CAIR SO_2 Trading Program as a SIP revision. This action contained amendments to 40 CFR part 52, Subpart T, § 52.970 which incorrectly incorporated "Section 506(c)" into the Louisiana SIP. Today we are correcting 40 CFR part 52, subpart T, § 52.970 to correctly incorporate "Section 506(C)" into the Louisiana SIP.

II. What Is the Background for This Action?

The Louisiana Department of Environmental Quality (LDEQ) initially proposed the Louisiana-specific CAIR NO_X annual and ozone season allocation methodologies in January 2007 as revision AQ261 to the LAC and in February 2007 as a revision to the Louisiana SIP. As a result of extensive comments and subsequent rewrites, AQ261 was withdrawn from consideration. LDEQ proposed the revised CAIR NO_X annual and ozone season allocation methodologies as revision AQ285 to the LAC and the Louisiana SIP in May 2007. The comment period on the AQ285 SIP revision ended on July 3, 2007. LDEQ responded to comments and made technical amendments to the allocation methodologies. The final rule revision was submitted to the Louisiana Legislative Oversight Committee (LOC) on July 12, 2007. At this time the LDEQ also requested that EPA parallel process this abbreviated revision to the Louisiana SIP in conjunction with the LDEQ's rulemaking activities. The LDEQ requested parallel processing of the Louisiana CAIR NO_X Trading Programs abbreviated SIP revision to expedite Federal approval of the Louisiana NO_X annual and ozone season allocation methodologies before the allowance recordation deadline. The Louisiana CAIR NO_X Annual and Ozone Season FIP includes a NO_X allowance recordation deadline of September 30, 2007, at 40 CFR 97.153 and 97.353. As explained in the preamble of our April 28, 2006, promulgation of the CAIR FIPs, EPA will only record State allowance allocations if EPA has approved a full or abbreviated SIP for the State which specifies the allocation methodology (see 71 FR 25354).

In order to expedite review, we proposed approval of the Louisiana

CAIR NO_X Trading Programs abbreviated SIP revision under a procedure called "parallel processing" whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations (40 CFR part 51, Appendix V, section 2.3). If the State's proposed revision is substantially changed, EPA evaluates those subsequent changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA publishes a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA occurs only after the SIP revision has been fully adopted and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the adoption of the rules may result in a re-proposal altering the approvability of the SIP revision.

The Louisiana LOC reviewed the final AQ285 from July 12–August 10, 2007, during which time the public was able to request a Legislative Oversight hearing. Since no hearing was requested by the deadline, the rule proceeded through the remainder of the Louisiana rulemaking process as finalized on July 12, 2007. The LDEQ published the final AQ285 in the August 20, 2007 *Louisiana Register;* the rule became effective upon publication.

The LDEQ submitted the final Louisiana CAIR NO_X Trading Programs abbreviated SIP revision on August 20, 2007. This SIP submittal included a copy of the *Louisiana Register* publication, providing evidence that the rule is fully adopted and effective at the State level. No substantive changes were made to the final SIP revision; however, it is important to note that the LDEQ updated Appendix A—Public Notification, to include all pages of the comment letters. The SIP revision submitted on July 12, 2007, inadvertently omitted even numbered pages from some comment letters. EPA is able to proceed with our final rulemaking because the August 20, 2007, SIP submittal was not substantively changed from proposal and provided evidence that Louisiana formally adopted and submitted the revisions for inclusion in the SIP.

III. When Is This Action Effective?

EPA has determined that today's technical correction to the Louisiana CAIR SO_2 citation falls under the "good cause" exemption in 5 U.S.C. 553(d)(3) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action to correct 40 CFR part 52 has no substantive impact on EPA's July 20, 2007, direct final rule approval of the Louisiana CAIR SO_2 Trading Program. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction of this error or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the approval status.

EPA also finds that there is good cause for the approval of the Louisiana CAIR NO_X Trading Programs abbreviated SIP revision and technical amendment to the Louisiana CAIR SO_2 citation to become effective on September 28, 2007, because a delayed effective date is unnecessary due to the nature of the approval, which allows the State to make allocations under its CAIR rules. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

CAIR SIP approvals relieve States and CAIR sources within States from being subject to allowance allocation provisions in the CAIR FIPs that otherwise would apply, allowing States to make their own allowance allocations based on their SIP-approved State rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Louisiana's relief from these obligations provides good cause to make this rule effective September 28, 2007, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the State of Louisiana and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard and indicates that approval will result in ministerial changes to the appropriate appendices of the CAIR FIP's trading rules, and does not alter the relationship or the distribution of power and responsibilities established in the Act. The EPA interprets Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (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 Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a State rule implementing a Federal standard. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Because this rule merely approves a State rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 97

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 18, 2007.

Richard E. Greene,

Regional Administrator, EPA Region 6.

■ 40 CFR parts 52 and 97 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart T—Louisiana

■ 2. Section 52.970 is amended as follows:

■ a. In paragraph (c) the table entitled "EPA Approved Louisiana Regulations in the Louisiana SIP" is amended under Chapter 5—Permit Procedures, by removing the entry for "Section 506(c)" and adding in its place an entry for "Section 506(C)".

■ b. In paragraph (c) the table entitled "EPA Approved Louisiana Regulations in the Louisiana SIP" is amended under Chapter 5—Permit Procedures, by adding in numerical order new entries for "Section 506(A)", "Section 506(B)", "Section 506(D)", and "Section 506(E).

■ c. In paragraph (e) the table entitled "EPA Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures" is amended by adding a new entry at the end for the "Clean Air Interstate Rule Nitrogen Oxides Annual and Ozone Season Trading Programs".

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Explanation
* *	*	*	*	* *
Chapter 5—Permit Procedures				
* *	*	*	*	* *
Section 506(A)	Clean Air Interstate Rule Requirements—Nitrogen Oxide Annual Program.	08/20/2007	09/28/2007 [Insert FR page number where document begins].	
Section 506(B)	Clean Air Interstate Rule Requirements—Nitrogen Oxide Ozone Season Program.	08/20/2007	09/28/2007 [Insert FR page number where document begins].	
Section 506(C)	Clean Air Interstate Rule Requirements—Annual Sulfur Dioxide.	09/20/2006	09/28/2007 [Insert FR page number where document begins].	

EPA-APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP—Continued

State citation	Title/subject	State approval date	EPA approval date	Explanation
Section 506(D)	Documentation	09/20/2006	09/28/2007 [Insert FR page number where document begins].	
Section 506(E)	Modifications or Exceptions	09/20/2006	09/28/2007 [Insert FR page number where document begins].	
*	*	*	*	* * *

* * * * * (e) * * *

EPA-APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
*	* *	*	*	* *
Clean Air Interstate Rule Nitrogen Oxides Annual and Ozone Season Trading Programs.	Statewide		09/28/2007 [Insert FR page number where document begins].	SIP revision also addresses CAA 110(a)(2)(D)(i)—Interstate Transport. The protection of visibility requirement will be re-evaluated after submission of the regional haze SIP.
*	* *	*	*	* *

* * * * *

PART 97—[AMENDED]

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, et seq.

■ 4. Appendix A to Subpart EE is amended by adding an entry, in alphabetical order, for "Louisiana" to paragraph 1., to read as follows:

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

1. * * *

Louisiana

* * * * *

■ 5. Appendix A to Subpart EEEE is amended by adding an entry, in alphabetical order, for "Louisiana" under the introductory text to read as follows:

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

* * * * *

Louisiana

[FR Doc. E7–18962 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0191; FRL–8149–5]

Quinclorac; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of quinclorac in or on imported barley grain. BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 28, 2007. Objections and requests for hearings must be received on or before November 27, 2007, 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–2006–0191. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Hope Johnson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5410; e-mail address: *johnson.hope@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0191 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 November 27, 2007.

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–2006–0191, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of August 16, 2006 (71 FR 47216) (FRL–7776–6), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E6114) by BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.463 be amended by establishing a tolerance for residues of the herbicide quinclorac, 3,7-dichloro-8-quinoline carboxylic acid, in or on imported barley grain at 1.5 parts per million (ppm). That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined it appropriate to establish the tolerance for residues of the herbicide quinclorac in or on imported barley grain at 2.0 ppm. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the 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 the 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 the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D) of the FFDCA, and the factors specified in section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of quinclorac on imported barley grain at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by quinclorac as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of March 26, 1999 (64 FR 14626) (FRL–6069–5).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

A summary of the toxicological endpoints for quinclorac used for human risk assessment is shown in the following Table of this unit.

SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR QUINCLORAC FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional FQPA, SF	*FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–49 years of age)	NOAEL = 200 milligram/kilogram/day (mg/kg/day) UF = 100Acute reference dose (RfD) = 2.0 mg/kg/day	FQPA SF = 1x aPAD = acute RfD ÷ FQPA SF = 2.0 mg/kg/day	Developmental toxicity study in rabbits LOAEL = 600 mg/kg/day based on increased early resorptions and postimplantation loss, decreased live fetuses, decreased fetal weight.
Chronic dietary (All populations)	NOAEL= 37.5 mg/kg/day UF = 100Chronic RfD =0.38 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD ÷ FQPA SF = 0.38 mg/kg/day	Dietary carcinogenicity in mice LOAEL = 150 mg/kg/day based on decreased body weight
Incidental Oral Short-term (1–30 days) and Intermediate-term (1–6 months)	NOAEL = 70 mg/kg/day	FQPA SF = 0.38 LOC for MOE = 100 (Residential)	Developmental toxicity study in rabbits LOAEL = 200 mg/kg/day based on decreased maternal body weight gain and food consumption (and increased water consumption)
Dermal (All durations)	Not applicable. A dermal endpoint was not selected because an appropriate endpoint was not available (no dermal toxicity at limit dose of 1,000 mg/kg/day in 21–day dermal toxicity study).		
Short-term inhalation (1 to 30 days) and Intermediate-term inhalation (1–6 months)	NOAEL= 70 mg/kg/day (inhalation absorption rate = 100% relative to oral absorption)	FQPA SF = 0.38 LOC for MOE = 100 (Residential)	Developmental toxicity study in rabbits. LOAEL = 200 mg/kg/day based on decreased maternal body weight gain and food consumption (and increased water consumption.
Long-term inhalation (>6 months)	Not applicable. Long-term inhalation exposure is not anticipated under current use scenarios.		
Cancer (Oral, dermal, inhalation)	Classification: "Not classifiable as to carcinogenicity to humans" based on an equivocal increase in pancreatic acinar cell adenomas in the male rat only and no increases in female rats or in mice.		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to quinclorac, EPA considered exposure under the petitioned-for tolerances as well as all existing quinclorac tolerances in (40 CFR 180.463). EPA assessed dietary exposures from quinclorac in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues. Percent crop treated and/or anticipated residues were not used.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994-1996 and 1998 CSFII. As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues. Percent crop treated and/or anticipated residues were not used.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for quinclorac in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of quinclorac. Further information regarding EPA drinking water models used in pesticide exposure assessment

can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of quinclorac for acute exposures are estimated to be 22.9 parts per billion (ppb) for surface water and 29 ppb for ground water. The EDWCs for chronic exposures are estimated to be 14.5 ppb for surface water and 29 ppb for ground water. The EDWCs were directly entered into the dietary exposure model (DEEM-FCID(™)).

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).

Quinclorac is currently registered for the following residential non-dietary sites: Ornamental plantings and turfgrass. EPA assessed residential post-application exposure using the following assumptions:

i. Five percent of the application rate has been used to calculate the day-zero turf transferable residue (TTR) residue levels used for assessing risk from hand-to-mouth exposures, since quinclorac-specific turf transferable residue study data are not available.

ii. Twenty percent of the application rate has been used to calculate the day-zero turf transferable residue (TTR) residue levels used for assessing risk from object-to-mouth exposures (a higher percent transfer has been used for object-to-mouth behaviors, because it involves a teething action believed to be more analogous to DFR/leaf wash sample collection where 20 percent is also used).

iii. Three year old toddlers are expected to weigh 15 kilograms (representing an average weight from years one to six)

iv. Hand-to-mouth exposures are based on a frequency of 20 events/hour and a surface area per event of 20 cm^2, representing the palmar surfaces of three fingers.

v. Saliva extraction efficiency is 50 percent meaning that every time the hand goes in the mouth approximately ½ of the residues on the hand are removed.

vi. Object-to-mouth exposures are based on 25 cm^2 surface area.

vii. Exposures durations for turfgrass scenarios are estimated to be 2 hours based on information in HED's Exposure Factors Handbook.

viii. Soil residues are contained in the top centimeter and soil density is 0.67 mL/gram.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to quinclorac and any other substances and quinclorac does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that quinclorac has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased pre- and/or postnatal susceptibility from exposure to quinclorac. Offspring effects were only noted at or above maternally toxic dose levels.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for quinclorac is complete for the purposes of this action.

ii. There is no indication that quinclorac 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 quinclorac results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated and tolerance-level residues. Conservative ground and surface water modeling estimates were used. Similarly conservative Residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by quinclorac.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to quinclorac will occupy <1% of the aPAD for the population group (females 13–49 years) receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to quinclorac from food and water will utilize 2% of the cPAD for the population group (children 1–2 years). Based on the current use patterns, chronic residential exposure to residues of quinclorac is not expected.

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

Quinclorac is currently registered for uses that could result in short-term residential post-application exposure

and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for quinclorac. The post-application exposure scenarios from the use on turf represent the worst-case estimates of exposure and risk.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential post-application exposures aggregated result in aggregate MOEs of 3,300 for infants (<1 year), 3,100 for children 1–2 years, and 3,200 for children 3–5 years. These values are greater than 100 and, therefore, indicate that risks are below the Agency's LOC.

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

Though residential post-application exposure could occur, no intermediate-term exposure scenarios are associated with quinclorac. Therefore, the aggregate risk is the sum of the risk from food and water and non-dietary (residential post-application exposures).

5. *Aggregate cancer risk for U.S. population.* Quinclorac is classified as "Group D, not classifiable as to carcinogenicity to humans," under the 1986 Agency cancer classification guidelines. Available carcinogenicity studies indicate that there was equivocal evidence of an increase in the incidince of pancreatic acniar cell adenomas in the male rat, but no treatment-associated in increases in tumors were observed in female rats or in mice. A quantification of cancer risk is not warrented because the chronic RfD of 0.4 mg/kg/day is approximately 1,200-fold lower than the dose (487 mg/kg/day) that induced the benign pancreatic tumors. Thus, the chronic RfD will adequately account for all chronic effects, including the observed adenomas, likely to result from exposure to quinclorac. Additionally, if quinclorac is evaluated under the current 2005 Guidelines for Carcinogen Risk Assessment, quinclorac will be classified as "Not Likely to be Carcinogenic to Humans" since only benign tumors were seen in only one sex and in one species.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to quinclorac residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (BASF Methods A8902 (plants) and 268/1 (livestock)) is available to enforce the tolerance expression. The methods 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) established for quinclorac. A Canadian MRL of 2.0 ppm is established for residues of quinclorac in/on barley grain.

C. Changes from Notice of Filing

BASF Corporation initially requested a tolerance of 1.5 ppm be established for residues of quinclorac in or on imported barley grain. However, based on residue trials conducted in Canada and reviewed by Health Canada's Pest Management Regulatory Agency (PMRA), a MRL of 2.0 ppm was established for residues of quinclorac in or on barley grain in Canada. Due to trade-harmonization issues, EPA also supports a tolerance of 2.0 ppm for residues of quinclorac in or on imported barley grain.

V. Conclusion

Therefore, the tolerance is established for residues of quinclorac, 3,7-dichloro-8-quinoline carboxylic acid, in or on imported barley grain at 2.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 21, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.463 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.463 Quinclorac; tolerances for residues.

(a) * * *

Commodity	Parts per million
Barley, grain	2.0
* * *	* *

* * * * *

[FR Doc. E7–19227 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0993; FRL–8148–4]

Florasulam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for florasulam in or on barley, grain at 0.01 ppm, barley, hay at 0.05 ppm, barley straw at 0.05 ppm, oat, grain at 0.01 ppm, oat, forage at 0.05 ppm, oat, hay at 0.05 ppm, oat, straw at 0.05 ppm, rye, grain at 0.01 ppm, rye, forage at 0.05 ppm, rye, straw at 0.05 ppm, wheat, grain at 0.01 ppm, wheat, forage at 0.05 ppm, wheat, hay at 0.05 ppm, and wheat, straw at 0.05 ppm. Dow AgroSciences LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 28, 2007. Objections and requests for hearings must be received on or before November 27, 2007, 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–2006–0993. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.* You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0993 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 November 27, 2007.

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–2006–0993, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of January 24, 2007 (72 FR 3132) (FRL–8110-9), 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 6F7061) by Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the herbicide florasulam N-(2,6-difluorophenyl)-8-fluoro-5-methoxy(1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide, in or on barley, grain at 0.01 parts per million (ppm), barley, forage at 0.05 ppm, barley, hay at 0.05 ppm, barley straw at 0.05 ppm, oats, grain at 0.01 ppm, oats, forage at 0.05 ppm, oats, hay at 0.05 ppm, oats, straw at 0.05 ppm, rye, grain at 0.01 ppm, rye, forage at 0.05 ppm, rye, hay at 0.05 ppm, rye, straw at 0.05 ppm, triticale, grain at 0.01 ppm, triticale, forage at 0.05 ppm, triticale, hay at 0.05 ppm, triticale, straw at 0.05 ppm, wheat, grain at 0.01 ppm, wheat, forage at 0.05 ppm, wheat, hay at 0.05 ppm, and wheat, straw at 0.05 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*. Comments were received on the notice of filing. B. Sachau commented that there are health implications listed for this chemical and a new pesticide should not be approved because the safety tests required by the EPA are insufficient. EPA's response to these comments is discussed in Unit IV.C. of this document

EPA is not establishing the proposed tolerances for barley, forage and rye, hay because EPA does not consider these items to be significant food commodities as noted in Table 1 of the OPPTS 860 guidelines. EPA is also not establishing the proposed tolerances for triticale. Triticale is covered by the tolerance for wheat as specified in 40 CFR 180.1(g).

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of florasulam, N-(2,6-difluorophenyl)-8-fluoro-5-methoxy(1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide, on barley, grain at 0.01 ppm, barley, hay at 0.05 ppm, barley, straw at 0.05 ppm, oat, grain at 0.01 ppm, oat, forage at 0.05 ppm, oat, hay at 0.05 ppm, oat, straw at 0.05 ppm, rye, grain at 0.01 ppm, rye, forage at 0.05 ppm, rye, straw at 0.05 ppm, wheat, grain at 0.01 ppm, wheat, forage at 0.05 ppm, wheat, hay at 0.05 ppm, and wheat, straw at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by florasulam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The human health risk assessment document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP-2006-0993 in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for florasulam used for human risk assessment is shown in Table 1 of this unit.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLORASULAM FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure	Uncertainty Factors/ FQPA Safety Factors/ RfD, PAD, Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–49 years of age)	N/A	N/A	No appropriate endpoint identified.
Acute dietary (General population including infants and children)	N/A	N/A	No appropriate endpoint identified. The effects observed in an acute neurotoxicity study were seen at a very high dose 2,000 mg/kg/day) that is considered not applicable to human exposure.
Chronic dietary (All populations)	NOAEL= 5 mg/kg/day	UF_A = 10X UF_H = 10X I FQPA SF = 1X cPAD = 0.05 mg/kg/day	Chronic toxicity – dogs. LOAEL = 50 mg/kg/day, based on decreased body weights (17%), body weight gains (68%), and food consumption in the females; adverse liver alterations; slight vacuolation of the zona reticularis and zona fasciculate in the adrenal gland (fatty change) in both sexes.
Short-term dermal (1 to 30 days) (Residential)	N/A	N/A	No appropriate endpoint identified. 28–day dermal toxicity study – rats. LOAEL = not determined, no systemic effect up to the limit dose of 1,000 mg/kg/day.
Inhalation Short-term (1-30 days)	NOAEL = 5 mg/kg/day IAF = 100%	UF_A = 10X UF_H = 10X FQPA SF = 1X Residential LOC for MOE = 100 (Residential)	90–day oral toxicity – dogs. LOAEL = 50 mg/kg/day based on increased incidence/severity of hepatic vacuolation in both sexes.
Cancer (oral, dermal, inhalation)	"Not likely to be Carcinogenic to Humans"		

NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UFA = extrapolation from animal to human (interspecies). UFH = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. N/A = not applicable. LOC = level of concern. MOE = margin of exposure.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to florasulam, EPA considered exposure under the petitioned-for tolerances . EPA assessed dietary exposures from florasulam in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for florasulam; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Method (DEEM-FCID) and the food consumption data from the USDA 1994–1996, and 1998 CSFII. As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

iii. *Cancer.* There were no treatment-related tumors observed in carcinogenicity studies in rats and mice. Because EPA has concluded that florasulam is not a carcinogen, a cancer exposure assessment was not needed.

iv. *Anticipated residue and percent crop treated (PCT) information.* The chronic analyses assumed tolerance level residues, 100% crop treated (CT), and DEEM ™ default processing factors for all registered and proposed commodities. For those processed commodities in the DEEM-FCID ™ residue list which were not in DEEM ™, a processing factor of 1 was assumed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for florasulam in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of florasulam. 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.*

The 5-OH degradate formed by demethylation of florasulam is by far the predominant environmental residue reaching maximum levels of 70% of applied material in the hydrolysis and metabolism (soil, aquatic) studies. This degradate is assumed to be of comparable toxicity to the parent. On this basis, the residues of concern in drinking water are the parent and 5-OH degradate. The Agency determined separate estimated drinking water concentrations (EDWCs) for these two compounds using FIRST (FQPA Index Reservoir Screening Tool) and SCI-GROW2 (Screening Concentration in Ground Water) models.

The modeled water residues were incorporated in the DEEM-FCID into the food categories "water, direct, all sources" and "water, indirect, all sources." To arrive at the total EDWC, the maximum chronic surface water value for the parent was added to the maximum chronic surface water value for the major degradate. For the parent, the chronic aerial spray value (16.8 ppTr) was higher than the ground spray value. For the degradate, the ground spray value was the higher of the two (217.5 ppTr). Adding the 2 values (16.8 + 217.5) results in the total chronic EDWC of 234 ppTr, or 0.234 ppb. This information can be found under docket identification (ID) number EPA–HQ–OPP–2006–0993.

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).

Florasulam is not registered for use on any sites that would result in residential exposure. Therefore, a residential exposure assessment was not conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to florasulam and any other substances and florasulam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that florasulam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased susceptibility and no residual uncertainties with regard to pre- and/or postnatal toxicity following *in utero* exposure to rats or rabbits and pre and/or post-natal exposures to rats.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for florasulam is complete.

ii. There is no indication that florasulam 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 florasulam results in increased susceptibility following *in utero* exposure to rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. Conservative ground and surface water modeling estimates were used. These assessments will not underestimate the dietary exposure and risks posed by florasulam. There are no registered or proposed residential uses of florasulam.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* No acute dietary endpoint was identified; therefore, florasulam is not expected to pose an acute risk.

2. *Chronic risk.* The chronic dietary exposure analysis included both food and drinking water. The general U.S. population and all population subgroups have risk estimates that are below the level of concern. The most highly exposed population subgroup is children (1-2 years) which utilizes < 1% of the cPAD. The general U.S. population utilizes <1% of the cPAD. There are no residential uses for florasulam that result in chronic residential exposure to florasulam.

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

Florasulam is not registered for use on any sites that would result in residential exposure. Therefore, short-term and intermediate-term aggregate risk assessments were not conducted.

4. *Aggregate cancer risk for U.S. population.* Exposure to florasulam did not result in a treatment-related increase in tumor formation in rats or mice; therefore, florasulam is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to florasulam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (capillary gas chromatography with mass selective detection (GC/MSD) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Maximum residue levels (MRLs) are established in Canada for residues of florasulam in barley, oats, and wheat grain at 0.01 ppm. No harmonization issues exist since the same tolerance level is recommended for the use in the United States. There are no Codex MRLs.

C. Response to Comments

One comment was received in response to the notice of filing from B. Sachau, 15 Elm St., Florham Park, NJ 07932. The commenter objected to the sale or use of this product and the acceptance of anything except a zero tolerance. The commenter also indicated health implications from this chemical. However, the comment contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate expose to florasulam, including all anticipated dietary exposure and all other exposures for which there is reliable information. The commenter also questioned the rigor of the safety testing submitted on florasulam; however, the comment was in the form of a conclusory statement and provided no supporting documentation or rationale for the position taken.

V. Conclusion

Therefore, the tolerance is established for residues of florasulam, N-(2,6-difluorophenyl)-8-fluoro-5-methoxy(1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide, in or on barley, grain at 0.01 ppm, barley, hay at 0.05 ppm, barley, straw at 0.05 ppm, oat, grain at 0.01 ppm, oat, forage at 0.05 ppm, oat, hay at 0.05 ppm, oat, straw at 0.05 ppm, rye, grain at 0.01 ppm, rye, forage at 0.05 ppm, rye, straw at 0.05 ppm, wheat, grain at 0.01 ppm, wheat, forage at 0.05 ppm, wheat, hay at 0.05 ppm, and wheat, straw at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 23, 2007.

Debra Edwards,

Director, 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 180.633 is added to read as follows:

§ 180.633 Florasulam; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide florasulam N-(2,6-difluorophenyl)-8-fluoro-5-methoxy(1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide in or on the following commodities:

Commodity	Parts per million
Barley, grain	0.01
Barley, hay	0.05
Barley, straw	0.05
Oat, forage	0.05
Oat, grain	0.01
Oat, hay	0.05
Oat, straw	0.05
Rye, forage	0.05
Rye, grain	0.01

Commodity	Parts per million
Rye, straw	0.05
Wheat, forage	0.05
Wheat, grain	0.01
Wheat, hay	0.05
Wheat, straw	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E7–19219 Filed 9–27–07; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0072; FRL–8148–2]

Tembotrione; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione and its metabolite (M5); 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione in or on corn (field, sweet and pop) and livestock commodities. Bayer CropScience requested those tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 28, 2007. Objections and requests for hearings must be received on or before November 27, 2007, 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–2006-0072. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Eugene Wilson, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-6103; e-mail address: *wilson.eugene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006-0072 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 November 27, 2007.

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–2006-0072, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 26, 2006 (71 FR 24690 - 24692) (FRL–8063-6), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F7009) by Bayer CropScience, 2 TW Alexander Drive, P.O. Box 12014, RTP, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for combined residues of the herbicide AE 0172747 (tembotrione), 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione, and metabolite (M5), AE 1417268 (2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione (expressed as tembotrione equivalents in or on corn, field, grain at 0.02 ppm; corn, field, forage at 0.5 ppm; corn, field, stover at 0.5 ppm; corn, sweet, kernel plus cob with husks removed at 0.03 ppm; corn, sweet, forage at 1.0 ppm; corn sweet, stover at 1.0 ppm; popcorn, grain at 0.01 ppm; Popcorn, stover, 0.25 ppm; cattle, liver at 0.5 ppm; cattle, meat byproducts, except liver at 0.07 ppm; goat, liver at 0.5 ppm; goat, kidney at 0.07 ppm; Hog Liver at 0.5; Hog, Kidney at 0.07 ppm, sheep, kidney at 0.07 ppm; sheep, meat byproducts at 0.5 ppm ; horse, kidney at 0.07 ppm; horse, meat byproducts at 0.5 ppm. There were no comments received in response to the notice of filing.

Based on the aggregate exposure from food and feed commodities resulting from the use-patterns proposed in the petition, the proposed tolerances were revised to account for both tembotrione and its metabolite M5, expressed as tembotrione equilivants. The aggregate risk assessment is discussed in Unit III, below. The reasons for these changes are also explained in Unit V.

III. Aggregate Risk Assessment and Determination of Safety

For tembotrione, aggregate exposure risk assessments were performed for the following scenarios: acute aggregate exposure (food and drinking water), and chronic aggregate exposure (food and drinking water). Short- and intermediate-term assessments were not performed because there are no registered or proposed residential non-food uses. The chronic Reference Dose (cRfD) will be protective of cancer and non-cancer effects, because tembotrione is classified as "Suggestive Evidence of Carcinogenicity" and EPA's Cancer Assessment Review Committee (CARC) recommended that a separate quantification of cancer risks is not required, while noting that the progression of non-neoplastic related lesions in rats was biologically plausible by non-genotoxic modes of action for the corneal tumors.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy]methyl]benzoyl]-1,3-cyclo hexanedione and metabolite (M5), 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione, in or on corn, field, grain at 0.02 ppm; corn, field, forage at 0.60 ppm; corn, field, stover at 0.45 ppm; corn, sweet, kernel plus cob with husks removed at 0.04 ppm; corn, sweet, forage at 1.0 ppm; corn, sweet, stover at 1.2 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 0.35 ppm; cattle, liver at 0.40 ppm; cattle, meat byproducts, except liver 0.07 ppm; goat, liver at 0.40 ppm; goat, meat byproducts, except liver at 0.07 ppm; horse, liver at 0.40 ppm; horse, meat byproducts except liver at 0.07 ppm; sheep, liver at 0.40 ppm; sheep, meat byproducts, except liver at 0.07 ppm; poultry, liver at 0.07 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2006–0072 in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are

considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

A summary of the toxicological endpoints for tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione used for human risk assessment is shown in Table 1 of this unit.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TEMBOTRIONE, 2-[2-CHLORO-4-(METHYLSULFONYL)-3-[(2,2,2-TRIFLUOROETHOXY)METHYL]BENZOYL]-1,3-CYCLOHEXANEDIONE FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional FQPA, SF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (General population including infants and children) and Females 13 to 49	LOAEL = 0.8 (mg/kg/day) SF = 1000 UF_A = 10X UF_H = 10X FQPA SF = 10X(includes UF_L = 10X) Acute reference dose (RfD) = 0.0008 mg/kg	Special FQPA SF = 1 aPAD = acute RfD + Special FQPA SF = 0.0008 mg/kg	Developmental Neurotoxicity Study: Offspring NOAEL was not established.Offspring LOAEL = 0.8 mg/kg/day based on decreased acoustic startle response on PND 60 (males), and brain morphometric changes on PND 75 (males and females).
Chronic dietary(All populations)	NOAEL= .04 mg/kg/day SF = 100 UF_A = 10X UF_H = 10X FQPA SF = 1X Chronic RfD = 0.0004 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD Special FQPA SF = 0.0004 mg/kg/day	Chronic/Carcinogenicity Study LOAEL = 0.79 mg/kg/day based on neovascularization and edema of the cornea and snow flake-like corneal opacity, unilateral or bilateral keratitis of the eye, decreased mean body weight and mean body-weight gain, increased total cholesterol, higher ketone levels and lower pH values, higher protein levels, increased kidney weight, kidney to body weight and kidney to brain weight ratios, chronic nephropathy and atrophy of the sciatic nerve.
Short-term dermal (1 to 30 days) (Residential)	Oral study LOAEL= 0.8 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 10X (includes UFL = 10X) (dermal absorption rate = 15 %)	LOC for MOE =1000	Developmental neurotoxicity Study Offspring NOAEL was not established.Offspring LOAEL = 0.8 mg/kg/day based on decreased acoustic startle response on PND 60 (males), and brain morphometric changes on PND 75 (males and females).
Intermediate-term dermal (1 to 6 months) (Residential)	Oral study LOAEL= 0.8 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 10X (includes UFL = 10X) (dermal absorption rate = 15 %)	LOC for MOE = 1000 (Residential)	Developmental neurotoxicity Study Offspring NOAEL was not established.Offspring LOAEL = 0.8 mg/kg/day based on decreased acoustic startle response on PND 60 (males), and brain morphometric changes on PND 75 (males and females).

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TEMBOTRIONE, 2-[2-CHLORO-4-(METHYLSULFONYL)-3-[(2,2,2-TRIFLUOROETHOXY)METHYL]BENZOYL]-1,3-CYCLOHEXANEDIONE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional FQPA, SF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Long-term dermal (>6 months to lifetime) (Residential)	Oral study NOAEL= 0.04 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 1X (dermal absorption rate = 15 % when appropriate)	LOC for MOE = 100 (Residential)	Chronic/Carcinogenicity Study LOAEL = 0.79 mg/kg/day based on neovascularization and edema of the cornea and snow flake-like corneal opacity, unilateral or bilateral keratitis of the eye, decreased mean body weight and mean body-weight gain, increased total cholesterol, higher ketone levels and lower pH values, higher protein levels, increased kidney weight, kidney to body weight and kidney to brain weight ratios, chronic nephropathy and atrophy of the sciatic nerve.
Short-term inhalation (1 to 30 days) (Residential)	Oral study LOAEL= 0.8 UF_L = 10X) (inhalation absorption rate = 100%)	LOC for MOE = 1000 (Residential)	Developmental neurotoxicity Study Offspring NOAEL was not established. Offspring LOAEL = 0.8 mg/kg/day based on decreased acoustic startle response on PND 60 (males), and brain morphometric changes on PND 75 (males and females).
Intermediate-term inhalation (1 to 6 months) (Residential)	Oral study LOAEL= 0.8 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 10X (includes UF_L = 10X) (inhalation absorption rate = 100%)	LOC for MOE = 1000 (Residential)	Developmental neurotoxicity Study] Offspring NOAEL was not established.Offspring LOAEL = 0.8 mg/kg/day based on decreased acoustic startle response on PND 60 (males), and brain morphometric changes on PND 75 (males and females).
Long-term inhalation (>6 months) (Residential)	Oral study NOAEL= 0.04 mg/kg/day UF_H = 10X FQPA SF = 1X (inhalation absorption rate = 100%)	LOC for MOE = 100 Residential	Chronic/Carcinogenicity Study LOAEL = 0.79 mg/kg/day based on neovascularization and edema of the cornea and snow flake-like corneal opacity, unilateral or bilateral keratitis of the eye, decreased mean body weight and mean body-weight gain, increased total cholesterol, higher ketone levels and lower pH values, higher protein levels, increased kidney weight, kidney to body weight and kidney to brain weight ratios, chronic nephropathy and atrophy of the sciatic nerve.
Cancer (Oral, dermal, inhalation)	Classification: "Suggestive Evidence of Carcinogenic Potential" based on the observance of squamous cell carcinomas in a rat carcinogenicity study. Quantification of cancer risk is not required.		

UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-tri

fluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

Effects were identified in the toxicological studies for tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione; therefore, a quantitative acute dietary exposure assessment was necessary. The acute analysis assumed 100% crop treated (CT), Dietary Exposure Evaluation Model (DEEM(TM)) 7.81 default processing factors, and tolerance-level residues for all foods. For drinking water, the entire distribution of estimated daily exposure values from the Pesticide Root Zone Modeling-Exposure Evaluation Analysis Modeling System (PRZM-EXAMS) run was incorporated in the acute probabilistic exposure analyses. The resulting acute dietary (food + water) risk estimates were <32% of the aPAD for the general U.S. population and <77% of the aPAD for all infants (<1 year old, the most highly-exposed population subgroup) at the 95th percentile; less than HED's LOC (100% aPAD). Even though the entire distribution of estimated daily drinking water exposure values was incorporated, this analysis is still conservative since tolerance-level residues, DEEM(TM) 7.81 default processing factors, and 100% CT were assumed. Also, the distribution of estimated daily drinking water exposure still assumes 100% CT and the maximum application rate.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA, 1994–1996, and 1998 Continuing Survey of Food Intake by Individuals. As to residue levels in food, EPA assumed all foods for which there are proposed tolerances were treated and contain tolerance-level residues. A conservative chronic dietary assessment assuming tolerance-level residues, DEEM(TM) 7.81 default processing factors, and 100% CT was also conducted. The highest estimate of chronic surface water exposure (1.05 parts per billion (ppb)) was used for drinking water in this analysis.

iii. *Cancer.* There was only suggestive evidence of carcinogenic potential based on the observance of squamous cell carcinomas in a rat carcinogenicity study. Quantification of cancer risk is not required. Dietary cancer risk concerns due to long-term consumption of tembotrione residues are adequately addressed by the chronic exposure analysis using the cPAD.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione. 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 PRZM/EXAMS and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione for acute exposures are estimated to be 5.84 parts per billion (ppb) for surface water and 0.0139 ppb for ground water. The EECs for chronic exposures are estimated to be 1.05 ppb for surface water and 0.0139 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 5.84 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 1.05 ppb was used to access 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).

Tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Tembotrione, belongs to a class of herbicides (including mesotrione, pyrasulfotole, isoxaflutole and topramezone) that inhibit the liver enzyme 4-hydroxyphenylpyruvate dioxygenase (HPPD). As discussed above, EPA has concluded that the ocular effects caused by these herbicides has limited relevance to humans. Nonetheless, as a worst case scenario, EPA has assessed aggregate exposure to tembotrione based on ocular effects in rats. For similar reasons, a semi-quantitative screening cumulative assessment was conducted using the rat ocular effects and 100% crop treated information. The results of this screening analysis did not indicate a concern. In the future, assessments of HPPD-inhibiting herbicides will consider more appropriate models and cross species extrapolation methods.

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is evidence of increased susceptibility in rabbit and rat fetuses to *in utero* exposure to tembotrione compared to the doses for the effects found in maternal animals. In a developmental toxicity study in rabbits, the NOAEL of 1 milligram per kilogram of body weight per day (mg/kg bw/day) was based on decreased growth and/or delayed development of the skeleton

and increased incidences of skeletal variations and anomalies in fetuses seen at a LOAEL of 10 mg/kg/day. This LOAEL is ten-fold lower than the dose resulting in maternal toxicity (100 mg/kg/day, few or no feces, late abortion, decreased body weight and food consumption). In a rat developmental toxicity study, increased skeletal variations (e.g., delayed ossifications) and other fetal effects (decreased fetal body weights and an increased number of runts) occurred at a dose of 25 mg/kg/day (the lowest dose tested), which is lower than the 125 mg/kg bw dose that caused marginal maternal toxicity (decreased body-weight gains and food consumption). In a rat developmental neurotoxicity study (DNT), decreased post-weaning body weight (males), decreased acoustic startle response and brain morphometric changes were seen in rat fetuses at a dose of 0.8 mg/kg/day (the lowest dose tested) which was lower than the dose of 16.3 mg/kg/day at which maternal toxicity occurred (cornel opacity during lactation).

Although, these studies provide evidence of increased susceptibility following pre- and post-natal exposures, the concern for increased susceptibility is low for several reasons. First, a well characterized NOAEL (with a sufficient margin from the LOAEL) protecting fetuses has been established in the rabbit prenatal study. Also, the prenatal developmental NOAELs or LOAELs for both the rabbit and rat studies are approximately 12 to 30-fold higher than the LOAEL used for the acute RfD. Although there were some marginal effects reported in the offspring in the rat 2-generation reproduction study at 1.4 mg/kg/day (the lowest dose tested), these parameters (ocular, decreased absolute brain weight, preputial separation) were also evaluated at the lower dose in the rat DNT study but were not found at the low dose tested (0.8 mg/kg/day). Therefore, a NOAEL has been identified for these effects. Other effects indicative of neurotoxicity (altered brain morphometrics, decrease in auditory startle response) were seen in the rat developmental neurotoxicity study at the lowest dose tested. The response for brain morphometrics seen at termination is considered to be marginal or equivocal since the changes were small and no clear dose response was observed. The decreased acoustic startle response was not found in young pups (post-natal day 22) but only observed in adult rats (post-natal day 60) and was statistically significant at the mid and high dose but not at the lowest dose tested.

3. *Conclusion.* Given the above-described data on pre- and post-natal effects, the only significant uncertainty concerns the acute RfD due to the failure to identify a NOAEL for the brain morphometric alterations found in the rat DNT. The LOAEL in the DNT is lower than the NOAEL and the LOAEL from the rabbit and rat developmental studies, and thus is the lowest dose reflective of potential acute effects. Because of the uncertainty as to the NOAEL for the acute effects (brain morphometric alterations) seen at 0.8 mg/kg/day in the DNT, EPA has retained the additional 10X FQPA safety factor in calculating the acute RfD. This is a conservative step given the equivocal nature of the brain morphometric alterations seen at the LOAEL in the DNT.

EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X for assessing chronic risk. That decision is based on the following findings:

i. For the reasons described in Unit III.D.2., the toxicity database for tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione is adequate to assess chronic risk.

ii. Despite evidence of sensitivity in pre- and post-natal studies, as detailed in Unit III.D.2., the chronic RfD based on an adult animal study (chronic rat study) is considered to be protective of the chronic offspring toxicity found in the rat DNT and 2-generation reproduction studies. The 2-generation reproduction study did not identify a NOAEL for the chronic effects seen on brain weight and preputial separation but a NOAEL can be characterized from the DNT, as discussed above, at 0.8 mg/kg/day. The NOAEL used to set the chronic RfD is 20-fold lower than this 0.8 mg/kg/day dose and is not based on an effect as to which the data have raised sensitivity concerns. Similarly, the chronic rat study and the NOAEL from that study are protective of the chronic effects seen in the DNT study and the other chronic effects found in the 2-generation reproduction study. The endpoints of concern for the chronic RfD are based on ocular toxicity, body weight decreases, kidney toxicity, and changes in the clinical chemistry parameters. Target organ toxicity such as ocular toxicity, kidney toxicity, body weight changes and nervous system effects were assessed in the young through pre- and post-natal exposure to tembotrione in the 2-generation reproduction study and the DNT study. In those studies, these effects were observed at higher doses in the young than in the adults in the chronic rat study. Therefore, the chronic RfD is considered to be protective of effects in the young. As noted, the NOAEL (0.04 mg/kg/day) selected for the chronic RfD is 20-fold lower than the dose at which developmental and neurological effects were observed in any study; it is also 20-fold lower than the NOAEL for other chronic effects seen in the young.

iii. There are no residual uncertainties identified in the exposure data bases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues of tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclo hexanedione will occupy 77% of the aPAD for the population group (infants (<1 year old) receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione from food and water will utilize 48% of the cPAD for the population group (children 3 to 5 years old). There are no residential uses for tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione that result in chronic residential exposure to tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione.

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

Tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

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

Tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclo hexanedione is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Dietary cancer risk concerns due to long-term consumption of tembotrione residues are adequately addressed by the chronic exposure analysis using the cPAD.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An Adequate enforcement methodology, liquid chromatography/mass spectroscopy (LC/MS/MS) method 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 is neither a Codex proposal, nor Canadian or Mexican limits for residues of tembotrione and its metabolites in or on crops or livestock commodities.

C. Response to Comments

There were no comments received on the Notice of Filing of the pesticide petition.

V. Conclusion

Therefore, the tolerance is established for combined residues or residues of tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-(trifluoro ethoxy)methyl]benzoyl]-1,3-cyclohexanedione, metabolite; 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluorethoxy)methyl]benzoyl]-4,6-dihydroxycyclohexanedione, in or on corn, field, grain at 0.02 ppm; corn, field, forage at 0.60 ppm; corn, field, stover at 0.45 ppm; corn, sweet, kernel plus cob with husks removed at 0.04 ppm; corn, sweet, forage at 1.0 ppm; corn sweet, stover at 1.2 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 0.35 ppm; cattle, liver at 0.40 ppm; cattle, meat byproducts, except liver 0.07 ppm; goat, liver at 0.40 ppm; goat, meat byproducts, except liver at 0.07 ppm; horse, liver at 0.40 ppm; horse, meat byproducts except liver at 0.07 ppm; sheep, liver at 0.40 ppm; sheep, meat byproducts, except liver at 0.07 ppm; poultry, liver at 0.07 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 23, 2007.

Debra Edwards,

Director, 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 180.634 is added to subpart C to read as follows:

§180.634 Tembotrione; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, tembotrione, 2-[2-chloro-4-(methyl sulfonyl)-3-[(2,2,2-trifluoro ethoxy)methyl]benzoyl]-1,3-cyclo hexanedione and its metabolite 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-4,6-dihydroxycyclohexane-1,3-dione in or on the following commodities:

Commodity	Parts per million
Cattle, liver	0.40
Cattle, meat byproducts, except liver	0.07
Corn, field, forage	0.60
Corn, field, grain	0.02
Corn, field, stover	0.45
Corn, pop, grain	0.02
Corn, pop, stover	0.35
Corn, sweet, forage	1.0
Corn, sweet, kernel plus cob with husks removed	0.04
Corn, sweet, stover	1.2
Goat, liver	0.40
Goat, meat byproducts, except liver	0.07
Horse, liver	0.40
Horse, meat byproducts, except liver	0.07
Poultry, liver	0.07
Sheep, liver	0.40
Sheep, meat byproducts, except liver	0.07

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E7–19230 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1545–CN]

42 CFR Part 409

RIN 0938–AM46

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Corrections

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

ACTION: Final rule; correction notice.

SUMMARY: This document corrects technical errors that appeared in the August 3, 2007 **Federal Register**, entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008; Final Rule."

DATES: *Effective Date:* This correction is effective October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION:

I. Background

FR Doc. 07–3784 of August 3, 2007 (72 FR 43412) contained technical errors that this notice serves to identify and correct. The first involves the construction of the 2004 skilled nursing facility (SNF) market basket update. In the SNF prospective payment system (PPS) proposed rule for fiscal year (FY) 2008 (72 FR 25552, May 4, 2007), we proposed to discontinue the previous, 1997-based market basket's use of the Producer Price Index (PPI) for Industrial Chemicals, in favor of using a blended PPI composed of the PPIs for soap and other detergent manufacturing (North American Industrial Classification System (NAICS) 325611), polish and other sanitation good manufacturing (NAICS 325612), and all other miscellaneous chemical product and preparation manufacturing (NAICS 325998) in the 2004-based market basket, which we believed would better reflect SNF purchasing patterns. In the FY 2008 SNF PPS final rule, we finalized this proposal "* * * to revise the market basket to reflect more appropriate, industry-specific price proxies (such as the blended compensation and chemical price proxies)" (72 FR 43426, 43436).

However, in performing the actual calculations in the final rule, we inadvertently proxied the chemicals cost weight by the PPI for Industrial Chemicals rather than by the appropriate blended chemical price proxy. We note that this error did not affect the final market basket update factor of 3.3 percent, but did affect the labor-related share. The corrected labor-related share is 70.249, which is slightly higher than the 70.152 figure published in the FY 2008 SNF PPS final rule. Accordingly, in this notice, we are republishing corrected versions of Tables 6, 7, 10, 13, and 14 (as well as revising the corresponding portions of the final rule's preamble text) in order to reflect the final, corrected labor-related share.

In addition, we have determined that in the process of developing the most recent hospital wage index, two inpatient hospital providers with wage data that belonged in the Hartford–West Hartford–East Hartford, CT core-based statistical area (CBSA) were inadvertently included in rural Connecticut instead. Accordingly, in Table 8, we are revising the wage index value for CBSA Code 25540 (Hartford–West Hartford–East Hartford, CT) from 1.0937 to the corrected value of 1.0930. Similarly, in Table 9, we are revising the wage index value for CBSA Code 7 (rural Connecticut) from 1.1283 to the corrected value of 1.1711. As we are revising only a single entry in each of these two tables, we are not republishing Tables 8 and 9 in their entirety in this notice; however, we note that the corrected versions of both tables are available online on the SNF PPS Web site, at *http://www.cms.hhs.gov/SNFPPS/04_WageIndex.asp*. Moreover, we note that the corrected version of Table 14 that we are republishing in this notice also reflects these corrected values. We are also correcting a typographical error in the final rule's version of that table, which had inadvertently displayed the wage data update for rural New England incorrectly as a negative value.

II. Correction of Errors

In FR Doc. 07–3784 (72 FR 43412), make the following corrections:

1. On page 43421, Table 6 is corrected to read as follows:

TABLE 6.—RUG–53

[Case-Mix Adjusted Federal Rates for Urban SNFs by Labor and Non-Labor Component.]

RUG–III category	Total rate	Labor portion	Non-labor portion
RUX	601.90	422.83	179.07
RUL	528.59	371.33	157.26
RVX	456.34	320.57	135.77
RVL	425.55	298.94	126.61
RHX	386.84	271.75	115.09
RHL	379.51	266.60	112.91
RMX	442.85	311.10	131.75
RML	406.19	285.34	120.85
RLX	314.39	220.86	93.53
RUC	510.99	358.97	152.02
RUB	468.47	329.10	139.37
RUA	446.48	313.65	132.83
RVC	410.89	288.65	122.24
RVB	390.37	274.23	116.14
RVA	350.78	246.42	104.36
RHC	357.52	251.15	106.37
RHB	341.39	239.82	101.57
RHA	316.46	222.31	94.15
RMC	328.48	230.75	97.73
RMB	319.69	224.58	95.11
RMA	312.35	219.42	92.93
RLB	289.47	203.35	86.12
RLA	246.95	173.48	73.47
SE3	362.08	254.36	107.72
SE2	307.83	216.25	91.58
SE1	274.11	192.56	81.55
SSC	269.71	189.47	80.24
SSB	255.05	179.17	75.88
SSA	250.65	176.08	74.57
CC2	268.25	188.44	79.81
CC1	244.79	171.96	72.83
CB2	233.06	163.72	69.34
CB1	222.79	156.51	66.28
CA2	221.33	155.48	65.85
CA1	206.67	145.18	61.49
IB2	197.87	139.00	58.87
IB1	194.94	136.94	58.00
IA2	178.81	125.61	53.20
IA1	171.48	120.46	51.02
BB2	196.40	137.97	58.43
BB1	190.54	133.85	56.69
BA2	177.34	124.58	52.76
BA1	165.61	116.34	49.27
PE2	214.00	150.33	63.67
PE1	209.60	147.24	62.36
PD2	203.73	143.12	60.61
PD1	200.80	141.06	59.74
PC2	193.47	135.91	57.56
PC1	190.54	133.85	56.69
PB2	170.01	119.43	50.58
PB1	168.54	118.40	50.14
PA2	167.08	117.37	49.71
PA1	162.68	114.28	48.40

2. On page 43422, Table 7 is corrected to read as follows:

TABLE 7.—RUG–53

[Case-Mix Adjusted Federal Rates for Rural SNFs by Labor and Non-Labor Component.]

RUG–III category	Total rate	Labor portion	Non-labor portion
RUX	628.90	441.80	187.10
RUL	558.86	392.59	166.27
RVX	471.49	331.22	140.27
RVL	442.08	310.56	131.52

TABLE 7.—RUG–53—Continued

[Case-Mix Adjusted Federal Rates for Rural SNFs by Labor and Non-Labor Component.]

RUG–III category	Total rate	Labor portion	Non-labor portion
RHX	394.83	277.36	117.47
RHL	387.83	272.45	115.38
RMX	444.62	312.34	132.28
RML	409.60	287.74	121.86
RLX	314.47	220.91	93.56
RUC	542.05	380.78	161.27
RUB	501.43	352.25	149.18
RUA	480.42	337.49	142.93
RVC	428.07	300.71	127.36
RVB	408.46	286.94	121.52
RVA	370.64	260.37	110.27
RHC	366.82	257.69	109.13
RHB	351.41	246.86	104.55
RHA	327.60	230.14	97.46
RMC	335.36	235.59	99.77
RMB	326.96	229.69	97.27
RMA	319.95	224.76	95.19
RLB	290.66	204.19	86.47
RLA	250.04	175.65	74.39
SE3	352.30	247.49	104.81
SE2	300.47	211.08	89.39
SE1	268.25	188.44	79.81
SSC	264.05	185.49	78.56
SSB	250.04	175.65	74.39
SSA	245.84	172.70	73.14
CC2	262.65	184.51	78.14
CC1	240.23	168.76	71.47
CB2	229.03	160.89	68.14
CB1	219.22	154.00	65.22
CA2	217.82	153.02	64.80
CA1	203.81	143.17	60.64
IB2	195.41	137.27	58.14
IB1	192.61	135.31	57.30
IA2	177.20	124.48	52.72
IA1	170.19	119.56	50.63
BB2	194.01	136.29	57.72
BB1	188.41	132.36	56.05
BA2	175.80	123.50	52.30
BA1	164.59	115.62	48.97
PE2	210.82	148.10	62.72
PE1	206.62	145.15	61.47
PD2	201.01	141.21	59.80
PD1	198.21	139.24	58.97
PC2	191.21	134.32	56.89
PC1	188.41	132.36	56.05
PB2	168.79	118.57	50.22
PB1	167.39	117.59	49.80
PA2	165.99	116.61	49.38
PA1	161.79	113.66	48.13

3. On page 43424, third column, first full paragraph, line 7, the figure "$29,758" is corrected to read "$29,755".

4. On page 43424, Table 10 is corrected to read as follows:

TABLE 10.—RUG–53

[SNF XYZ: Located in Cedar Rapids, IA (Urban CBSA 16300) Wage Index: 0.8852]

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adj.	Medicare days	Payment
RVX	$320.57	0.8852	$283.77	$135.77	$419.54	$419.54	14	$5,874.00
RLX	220.86	0.8852	195.51	93.53	289.04	289.04	30	8,671.00
RHA	222.31	0.8852	196.79	94.15	290.94	290.94	16	4,655.00
CC2	188.44	0.8852	166.81	79.81	246.62	*562.29	10	5,623.00
IA2	125.61	0.8852	111.19	53.20	164.39	164.39	30	4,932.00

TABLE 10.—RUG–53—Continued

[SNF XYZ: Located in Cedar Rapids, IA (Urban CBSA 16300) Wage Index: 0.8852]

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adj.	Medicare days	Payment
Total							100	29,755.00

*Reflects a 128 percent adjustment from section 511 of the MMA.

5. On page 43430, Table 13 is corrected to read as follows:

TABLE 13.—LABOR-RELATED RELATIVE IMPORTANCE, FY 2007 AND FY 2008

	Relative importance, labor-related, FY 2007 (1997-based index) 06:2 forecast	Relative importance, labor-related, FY 2008 (2004-based index) 07:2 forecast
Wages and salaries	54.231	51.218
Employee benefits	11.903	11.72
Nonmedical professional fees	2.721	1.333
Labor-intensive services	4.035	3.456
Capital-related (.391)	2.949	2.522
Total	75.839	70.249

6. On page 43434, third column, final paragraph, line 19, the figure "9.6 percent" is corrected to read "9.5 percent".

7. On page 43435, Table 14 is corrected to read as follows:

TABLE 14.—PROJECTED IMPACT TO THE SNF PPS FOR FY 2008

	Number of facilities	Update wage data (percent)	Total FY 2008 change (percent)
Total	15,325	0.0	3.3
Urban	10,476	−.0.2	3.1
Rural	4,849	1.0	4.3
Hospital based urban	1,450	0.0	3.3
Freestanding urban	9,026	−0.2	3.1
Hospital based rural	1,130	1.2	4.5
Freestanding rural	3,719	1.0	4.3
Urban by region:			
New England	865	−0.3	3.0
Middle Atlantic	1,482	−0.9	2.4
South Atlantic	1,735	0.0	3.3
East North Central	2,004	−0.2	3.1
East South Central	524	0.0	3.3
West North Central	823	0.4	3.7
West South Central	1,146	0.2	3.5
Mountain	470	0.1	3.4
Pacific	1,419	−0.2	3.1
Outlying[1]	8	6.0	9.5
Rural by region:			
New England	130	0.5	3.8
Middle Atlantic	260	1.5	4.8
South Atlantic	608	0.9	4.2
East North Central	927	0.9	4.2
East South Central	556	1.1	4.4
West North Central	1,134	0.9	4.2
West South Central	818	1.3	4.6
Mountain	262	1.3	4.6
Pacific	152	1.3	4.6
Outlying[1]	2	−3.2	0.0
Ownership:			
Government	675	0.1	3.4
Proprietary	11,178	0.0	3.3

TABLE 14.—PROJECTED IMPACT TO THE SNF PPS FOR FY 2008—Continued

	Number of facilities	Update wage data (percent)	Total FY 2008 change (percent)
Voluntary	3,472	−0.1	3.2

[1] The Outlying region includes the following, noncontiguous jurisdictions referenced as States in §§ 1861(x) and 210(h) of the Social Security Act: Puerto Rico, the Virgin Islands, American Samoa, and Guam.

8. On page 43436, third column, lines 4–5, the figure "9.6 percent" is corrected to read "9.5 percent".

9. On page 43446, the entry of "1.0937" that is displayed in Table 8 as the wage index value for CBSA Code 25540 (Hartford–West Hartford–East Hartford, CT) is corrected to read "1.0930".

10. On page 43462, the entry of "1.1283" that is displayed in Table 9 as the wage index value for CBSA Code 7 (rural Connecticut) is corrected to read "1.1711".

III. Waiver of Proposed Rulemaking and Delayed 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 notice such as this take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a 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.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. The public has already had the opportunity to comment on these payment methodologies and policies, and this correction notice is intended solely to ensure that the FY 2008 SNF PPS final rule accurately reflects them. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the update notice is unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical errors. The changes noted above do not make any substantive changes to the SNF PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate SNF PPS payments in as timely a manner as possible and to ensure that the FY 2008 SNF PPS final rule accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 17, 2007.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E7–18732 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

Communities Eligible for the Sale of Insurance

CFR Correction

In Title 44 of the Code of Federal Regulations, revised as of October 1, 2006, on page 339, in § 64.4, paragraph (b), in the fourth sentence, remove the words "within the newly-month period," and add the words "within the newly-acquired area the requirements of § 60.3(b) of this subchapter. During the six month period," in their place.

[FR Doc. 07–55516 Filed 9–27–07; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Commission Organization

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 0 to 19, revised as of October 1, 2006, on page 45, in § 0.406, in paragraph (b)(2), the eighth sentence, beginning with "Additional procedures applicable . . .", is removed and a sentence is added following the sixth sentence to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) * * *

(2) * * * Part 1, subpart E, of this chapter contains general rules and procedures applicable to common carriers. * * *

* * * * *

[FR Doc. 07–55514 Filed 9–27–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Solicitation Provisions and Contract Clauses

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter I (Parts 52 to 99), revised as of October 1, 2006, on page 80, in section 52.215–15, correct paragraph (b) and the source note to read as follows:

52.215–15 Pension adjustments and asset reversions.

* * * * *

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount

measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 9904.413–50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

* * * * *

[63 FR 58598, Oct. 30, 1998, as amended at 68 FR 69257, Dec. 11, 2003; 69 FR 59704, Oct. 5, 2004; 69 FR 60967, Oct. 14, 2004]

[FR Doc. 07–55518 Filed 9–27–07; 8:45 am]
BILLING CODE 1505–01–D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807 and 1817

Acquisition Planning and Special Contracting Methods

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapters 15 to 28, revised as of October 1, 2006, on page 185, reinstate section 1807.7201, and on page 204, reinstate section 1817.7300 to read as follows:

1807.7201 Definitions.

Class of contracts means a grouping of acquisitions, either by dollar value or by the nature of supplies and services to be acquired.

Contract opportunity means planned new contract awards exceeding $25,000.

1817.7300 Definitions.

(a) *Down-selection.* In a phased acquisition, the process of selecting contractors for later phases from among the preceding phase contractors.

(b) *Phased Acquisition.* An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(c) *Progressive Competition.* A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

[FR Doc. 07–55517 Filed 9–27–07; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 171

[Docket No. PHMSA–2005–23141 (HM–215F)]

RIN 2137–AE01

Hazardous Materials: Revision and Reformatting of Requirements for the Authorization To Use International Transport Standards and Regulations; Correction

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule; correction.

SUMMARY: On May 3, 2007, PHMSA published a final rule to amend the Hazardous Materials Regulations (HMR; Parts 171–180) by revising and consolidating the requirements applicable to the use of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, the Canadian Transport of Dangerous Goods Regulations, and the International Atomic Energy Agency Safety Standards Series: Regulations for the Safe Transport of Radioactive Material. This rule corrects errors in the final rule.

DATES: *Effective date:* September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre or Kurt Eichenlaub, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2007, the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published a final rule under Docket No. PHMSA–2005–23141 (HM–215F) to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) by revising and consolidating the requirements applicable to the use of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, the Canadian Transport of Dangerous Goods Regulations, and the International Atomic Energy Agency Safety Standards Series: Regulations for the Safe Transport of Radioactive Material. The final rule is effective as of October 1, 2007.

The Dangerous Goods Advisory Council (DGAC), an organization of industry stakeholders, filed an appeal to the May 3 final rule on June 4, 2007. We are addressing most elements of DGAC's appeal in a separate response, which will be included in the docket for this rulemaking. In the meantime, we are issuing this correction to address certain errors that DGAC identified in the text of the May 3 final rule.

Correction

The May 5 final rule added a new § 171.22, which provides authorization and conditions for the use of international standards and regulations for the commercial transportation of hazardous materials to, from, or within the United States. Paragraph (g) of this section requires shipments to conform to applicable HMR requirements, including the general packaging requirements in §§ 173.24 and 173.24a and the reuse, reconditioning, and remanufacture requirements in § 173.28. The notice of proposed rulemaking issued under this docket on January 27, 2006 (71 FR 4544) proposed to apply these requirements "for export shipments". The phrase "for export shipments" was inadvertently dropped from the May 3 final rule. It was not our intention to require compliance with §§ 173.24, 173.24a, or 173.28 for import shipments. Therefore, in this final rule, we are reinserting the phrase "for export shipments" in paragraphs (g)(5) and (g)(6) of § 173.22.

The DGAC appeal also identifies a typographical error in § 171.12(a)(2). Use of the term "subpart" in § 171.12(a)(2) is incorrect. This paragraph should read: "When the provisions of this subchapter require a DOT specification or UN standard packaging to be used for transporting a hazardous material, a packaging authorized by the Transport Canada TDG Regulations may be used, subject to the limitations of this part, and only if it is equivalent to the corresponding DOT specification or UN packaging (see § 173.24(d)(2) of this subchapter) authorized by this subchapter." We are

correcting the typographical error in this final rule.

Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal Hazardous Materials Transportation Law (Federal Hazmat Law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal Hazmat Law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This final rule corrects errors in a final rule published in the **Federal Register** on May 3, 2007.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 *FR* 11034). There are no cost impacts associated with this final rule.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, preparation of a federalism assessment is not warranted.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

I certify this final rule will not have a significant economic impact on a substantial number of small entities. This rule corrects a previously issued final rule by reinserting a dropped phrase and correcting a typographical error. There are no cost impacts associated with this rule.

F. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

G. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

H. Environmental Impact Analysis

There are no environmental impacts associated with this final rule.

I. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are making the following corrections to FR Doc. 07–1959, appearing on page 25162 in the **Federal Register** of Thursday, May 3, 2007:

PART 171—[CORRECTED]

■ 1. On page 25171, in § 171.12 correct the text in paragraph (a)(2) to read as follows:

§ 171.12 North American Shipments.

(a) * * *

(2) *General packaging requirements.* When the provisions of this subchapter require a DOT specification or UN standard packaging to be used for transporting a hazardous material, a packaging authorized by the Transport Canada TDG Regulations may be used, subject to the limitations of this part, and only if it is equivalent to the corresponding DOT specification or UN packaging (see § 173.24(d)(2) of this subchapter) authorized by this subchapter.

* * * * *

■ 2. On page 25173, in § 171.22, correct the text in paragraphs (g)(5) and (g)(6) to read as follows:

§ 171.22 Authorization and conditions for use of international standards and regulations.

* * * * *

(g) * * *

(5) For export shipments, the general packaging requirements in §§ 173.24 and 173.24a of this subchapter;

(6) For export shipments, the requirements for the reuse, reconditioning, and remanufacture of packagings in § 173.28 of this subchapter; and

* * * * *

Issued in Washington, DC, on September 21, 2007, under authority delegated in 49 CFR part 1.

Krista L. Edwards,

Acting Administrator.

[FR Doc. E7–19259 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 173, 175 and 178

[Docket No. RSPA–04–17664 (HM–224B)]

RIN 2137–AD33

Hazardous Materials Regulations: Transportation of Compressed Oxygen, Other Oxidizing Gases and Chemical Oxygen Generators on Aircraft

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule; response to appeals.

SUMMARY: On January 31, 2007, PHMSA published a final rule that amended requirements in the Hazardous Materials Regulations applicable to the air transportation of compressed oxygen cylinders and oxygen generators. In response to appeals submitted by entities affected by the January 31 final rule, this final rule amends requirements adopted in the January 31, 2007 final rule and delays the effective

date of these requirements from October 1, 2007 to October 1, 2008.

DATES: *Effective Date:* The effective date of the amendments in the January 31, 2007 final rule (72 FR 4442) is delayed from October 1, 2007 to October 1, 2008. The effective date of the amendments in this final rule is October 1, 2008.

Voluntary compliance: Voluntary compliance with the requirements in the January 31 final rule was authorized as of March 2, 2007. Voluntary compliance with the amendments in the January 31 final rule, including those with a delayed compliance date, is authorized as of October 29, 2007.

FOR FURTHER INFORMATION CONTACT: John A. Gale or T. Glenn Foster, Office of Hazardous Materials Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, PHH–11, Washington, DC 20590–0001, or David Catey, Office of Flight Standards Service, telephone (202) 267–3732, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Supplementary Background

On January 31, 2007, PHMSA, in cooperation with the Federal Aviation Administration (FAA), issued a final rule under Docket No. RSPA–04–17664 (HM–224B) enhancing the safety standards for transportation by air of compressed oxygen, other oxidizing gases and chemical oxygen generators (72 FR 4442). Specifically, the January 31 final rule:

(1) Requires cylinders of compressed oxygen and other oxidizing gases and packages of chemical oxygen generators to be placed in an outer packaging that meets certain flame penetration and thermal resistance requirements when transported aboard an aircraft;

(2) Revises the pressure relief device (PRD) setting limit on cylinders of compressed oxygen and other oxidizing gases transported aboard aircraft;

(3) Limits the types of cylinders authorized for transporting compressed oxygen aboard aircraft; and

(4) Converts most of the provisions of an oxygen generator approval into requirements in the HMR.

II. Appeals

The following organizations submitted appeals to the January 31 final rule, in accordance with 49 CFR part 106: Air Canada (AC); Barlen and Associates, Inc. (Barlen); PSI Plus, Inc. (PSI); and United Airlines, Inc. (United). Delta Airlines (Delta) also submitted a letter expressing its general support for United's formal appeal. The appellants based their appeals on several aspects of the January 31 final rule, most notably, the effective date of certain requirements in the rule, cost and availability of the required outer packaging, marking requirements, and thermal resistance testing. We also received requests for clarification of certain requirements of the January 31 final rule. The Good View Trading Company (GVT) also expressed concerns about the impact the January 31 final rule will have on the current exceptions for live fish transported aboard aircraft.

In this final rule, we are granting the request to delay the mandatory effective date from October 1, 2007 until October 1, 2008 to require a new limit on the pressure relief device (PRD) settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft. We are clarifying the thermal resistance test methods for packagings for oxygen cylinders and oxygen generators in Appendix D to part 178. We are granting the request to include DOT specification 3E and 39 cylinders among the types of cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft. In addition, we are providing a marking option to ensure easier identification of cylinders equipped with the new PRD and outer packagings meeting the flame penetration and thermal resistance requirements. The appeals and issues of the appellants and other concerned parties are discussed in detail below.

A. Outer Packaging That Meets Certain Flame Penetration and Thermal Resistance Requirements When Transported Aboard Aircraft

The January 31 final rule amended the HMR to require cylinders of compressed oxygen and other oxidizing gases and chemical oxygen generators to be transported in an outer packaging that: (1) Meets the same flame penetration resistance standards as required for cargo compartment sidewalls and ceiling panels in transport category airplanes; and (2) provides certain thermal protection capabilities so as to retain its contents during an otherwise controllable cargo compartment fire. The outer packaging standard adopted in the January 31 final rule addresses two safety concerns: (1) Protecting a cylinder and an oxygen generator that could be exposed directly to flames from a fire; and (2) protecting a cylinder and an oxygen generator that could be exposed indirectly to heat from a fire. These performance requirements must remain in effect for the entire service life of the outer packaging.

Under the January 31 final rule, an outer packaging for a cylinder containing compressed oxygen or another oxidizing gas and a package containing an oxygen generator must meet the standards in Part III of Appendix F to 14 CFR part 25, Test Method to Determine Flame Penetration Resistance of Cargo Compartment Liners. An outer packaging's materials of construction must prevent penetration by a flame of 1,700 °F for five minutes, in accordance with Part III of Appendix F, paragraphs (a)(3) and (f)(5) of 14 CFR part 25. A method for thermal resistance testing of packagings for oxygen cylinders and oxygen generators was added by the January 31 final rule under a new Appendix D to part 178 of the HMR. To ease understanding of and compliance with the flame penetration test requirements, in this final rule we are adding a new Appendix E to part 178, which will include the entire test procedure. This will eliminate the necessity for persons performing the flame penetration test to refer to the requirements in Appendix F to 14 CFR part 25.

In its appeal, United expresses concern about several aspects of these provisions, including international repercussions, risk assessment and analysis, effects of this rulemaking on travelers requiring medical oxygen, and the cost basis for the packaging required by the January 31 final rule.

Specifically, United contends that no test data or other substantiation of compliance with requirements for outer packaging by any packaging manufacturer was placed in the public docket. United also states that although the January 31 final rule indicates at least one packaging manufacturer appears to have addressed the flame penetration and thermal penetration standard and is able to produce the required packaging, neither this company nor any other has actually produced it. In addition, United contends that because the packaging required by the January 31 final rule does not yet exist, the cost estimates made by the agency are unreliable.

We are not persuaded that the required packagings will be unavailable or that we have underestimated the cost of bringing them to market. PHMSA issued the January 31 final rule only after reviewing test data and other materials substantiating the development of packagings meeting the performance standard. Based on consultation with companies that are able to produce similar packaging and reviewing their packaging prototypes, supporting test documentation and cost estimates, we believe the required packaging will be available in sufficient time for the affected parties to comply with this requirement. (Because of its confidential proprietary nature, we did not post this documentation in the public docket for this rulemaking.) PHMSA and FAA intend to closely monitor the availability of the required packaging as the effective date of this provision approaches and will consider an extension of the compliance date for this requirement if it is determined that a sufficient supply of the required outer packaging is not available.

Likewise, the fact that the required packaging is not yet commercially available does not make the cost estimates for this rulemaking unreasonable. As referenced in the January 31 final rule, packaging manufacturers provided estimates of costs for the existing ATA specification 800 packagings and the new outer packaging. We utilized these estimates, in addition to our own research, in the regulatory evaluation (available for review in the public docket for this rulemaking). Although some of the figures provided by the commenters were slightly higher than ours, the differences were not significant. Accordingly, we believe that our estimate of a total cost of $10.8 million ($7.6 million discounted to present value) over 15 years, for the transport of oxygen cylinders, and $27.0 million ($16.9 million discounted to present value) over 15 years, for the costs associated with the transport of chemical oxygen generators, are reasonable estimates of the costs of this rulemaking despite the current lack of an available outer packaging in an after-market condition.

United also refers to the statement in the January 31 final rule that DOT intends to submit a paper to the International Civil Aviation Organization (ICAO) Dangerous Goods Panel to propose that the ICAO Technical Instructions be amended consistent with the requirements of the packaging required by the January 31 rulemaking. United requests that a copy of such a U.S. proposal be placed in the public docket for HM–224B, and that the views of other air carriers in the international community be considered. United states that PHMSA should collect input from the international community before concluding rulemaking action in this docket because of the international aviation environment and PHMSA's expressed stance on the benefits of global harmonization. United also recommends that if the new requirements are adopted internationally through ICAO, the compliance dates for affected carriers should coincide to avoid unnecessary compliance complexity in the aviation industry.

We agree that the international community should be considered when initiating any regulatory change that could potentially affect international commerce. As indicated in the January 31 final rule, it was PHMSA's intention to submit a working paper pertaining to this rulemaking for discussion at the meeting of the ICAO Dangerous Goods Panel (DGP). PHMSA submitted a paper to the DGP Working Group of the Whole (held April 30 to May 4, 2007) which provided information relative to the amendments to the HMR to enhance the requirements for the transportation of compressed oxygen, other oxidizing gases and chemical oxygen generators on aircraft. The working paper can be viewed on the public ICAO Web site at: *http://www.icao.int/anb/FLS/DangerousGoods/FLSDG.cfm*. A copy of this working paper has also been placed in the public docket for this rulemaking. However, we are not prepared to defer this rulemaking while changes to international standards are considered. As we explained in the January 31 final rule, the risk of an unintentional actuation of an oxygen generator or a cylinder containing oxygen or another oxidizing gas during an aircraft fire is a serious safety risk that we believe must be immediately addressed, without waiting for the outcome of international deliberations.

United also contends that the final rule is inconsistent with PHMSA's expressed commitment to promote risk-based, data-driven, and cost-effective standards. United asserts that PHMSA justified the January 31 rulemaking on a worst-case scenario that was not supported by actual data in the record and that affected parties therefore should be given time to review and comment on such data. As explained in the January 31 final rule, we have utilized a risk-based approach to the air transportation of compressed oxygen cylinders and oxygen generators since the tragic events of the ValuJet Airlines crash in 1996. FAA has established through testing that cylinders of compressed oxygen release their contents at temperatures well below those that aircraft cargo compartment liners and structures are designed to withstand. When the surface temperature of a cylinder of compressed oxygen reaches approximately 300 °F, the increase in internal pressure causes the cylinder's pressure relief device to open and release oxygen. The risk that such a release could vent directly into a fire significantly increases the risks posed by aircraft fires. FAA also found that use of an outer packaging specifically designed to provide both thermal protection and flame penetration may significantly lengthen the time a cylinder will retain its contents when exposed to fire or heat. Therefore, our rationale for this January 31 final rule is a continuation of our ongoing risk-based approach and is centered on the conclusions drawn from the "Evaluation of Oxygen Cylinder Overpacks Exposed to Elevated Temperatures" conducted by FAA (available for review in the public docket for this rulemaking).

United also contends that PHMSA did not adequately address the potential of the new packaging requirements to restrict air travel by individuals who need compressed oxygen to travel. It states that additional packaging cost and other related costs could dissuade air carriers from providing this service. The commenter also states that although PHMSA requested information on this scenario in the January 31 final rule, the impact could not be considered sufficiently without adequate and reliable information on the cost of the required packaging.

PHMSA is acutely aware of the specific needs of individuals who require compressed oxygen to travel, and has maintained ongoing dialogue with FAA and other agencies in an attempt to minimize requirements that

may restrict their travel. For example, PHMSA and FAA have partnered with the Office of the Secretary of Transportation to develop a rulemaking that proposes to provide greater accommodations for persons with respiratory disabilities, and provide passengers free in-flight medical oxygen in accordance with applicable safety rules. See "Nondiscrimination on the Basis of Disability in Air Travel—Medical Oxygen and Portable Respiration Assistive Devices," Docket No. OST–2005–22298, 70 FR 53108 (September 7, 2005), 70 FR 61241 (October 21, 2005).

The January 31 final rule complements the goal of providing a safer environment for people with disabilities by requiring cylinders of compressed oxygen and other oxidizing gases and packages of chemical oxygen generators to be placed in an outer packaging that meets certain flame penetration and thermal resistance requirements when transported aboard an aircraft. We note that the current regulations specified in § 175.501 of the HMR allow for the use of oxygen by passengers in the aircraft cabin and provide for the stowage of a combined total of six cylinders of compressed oxygen, which, under the conditions specified in this section, do not require that they be placed in the new outer packaging.

For the reasons cited above, the appeal to the requirement that an outer packaging for a cylinder containing compressed oxygen or another oxidizing gas and a package containing an oxygen generator must meet the standards adopted in the January 31 final rule is denied.

B. Test Method in Appendix D to Part 178 and Test Protocol for Outer Packaging

The January 31 final rule amended the HMR by adding a thermal resistance test for packagings for oxygen cylinders and oxygen generators in a new appendix (Appendix D) to part 178. United recommends that PHMSA clarify the test method described in Paragraph 4.1 of this appendix, which states, "It is recommended that the cylinder be closed at ambient temperature and configured as when filled with a valve and pressure relief device. The oxygen generator must be filled and may be tested with or without packaging." United indicates that it understands from discussions that took place with PHMSA and its trade association after publication of the January 31 final rule that PHMSA did not intend to require testing of the outer packaging with inner receptacles containing hazardous materials. If an alternative filling material was intended, the commenter requests PHMSA clarify this portion of the appendix as applicable. United suggests that "any alternate material should exhibit comparable heat-absorbing properties of compressed oxygen in the cylinder, or oxidizing solid in the generator." If, however, oven testing with packagings containing hazardous materials is required, the commenter is uncertain there is a testing facility capable of performing such a test.

In publishing the January 31 final rule, it was our intention to permit the thermal resistance test to be conducted on an oxygen cylinder that is either empty or filled with nitrogen. It was also our intention that an oxygen generator must be tested completely filled with its oxidizing agent. Therefore, in this final rule, we are granting United's request to clarify the test method described in Appendix D to Part 178. In addition, we are also providing an alternative to the use of thermocouples specified in the test methods of Appendix D to part 178.

United also expresses concern that the test protocol for outer packaging required by the January 31 final rule will change in the near future. For example, the commenter points out the footnote in the preamble at page 4444 of the January 31 final rule:

> The FAA is currently evaluating other non-ozone-depleting suppression agents that could eventually be used in cargo compartments. Some of these agents can maintain an adequate level of safety in the compartment, but the mean temperature may be slightly higher than 400 °F, which is the level found during typical halon-suppressed fires. If an alternative agent is used, the oven soak temperature level may need to be adjusted accordingly.

United states that the investment by itself and other air carriers in the newly required outer packaging is too substantial for the test performance temperature to be addressed in such vague terms. The commenter requests clarification of this statement and an assessment of the probability that it will result in a revision to the performance standard for outer packaging by, or relatively soon after, the October 1, 2007 mandatory compliance date.

We understand the commenter's concern regarding the footnote on page 4444 of the January 31 final rule which references FAA's ongoing evaluation of other non-ozone-depleting suppression agents that could eventually be used in cargo compartments. By including the footnote, our intention was to provide additional information about testing agents currently under consideration which may affect test performance temperatures. For clarification, FAA's halon replacement program was designed to develop minimum performance standards (MPS) for the various extinguishing systems used aboard aircraft. These MPS would establish a baseline test for new agents to demonstrate that the agent had comparable fire-fighting effectiveness to that of Halon 1211 and 1301. FAA has developed the MPS for hand-held fire extinguishers, waste bins, and cargo compartments. In addition, three halocarbon agents have been approved for use in hand-held fire extinguishers. While alternative agents are currently being evaluated, none have been approved for use on aircraft. Further, the FAA informs us that it has no plans at present to mandate the use of halon replacements. Therefore, we do not anticipate that a revision to the test protocol for outer packaging required by the January 31 final rule will occur in the near future.

C. Effective Date for Pressure Relief Device Settings on Cylinders of Compressed Oxygen and Other Oxidizing Gases

The January 31 final rule revised the HMR to require a new limit on the pressure relief device (PRD) settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft. To ensure the cylinder contents are not released into an aircraft cargo compartment in the event of a fire, we amended the HMR to limit the PRD to a setting that will prevent it from releasing at temperatures the cylinder will experience while protected by the outer packaging. We also amended the HMR to require cylinders containing oxidizing gases, including oxygen, be equipped with PRDs that have a set pressure equal to the cylinder test pressure with allowable tolerances of −10 to plus zero percent. The effective date of this requirement for cylinders containing compressed oxygen and oxidizing gases was established in the January 31 final rule as the first requalification test due after October 1, 2007.

United requests that PHMSA delay the mandatory effective date from October 1, 2007 until October 1, 2008 in order to allow it and other air carriers to come into compliance with this requirement of the January 31 final rule. United states that "after cylinder manufacturers develop and implement new designs, conduct any required testing, complete the detailed approval process, *and* [sic] manufacture and distribute the new PRDs, it then will be

necessary to transport these cylinders as air cargo to assure global distribution to all of United's facilities where replacements might need to be installed, and to accommodate breathing-oxygen needs for impaired passengers as part of United's current effort to serve such customers." In addition, United states that procedures for oxygen cylinder maintenance and quality assurance programs must be revised, prompting additional training, testing and certification of both employees and their supervisors, and that "in addition to all the cylinders that may come due for periodic retest as early as October 1, 2007, it is assumed that any new oxygen cylinders purchased as replacement parts will need to be equipped with the new PRD as of that date." United states the demand for PRDs will likely peak around the October 1, 2007 effective date specified in the January 31 final rule, and it foresees an inadequate supply of PRDs. The commenter further states that it has over 6,500 cylinders affected by this rule and, after discussions with the manufacturers of these cylinders and external repair facilities, it is concerned that bringing its cylinders into compliance with this requirement by the January 31 final rule effective date will not be achievable.

We accept the likelihood that more time may be necessary to allow for the testing, approval, distribution, and training associated with this requirement of the January 31 final rule. Therefore, we are extending the effective date for this provision from October 1, 2007 until October 1, 2008. By this revised date, the HMR requires a new limit on the PRD settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft. The effective date of this requirement for cylinders containing compressed oxygen and oxidizing gases is established as the first requalification test due after October 1, 2008.

In the January 31 final rule, we added a new § 173.168 that would: (1) Specify the means to be incorporated into an oxygen generator to prevent inadvertent actuation; (2) require the oxygen generator to be capable of withstanding a 1.8 meter drop with no loss of contents or actuation; and (3) specify packaging, shipping paper, and marking requirements for those oxygen generators that are installed in a piece of equipment sealed or otherwise packaged so it is difficult to determine if an oxygen generator is present. The effective date of these new requirements is October 1, 2007, except for the packaging requirement in paragraph (d) of § 173.168, which becomes effective on September 30, 2009. We received a request for clarification regarding these effective dates. One commenter requests clarification as to whether the requirements prior to the January 31 final rule pertaining to chemical oxygen generators, particularly approvals, were intended to remain in effect until the effective date of the January 31 final rule. For clarification, our intention in the January 31 final rule was for the current requirements concerning chemical oxygen generators, including approvals, to remain in effect until the overall effective date of the January 31 final rule. A similar issue was raised by the same commenter concerning the additional requirements for shipment of nonliquefied (permanent) and liquefied compressed gases in specification cylinders found in §§ 173.302a and 173.304a, respectively. The commenter asks whether it was PHMSA's intention to continue current outer packaging requirements for non-liquefied (permanent) and liquefied compressed gases in specification cylinders until the effective dates specified in these revised sections.

The answer is yes. It was also our intention in the January 31 final rule that the current requirements for the shipment of nonliquefied and liquefied compressed gases in specification cylinders remain in effect until the effective dates specified under these revised sections. In this final rule, we are revising the amendments to §§ 173.302a and 173.304a to clarify these effective dates and are re-designating them under new paragraph (f) of § 173.302—"Filling of cylinders with non-liquefied (permanent) compressed gases—" and new paragraph (f) of § 173.304—"Filling of cylinders with liquefied compressed gases—" respectively, to provide a more logical, user-friendly format. We are also revising § 173.301 to direct the user to these new paragraphs.

D. Marking Requirements

United also urges PHMSA to take further steps to ensure easier identification of cylinders equipped with the new PRD and outer packagings meeting the flame penetration and thermal resistance requirements. In its appeal, the commenter requests that PHMSA require manufacturers to distinguish between the modified cylinders, as well as the modified outer packaging, through the use of a uniform marking requirement. United asserts that such a marking requirement would have the benefit of clarifying DOT's jurisdiction over the manufacturers, specifically with respect to compliance with testing, hazmat employee training, and record-keeping provisions. In addition, United states that a consistent visible mechanism will allow its employees and DOT enforcement officials to determine whether a UN or ATA Specification 300 outer packaging meets the new rule versus prior requirements, and to identify with reliable ease and certainty which DOT and UN cylinders are authorized to transport specific hazardous materials by air. United stresses the importance of such a provision because of the common airline industry practice of conducting code share operations and participating in loaned parts programs.

PHMSA acknowledges the commenters' concerns that current labeling and marking requirements may not fully identify cylinders equipped with the new PRD and outer packagings meeting the flame penetration and thermal resistance requirements of the January 31 final rule. However, because we did not propose any additional marking or labeling requirements in the NPRM, we cannot formally adopt a uniform marking or labeling requirement in this final rule. Any new marking or labeling requirement must be proposed in a future rulemaking to allow for public comment. Instead, PHMSA and FAA have developed a voluntary marking that may be affixed to an outer packaging meeting the flame penetration and thermal resistance requirements of the January 31 final rule to indicate compliance with these provisions of the regulations. The marking is as follows:

DOT31FP

We emphasize that this marking is not a requirement. We will consider proposing this marking as a uniform marking requirement in a future rulemaking, and, if this or some other marking is adopted, it would be incorporated into the HMR as an acceptable indication that the outer packaging meets the flame penetration and thermal resistance requirements and is in compliance with the requirements of the January 31 final rule.

E. Authorized Cylinders for Compressed Oxygen and Other Oxidizing Gases

The January 31 final rule revised the HMR to limit cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft to DOT specifications 3A, 3AA, 3AL, and 3HT in order to minimize numerous PRD setting requirements for oxygen cylinders aboard aircraft.

Barlen comments that DOT 39 and DOT 3E cylinders are safer than 3AL cylinders and questions why these

cylinders were eliminated in the January 31 final rule. PSI, a manufacturer of high-pressure steel DOT 39 and DOT 3E cylinders, requests reconsideration of the requirement to limit cylinders authorized for the transportation of compressed oxygen aboard aircraft and a delay in implementation of the requirements of the January 31 final rule. This commenter states the majority of the cylinders it manufactures are sold to companies producing gas mixtures used for gas calibration equipment and medical devices, such as blood gas analyzers. PSI notes that although DOT 3A and DOT 3AA cylinders are allowed in the January 31 final rule, these cylinders are not used for calibration gas mixtures because of their excessive weight. The commenter asserts that the requirements in the January 31 final rule would effectively ban the use of the only cylinders it manufactures. PSI adds that testing has shown steel DOT 39 and DOT 3E cylinders will survive fires for longer periods of time and be more resistant to higher failure temperatures than aluminum 3AL cylinders, and, along with Barlen, requests DOT to consider permitting the use of these cylinder types in addition to the DOT 3AL cylinders specified in the January 31 final rule. In addition, PSI requests DOT to allow limited quantities of oxygen-rich calibration gas mixtures to be transported on non-passenger aircraft such as those operated by Federal Express and UPS. Finally, PSI requests a delay in the implementation of this rule to allow for presentation of additional information.

We agree with the commenters that including DOT 39 and DOT 3E cylinders as cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft does not pose an additional safety hazard and will provide carriers more flexibility when transporting these materials aboard aircraft. Therefore, we are revising the HMR to limit cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft to DOT specifications 39, 3A, 3AA, 3AL, 3E, and 3HT, and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders, including a new limit on the PRD settings.

F. Miscellaneous Issues

Currently, § 173.302(c) specifies that an authorized cylinder containing oxygen continuously fed to tanks containing live fish may be offered for transportation and transported. One commenter, the Good View Trading Company (GVT), expresses concern about the impact that the new outer packaging requirement in the January 31 final rule will have on the current exceptions for live fish transported aboard aircraft. In publishing the January 31 final rule, our intention was not to eliminate this exception. Therefore, for clarification, we are revising this section to specifically except it from the new outer packaging requirements.

In addition, on May 3, 2007, PHMSA published a final rule under Docket No. PHMSA–2005–23141 (HM–215F) in the **Federal Register** (72 FR 25161). The HM–215F final rule amended the HMR to revise and consolidate the requirements applicable to the use of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, Transport Canada's Transportation of Dangerous Goods Regulations, and the International Atomic Energy Agency's Safety Standards Series: Regulations for the Safe Transport of Radioactive Material. The revisions and reformatting provide a user-friendly format to promote understanding of the conditions and limitations on the use of international standards and regulations. In the HM–215F final rule, the ICAO Technical Instructions (formerly § 171.11) were re-designated as new § 171.24. As a result of this designation, the revisions adopted in this section under the January 31 final rule were inadvertently omitted. Therefore, we are republishing new § 171.24 as amended in the January 31 final rule for clarification.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for Rulemaking

This final rule is published under the authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not a significant action under the Regulatory Policies and Procedures of the Department of Transportation. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the January 31, 2007 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local and Indian tribe requirements, but does not amend any regulation that has direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses items 2 and 5 above and preempts any State, local, or Indian tribe requirements not meeting the "substantially the same" standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This effective date of preemption is 90 days after the publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule will not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act of 1980 requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule will not impose increased compliance costs on the regulated industry. The revisions, clarifications, and corrections we are making to the January 31, 2007 final rule will provide regulatory relief to persons transporting compressed oxygen, other oxidizing gases and chemical oxygen generators on aircraft by: Delaying the mandatory effective date from October 1, 2007 until October 1, 2008 to require a new limit on the pressure relief device (PRD) settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft; clarifying the thermal resistance test methods for packagings for oxygen cylinders and oxygen generators in Appendix D to Part 178, including DOT specification 3E and 39 cylinders to the types of cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft; and providing a marking option to ensure easier identification of cylinders equipped with the new PRD and outer packagings meeting the flame penetration and thermal resistance requirements. Thus, DOT has determined that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), DOT certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

G. Paperwork Reduction Act

PHMSA currently has approved information collections under OMB Control Number 2137–0572, "Testing Requirements for Non-Bulk Packaging" with an expiration date of March 31, 2010, and OMB Control Number 2137–0557, "Approvals for Hazardous Materials" with an expiration date of March 31, 2008. This final rule imposes no new information collection and recordkeeping requirements.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410, section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001.

■ 2. In § 171.24, paragraph (d)(2) as added on May 3, 2007 (72 FR 25172) effective October 1, 2007, is revised to read as follows:

§ 171.24 Additional requirements for the use of ICAO Technical Instructions.

* * * * *

(d) * * *

(2) A package containing Oxygen, compressed, or any of the following oxidizing gases must be packaged as required by Parts 173 and 178 of this subchapter: carbon dioxide and oxygen mixtures, compressed; compressed gas, oxidizing, n.o.s.; liquefied gas, oxidizing, n.o.s.; nitrogen trifluoride; and nitrous oxide.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

■ 4. In § 173.168, as added on January 31, 2007, paragraphs (d) introductory text, (d)(1), (d)(2) introductory text and (d)(2)(i) are revised to read as follows:

§ 173.168 Chemical oxygen generators.

* * * * *

(d) *Packaging.* A chemical oxygen generator and a chemical oxygen generator installed in equipment, (e.g., a PBE) must be placed in a rigid outer packaging that—

(1) Conforms to the requirements of either:

(i) Part 178, subparts L and M, of this subchapter at the Packing Group I or II performance level; or

(ii) The performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container.

(2) After September 30, 2009, with its contents, is capable of meeting the following additional requirements when transported by cargo-only aircraft:

(i) The Flame Penetration Resistance Test in Appendix E to part 178 of this subchapter;

* * * * *

■ 5. In § 173.301, paragraph (f)(3) is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(f) * * *

(3) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2 (except oxygen and oxidizing gases transported by aircraft, see §§ 173.302(f) and 173.304(f)), beginning with the first requalification due after December 31, 2003, the burst pressure of a CG–1, CG–4, or CG–5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disk is placed inside a holder. This requirement does not apply if a CG–2, CG–3, or CG–9 thermally activated relief device or a CG–7 reclosing pressure valve is used on the cylinder.

* * * * *

■ 6. In § 173.302, paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 173.302 Filling of cylinders with non-liquefied (permanent) compressed gases.

* * * * *

(c) Notwithstanding the provisions of §§ 173.24(b)(1) and paragraph (f) of this section, an authorized cylinder containing oxygen continuously fed to tanks containing live fish may be offered for transportation and transported.

* * * * *

(f) *Compressed oxygen and oxidizing gases by aircraft.* A cylinder containing oxygen, compressed; compressed gas, oxidizing, n.o.s.; or nitrogen trifluoride is authorized for transportation by aircraft only when it meets the following requirements:

(1) Only DOT specification 3A, 3AA, 3AL, 3E, 3HT, and 39 cylinders, and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders are authorized.

(2) Cylinders must be equipped with a pressure relief device in accordance with § 173.301(f) and, for DOT 39 cylinders offered for transportation after October 1, 2008, for the other DOT specification cylinders with the first requalification due after October 1, 2008, or for the UN pressure receptacles prior to initial use:

(i) The rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, 3E, and 39 cylinders, and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders must be 100% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%; and

(ii) The rated burst pressure of a rupture disc for a DOT 3HT cylinder must be 90% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%.

(3) The cylinder must be placed in a rigid outer packaging that—

(i) Conforms to the requirements of either part 178, subparts L and M of this subchapter at the Packing Group I or II performance level or the performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container;

(ii) After September 30, 2009, is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in Appendix E to part 178 of this subchapter; and

(iii) Prior to each shipment, passes a visual inspection that verifies that all features of the packaging are in good condition, including all latches, hinges, seams, and other features, and that the packaging is free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance characteristics of the packaging.

(4) After September 30, 2009, the cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(5) The cylinder and the outer packaging must both be marked and labeled in accordance with part 172, subparts D and E of this subchapter. The additional marking "DOT31FP," is allowed to indicate that the cylinder and the outer packaging are capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(6) A cylinder of compressed oxygen that has been furnished by an aircraft operator to a passenger in accordance with 14 CFR §§ 121.574, 125.219, or 135.91 is excepted from the outer packaging requirements of paragraph (f)(3) of this section.

§ 173.302a [Amended]

■ 7. In § 173.302a, as amended on January 31, 2007, paragraph (f) is removed.

■ 8. In § 173.304, a new paragraph (f) is added to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

* * * * *

(f) *Oxidizing gases by aircraft.* A cylinder containing carbon dioxide and oxygen mixture, compressed; liquefied gas, oxidizing, n.o.s.; or nitrous oxide is authorized for transportation by aircraft only when it meets the following requirements:

(1) Only DOT specification 3A, 3AA, 3AL, 3E, 3HT, and 39 cylinders, and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders are authorized.

(2) Cylinders must be equipped with a pressure relief device in accordance with § 173.301(f) and, for DOT 39 cylinders offered for transportation after October 1, 2008, for the other DOT specification cylinders with the first requalification due after October 1, 2008, or for the UN pressure receptacles prior to initial use:

(i) The rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, 3E and 39 cylinders, and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders must be 100% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%; and

(ii) The rated burst pressure of a rupture disc for a DOT 3HT cylinder must be 90% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%.

(3) The cylinder must be placed in a rigid outer packaging that—

(i) Conforms to the requirements of either part 178, subparts L and M, of this subchapter at the Packing Group I or II performance level, or the

performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container;

(ii) After September 30, 2009, is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in part III of Appendix E to part 78 of this subchapter; and

(iii) Prior to each shipment, passes a visual inspection that verifies that all features of the packaging are in good condition, including all latches, hinges, seams, and other features, and the packaging is free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance characteristics of the container.

(4) After September 30, 2009, the cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(5) The cylinder and the outer packaging must both be marked and labeled in accordance with part 172, subparts D and E of this subchapter. The additional marking "DOT31FP," is allowed to indicate that the cylinder and the outer packaging are capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(6) A cylinder of compressed oxygen that has been furnished by an aircraft operator to a passenger in accordance with 14 CFR 121.574, 125.219, or 135.91 is excepted from the outer packaging requirements of paragraph (f)(3) of this section.

§ 173.304a [Amended]

■ 9. In § 173.304a, as amended on January 1, 2007, paragraph (f) is removed.

PART 175—[AMENDED]

■ 10. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

■ 11. In § 175.501, as amended on January 1, 2007, paragraph (e)(5)(i) is revised to read as follows:

§ 175.501 Special requirements for oxidizers and compressed oxygen.

* * * * *

(e) * * *

(5) * * *

(i) Sections 173.302(f) and 173.304(f) of this subchapter, subpart C of part 172 of this subchapter, and, for passengers only, subpart H of part 172 of this subchapter;

* * * * *

PART 178—[AMENDED]

■ 12. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 13. In appendix D to part 178, as added on January 1, 2007, paragraph 2.2 and paragraph 4.1 are revised to read as follows:

Appendix D to Part 178

Thermal Resistance Test

* * * * *

2. * * *

2.2 *Thermocouples.* At least three thermocouples must be used to monitor the temperature inside the oven and an additional three thermocouples must be used to monitor the temperature of the cylinder. The thermocouples must be 1/16 inch, ceramic packed, metal sheathed, type K (Chromel-Alumel), grounded junction with a nominal 30 American wire gauge (AWG) size conductor. The thermocouples measuring the temperature inside the oven must be placed at varying heights to ensure even temperature and proper heat-soak conditions. For the thermocouples measuring the temperature of the cylinder: (1) Two of them must be placed on the outer cylinder side wall at approximately 2 inches (5 cm) from the top and bottom shoulders of the cylinder; and (2) one must be placed on the cylinder valve body near the pressure relief device. Alternatively, the thermocouples may be replaced with other devices such as a remote temperature sensor, metal fuse on the valve, or coated wax, provided the device is tested and the test report is retained for verification. Under this alternative, it is permissible to record the highest temperature to which the cylinder is subjected instead of temperature measurements in intervals of not more than five (5) minutes.

* * * * *

4. * * *

4.1 It is recommended that the cylinder be closed at ambient temperature and configured as when filled with a valve and pressure relief device. The oxygen generator must be filled with an oxidizing agent and may be tested with or without packaging.

* * * * *

■ 14. A new Appendix E to part 178 is added to read as follows:

Appendix E to Part 178—Flame Penetration Resistance Test

(a) *Criteria for Acceptance.* (1) At least three specimens of the outer packaging materials must be tested;

(2) Each test must be conducted on a flat 16 inch x 24 inch test specimen mounted in the horizontal ceiling position of the test apparatus to represent the outer packaging design;

(3) Testing must be conducted on all design features (latches, seams, hinges, etc.) affecting the ability of the outer packaging to safely prevent the passage of fire in the horizontal ceiling position; and

(4) There must be no flame penetration of any specimen within 5 minutes after application of the flame source and the maximum allowable temperature at a point 4 inches above the test specimen, centered over the burner cone, must not exceed 205 °C (400 °F).

(b) *Summary of Method.* This method provides a laboratory test procedure for measuring the capability of cargo compartment lining materials to resist flame penetration with a 2 gallon per hour (GPH) #2 Grade kerosene or equivalent burner fire source. Ceiling and sidewall liner panels may be tested individually provided a baffle is used to simulate the missing panel. Any specimen that passes the test as a ceiling liner panel may be used as a sidewall liner panel.

(c) *Test Specimens.* (1) The specimen to be tested must measure 16 ±1/8 inches (406 ±3 mm) by 24+1/8 inches (610 ±3 mm).

(2) The specimens must be conditioned at 70 °F. ±5 °F. (21 °C. ±2 °C.) and 55% ±5% humidity for at least 24 hours before testing.

(d) *Test Apparatus.* The arrangement of the test apparatus must include the components described in this section. Minor details of the apparatus may vary, depending on the model of the burner used.

(1) *Specimen Mounting Stand.* The mounting stand for the test specimens consists of steel angles.

(2) *Test Burner.* The burner to be used in tesing must—

(i) Be a modified gun type.

(ii) Use a suitable nozzle and maintain fuel pressure to yield a 2 GPH fuel flow. For example: An 80 degree nozzle nominally rated at 2.25 GPH and operated at 85 pounds per square inch (PSI) gauge to deliver 2.03 GPH.

(iii) Have a 12 inch (305 mm) burner extension installed at the end of the draft tube with an opening 6 inches (152 mm) high and 11 inches (280 mm) wide.

(iv) Have a burner fuel pressure regulator that is adjusted to deliver a nominal 2.0 GPH of #2 Grade kerosene or equivalent.

Burner models which have been used successfully in testing are the Lenox Model OB–32, Carlin Model 200 CRD and Park Model DPL.

(3) *Calorimeter.* (i) The calorimeter to be used in testing must be a total heat flux Foil Type Gardon Gage of an appropriate range (approximately 0 to 15.0 British thermal unit (BTU) per ft.^{2} sec., 0–17.0 watts/cm^2). The calorimeter must be mounted in a 6 inch by 12 inch (152 by 305 mm) by 3/4 inch (19 mm) thick insulating block which is attached to a steel angle bracket for placement in the test stand during burner calibration as shown in Figure 2 of this part of this appendix.

(ii) The insulating block must be monitored for deterioration and the mounting shimmed as necessary to ensure that the calorimeter face is parallel to the exit plane of the test burner cone.

(4) *Thermocouples.* The seven thermocouples to be used for testing must be

1/16 inch ceramic sheathed, type K, grounded thermocouples with a nominal 30 American wire gage (AWG) size conductor. The seven thermocouples must be attached to a steel angle bracket to form a thermocouple rake for placement in the test stand during burner calibration.

(5) *Apparatus Arrangement.* The test burner must be mounted on a suitable stand to position the exit of the burner cone a distance of 8 inches from the ceiling liner panel and 2 inches from the sidewall liner panel. The burner stand should have the capability of allowing the burner to be swung away from the test specimen during warm-up periods.

(6) *Instrumentation.* A recording potentiometer or other suitable instrument with an appropriate range must be used to measure and record the outputs of the calorimeter and the thermocouples.

(7) *Timing Device.* A stopwatch or other device must be used to measure the time of flame application and the time of flame penetration, if it occurs.

(e) *Preparation of Apparatus.* Before calibration, all equipment must be turned on and allowed to stabilize, and the burner fuel flow must be adjusted as specified in paragraph (d)(2).

(f) *Calibration.* To ensure the proper thermal output of the burner the following test must be made:

(1) Remove the burner extension from the end of the draft tube. Turn on the blower portion of the burner without turning the fuel or igniters on. Measure the air velocity using a hot wire anemometer in the center of the draft tube across the face of the opening. Adjust the damper such that the air velocity is in the range of 1550 to 1800 ft./min. If tabs are being used at the exit of the draft tube, they must be removed prior to this measurement. Reinstall the draft tube extension cone.

(2) Place the calorimeter on the test stand as shown in Figure 2 at a distance of 8 inches (203 mm) from the exit of the burner cone to simulate the position of the horizontal test specimen.

(3) Turn on the burner, allow it to run for 2 minutes for warm-up, and adjust the damper to produce a calorimeter reading of 8.0 ±0.5 BTU per ft.^{2} sec. (9.1 ±0.6 Watts/cm^2).

(4) Replace the calorimeter with the thermocouple rake.

(5) Turn on the burner and ensure that each of the seven thermocouples reads 1700 °F. ±100 °F. (927 °C. ±38 °C.) to ensure steady state conditions have been achieved. If the temperature is out of this range, repeat steps 2 through 5 until proper readings are obtained.

(6) Turn off the burner and remove the thermocouple rake.

(7) Repeat (1) to ensure that the burner is in the correct range.

(g) *Test Procedure.* (1) Mount a thermocouple of the same type as that used for calibration at a distance of 4 inches (102 mm) above the horizontal (ceiling) test specimen. The thermocouple should be centered over the burner cone.

(2) Mount the test specimen on the test stand shown in Figure 1 in either the horizontal or vertical position. Mount the insulating material in the other position.

(3) Position the burner so that flames will not impinge on the specimen, turn the burner on, and allow it to run for 2 minutes. Rotate the burner to apply the flame to the specimen and simultaneously start the timing device.

(4) Expose the test specimen to the flame for 5 minutes and then turn off the burner. The test may be terminated earlier if flame penetration is observed.

(5) When testing ceiling liner panels, record the peak temperature measured 4 inches above the sample.

(6) Record the time at which flame penetration occurs if applicable.

(h) *Test Report.* The test report must include the following:

(1) A complete description of the materials tested including type, manufacturer, thickness, and other appropriate data.

(2) Observations of the behavior of the test specimens during flame exposure such as delamination, resin ignition, smoke, etc., including the time of such occurrence.

(3) The time at which flame penetration occurs, if applicable, for each of the three specimens tested.

Issued in Washington, DC, on September 17, 2007 under authority delegated in 49 CFR part 1.

Krista Edwards,

Acting Administrator.

[FR Doc. E7–19207 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 300 to 399, revised as of October 1, 2006, on page 276, in Appendix A to Part 386, reinstate Section IV to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

* * * * *

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to $2,100 per violation. (For purposes of this violation, the term "driver" means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to $16,000 per violation. (This violation applies to motor carriers, including an independent contractor who is not a "driver," as defined under paragraph IVa above.)

c. Violation—Operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

Penalty—$2,100 each time the vehicle is so operated.

(This violation applies to drivers as defined in IVa above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle placed out of service before the required repairs are made.

Penalty—Up to $16,000 each time the vehicle is so operated after notice of the defect is received.

(This violation applies to motor carriers, including an independent owner-operator who is not a "driver," as defined in IVa above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to $650 per violation.

f. Violation—Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty—Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

Note: Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations, i.e., failure to cease operations as ordered.

Penalty—Up to $16,000 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Conducting operations during a period of suspension under §§ 386.83 or 386.84 for failure to pay penalties.

Penalty—Up to $11,000 for each day that operations are conducted during the suspension period.

[FR Doc. 07–55515 Filed 9–27–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

RIN 2126–AB12

Civil Penalties Adjustments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule specifies inflation adjustments to civil penalties

for violating the FMCSA regulations. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. This final rule also makes a technical correction to include a reference to a paragraph created by an earlier rulemaking action.

DATES: Effective September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Jason Hartman, Regulatory Development Division, (202) 366–5043, *jason.hartman@dot.gov*. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

The Debt Collection Improvement Act of 1996

In order to preserve the remedial effect of civil penalties and foster compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (the Act) (Pub. L. 104–134, 110 Stat. 1321–1373), requires Federal agencies to regularly adjust certain civil penalties for inflation (see 28 U.S.C. 2461 note). The law requires each agency to make an initial inflationary adjustment for all applicable civil penalties and to make further adjustments to these penalty amounts at least once every four years.

The FMCSA previously adjusted civil penalties for inflation by regulation on March 31, 2003 (68 FR 15381). Subsequent to these adjustments, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) on August 10, 2005 (Pub. L. 109–59, 119 Stat. 1144). SAFETEA–LU reset several penalties at amounts required prior to adjustment for inflation and created new categories of penalties. The current penalties are found in 49 CFR part 386, Appendix A and B and 49 CFR 383.53(b).

Under 5 U.S.C. 553(b), the FMCSA finds good cause to dispense with prior notice and opportunity for comment. These procedures are unnecessary because inflation adjustments are ministerial acts required by statute. The adjustment simply recognizes that as inflation occurs, penalties should keep pace so that the impact of the penalty is not diminished with the passage of time.

Method of Calculation

Under the Act (28 U.S.C. 2461 note) the inflation adjustment for each applicable civil penalty is determined by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment. The cost-of-living adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law (section 5(b), 28 U.S.C. 2461 note). Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act (section 5(a), 28 U.S.C. 2461 note).

For example, under Appendix A of 49 CFR part 386, part IV, paragraph (e), failure to return a written certification of correction as required by an out-of-service order is subject to a civil penalty. The penalty was adjusted for inflation on March 31, 2003 (68 FR 15381), resulting in a maximum penalty of $650 for per violation. The CPI was 203 in June 2006, and was 184 in June 2003 (see U.S. Department of Labor CPI index at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt*). Thus the inflation factor is 203/184 or 1.10. The new penalty amount after the increase is the result of multiplying $650 × 1.10 = $715. Under the statute, however, the increase is to be rounded to the nearest multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000. The amount of the increase in the daily maximum penalty was $65, rounded to the nearest multiple of $100 equals $100, so the new daily maximum penalty is $750. Therefore, Appendix A of 49 CFR part 386, part IV, paragraph (e) is revised to provide an adjusted maximum penalty of $750 per violation.

The 1.10 inflation factor is used to adjust penalties previously adjusted in 2003, which included penalties under the Federal Hazardous Materials Regulations (49 CFR parts 171–180); penalties under the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107); commercial penalties established in the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 809); and penalties enacted in the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748 (Dec. 9, 1999)).

SAFETEA–LU revised or established several civil penalty amounts, which have been promulgated by final rule in 72 FR 36760, July 5, 2007. The FMCSA adjusts these penalties for inflation, using an inflation factor of 203/195 or 1.04, even though the penalties are less than four years old, to place all penalties on the same adjustment schedule. The Debt Collection Improvement Act of 1996 allows for more frequent adjustments, so long as agencies adjust civil penalties at least every four years.

Some penalties established by SAFETEA–LU were not included in the July 5, 2007, final rule. Footnote 2 in the preamble to that rule explained that changes in penalties made by section 4102(a) of SAFETEA–LU (amending 49 U.S.C. 521(b)(2)(B) to increase the penalties for recordkeeping and reporting violations) do not require any change in FMCSA regulations because they are automatically implemented by 49 CFR 386.81. Nevertheless, to avoid confusion on the part of the regulated community and to ensure that the listed regulatory penalties are consistent with those specified in SAFETEA–LU, FMCSA is updating the penalties in Appendix B to 49 CFR part 386, paragraphs (a)(1) and (a)(2).

Section 4209 of SAFETEA–LU also established new penalties for household goods brokers and motor carriers. In a proposed rule entitled "Brokers of Household Goods Transportation by Motor Vehicle" (RIN 2126–AA84), the FMCSA has proposed to add the penalties to 49 CFR part 386, paragraph (e) of Appendix B (72 FR 5947, Feb. 8, 2007). Those penalty amounts will not, however, be adjusted at this time because that rule is not yet final.

Appendices A and B are now adjusted for inflation. Because of the relatively low rate of recent inflation and the rounding formula required by the Act, most penalties remain unchanged from their previous levels.

In addition, the July 5, 2007, revisions to Appendix B to part 386 added paragraph (h). Today's rule modifies the second sentence of the introductory paragraph to Appendix B to reference paragraph (h).

Rulemaking Analyses and Notices

Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause on the basis that those procedures are "impracticable, unnecessary, or contrary to the public interest." (See 5 U.S.C. 553(b).) As stated above, the amendments made by this final rule are mandated by Congress. By making these amendments, the Agency is performing a nondiscretionary ministerial act. For this reason, the FMCSA finds good cause that notice and public comment are unnecessary. Further, the agency finds good cause under 5 U.S.C. 553(d)(3) to make the amendments effective upon publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. The Office of Management and Budget (OMB) did not review this document. We expect the final rule, which is statutorily mandated to preserve the remedial effect of civil penalties, will have minimal costs. Therefore, a full regulatory evaluation is unnecessary.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The FMCSA is an Administration within the Department of Transportation (DOT). The FMCSA analyzed this rule under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the Council on Environmental Quality Regulations implementing NEPA (40 CFR parts 1500–1508), and DOT Order 5610.1C, Procedures for Considering Environmental Impacts. This rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement since this action does not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

The FMCSA has analyzed this action 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 concern an environment risk to health or safety that may disproportionately affect children.

Executive Order 12630 (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.

Executive Order 13211 (Energy Effects)

The FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a "significant energy action" under that Executive Order because it will not be economically significant and will not be likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

■ In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, subtitle, B, chapter III, part 386 as set forth below:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132–31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 stat. 1748, 1767; and 49 CFR 1.73.

Appendix A to Part 386—[Amended]

■ 2. Appendix A to part 386 is amended by revising the figure "$650" to read as "$750," whenever it appears throughout the appendix.

Appendix B to Part 386—[Amended]

■ 3. In Appendix B to part 386 the introductory text is amended by revising the second sentence to read as follows:

* * *Pursuant to that authority, the inflation-adjusted civil penalties listed in paragraphs (a) through (h) of this appendix supersede the corresponding civil penalty amounts listed in title 49, United States Code.

* * * * *

■ 4. Appendix B to part 386 is further amended as follows:

■ a. Paragraph (a)(1) is amended by revising the figure "$550" to read as "$1,000," and the figure "$5,500" to read as "$10,000."

■ b. Paragraph (a)(2) is amended by revising the figure "$5,500" to read as "$10,000."

■ c. Paragraph (e)(5) is amended by revising the figure "$100,000" to read as "$105,000."

■ d. Paragraph (f)(2) is amended by revising the figure "$100,000" to read as "$105,000."

■ e. Paragraph (g) is amended by revising the figure "$550" to read as "$650," the figure "$5,500" to read as "$6,500," the figure "$27,500" to read as "$32,500," and the figure "$110,000" to read as "$120,000," whenever they appear throughout paragraph (g).

Issued on: September 24, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–19254 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–2005–23082]

RIN 2132–AA90

Buy America Requirements; End Product Analysis and Waiver Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Transit Administration published in the **Federal Register** of September 20, 2007, a final rule (effective October 22, 2007) which amended the Buy America

requirements in 49 CFR part 661. This document replaces text that was discussed in the preamble but omitted from the final rule with regard to final assembly requirements for rolling stock.

DATES: The effective date of this publication is October 22, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Office of the Chief Counsel, Federal Transit Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–4011 or *Richard.Wong@dot.gov.*

SUPPLEMENTARY INFORMATION: An inadvertent error occurred in the drafting of the final rule. In the Second Notice of Proposed Rulemaking (SNPRM) (71 FR 69412, Nov. 30, 2006), FTA proposed a new Appendix D to part 661 to amend the final assembly requirements for rolling stock. In the preamble to the final rule (72 FR 53688, Sept. 20, 2007), FTA announced that it was withdrawing the proposed language in the SNPRM and would instead continue to implement the terms of the March 18, 1997, Dear Colleague letter, with a few minor additions to reflect industry practices that have taken effect after the 1997 Dear Colleague letter was issued. In the process of drafting the final rule, text that was discussed in the preamble was not included in the final rule.

Accordingly, this document will correct that omission by removing the erroneous text in the September 20, 2007, final rule and replacing it with the correct text.

PART 661—BUY AMERICA REQUIREMENTS

■ In rule FR Doc E7–18355 published on September 20, 2007 (72 FR 53688) make the following corrections:

§ 661.11 [corrected]

■ 1. Beginning on page 53697, in the third column, in Appendix D to § 661.11, paragraphs (a) and (b) are corrected to read as follows:

Appendix D to § 661.11—Minimum Requirements for Final Assembly

(a) Rail Cars: In the case of the manufacture of a new rail car, final assembly would typically include, as a minimum, the following operations: installation and interconnection of propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, wheels and axles, suspensions and frames; the inspection and verification of all installation and interconnection work; and the in-plant testing of the stationary product to verify all functions.

(b) Buses: In the case of a new bus, final assembly would typically include, at a minimum, the installation and interconnection of the engine, transmission, axles, including the cooling and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic and electrical systems, door systems, passenger seats, passenger grab rails, destination signs, wheelchair lifts; and road testing, final inspection, repairs and preparation of the vehicles for delivery.

* * * * *

Issued on September 25, 2007.

James S. Simpson,

Administrator.

[FR Doc. 07–4803 Filed 9–25–07; 3:19 pm]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No.060525140–6221–02]

RIN 0648–XC83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for golden tilefish in the exclusive economic zone (EEZ) in the South Atlantic. This closure is necessary to protect the golden tilefish resource.

DATES: The closure is effective 12 noon, local time, October 3, 2007, through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727–824–5305, fax: 727–824–5308, e-mail: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial fishery for South Atlantic golden tilefish is managed under a commercial quota of 295,000 lb (133,810 kg), as specified in 50 CFR 622.42(e)(2), for the current fishing year, January 1 through December 31, 2007.

Under 50 CFR 622.43(a), NMFS is required to close the golden tilefish commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined the commercial quota of 295,000 lb (133,810 kg) for golden tilefish in the South Atlantic will be reached by October 3, 2007. Accordingly, the commercial fishery for South Atlantic golden tilefish is closed effective 12 noon, local time, October 3, 2007, through December 31, 2007, the end of the fishing year. The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having golden tilefish aboard must have landed and bartered, traded, or sold such golden tilefish prior to 12 noon, local time, October 3, 2007.

During the closure, the appropriate bag limits specified in 50 CFR 622.39(d)(1) and the applicable possession limits specified in 50 CFR 622.39(d)(2) apply to all harvest or possession of golden tilefish in or from the South Atlantic EEZ, and the sale or purchase of golden tilefish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of golden tilefish that were harvested, landed ashore, and sold prior to 12 noon, local time, October 3, 2007, and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

NMFS also finds good cause that the implementation of this action cannot be delayed for 30 days. There is a need to implement this measure in a timely fashion to prevent an overrun of the commercial quota of South Atlantic golden tilefish, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be contrary to the

Magnuson-Stevens Act and the FMP. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 24, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–4797 Filed 9–25–07; 2:07 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC91

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to fully use the C season allowance of the 2007 total allowable catch (TAC) of pollock in Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 25, 2007, through 1200 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 10, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *inseason-fakr@noaa.gov* and include in the subject line of the e-mail the document identifier: g63plkro5.fo.wpd (E-mail comments, with or without attachments, are limited to 5 megabytes).

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

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

NMFS prohibited directed fishing for pollock in Statistical Area 630 in the GOA under § 679.20(d)(1)(iii) on August 28, 2007 (72 FR 48946, August 27, 2007). NMFS reopened the pollock fishery in Statistical Area 630 in the GOA for 72 hours on September 15, 2007 (72 FR 53169, September 18, 2007). NMFS reopened the pollock fishery in Statistical Area 630 in the GOA for 48 hours on September 21, 2007. NMFS prohibited directed fishing for pollock on September 23, 2007.

NMFS has determined that as of September 24, 2007 approximately 1,590 mt remain in the C season allowance of the 2007 pollock directed fishing allowance in Statistical Area 630 in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2007 TAC of pollock in Statistical Area 630 in the GOA, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 in the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 630 in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 24, 2007.

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

Without this inseason adjustment, NMFS could not allow the fishery for pollock in Statistical Area 630 in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until October 10, 2007.

This action is required by § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 25, 2007.

James P. Burgess,

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

[FR Doc. 07–4798 Filed 9–25–07; 2:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 188
Friday, September 28, 2007

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

Commodity Credit Corporation

7 CFR Parts 1412 and 1427

RIN 0560–AH75

Cash and Share Lease Provisions for Future Farm Programs

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking seeks comments with respect to the manner in which so-called "combination" or "flex" leases are viewed by the Department of Agriculture in the administration of various programs that are administered by the Farm Service Agency (FSA) and the Risk Management Agency (RMA). This includes those programs of the Commodity Credit Corporation (CCC) that are administered by FSA on behalf of CCC and those programs of the Federal Crop Insurance Corporation (FCIC) that are administered by RMA on behalf of FCIC. Changes have occurred within agriculture that relate to the types of leases. A traditional crop share lease is a lease where the landlord receives a share of the crop production in full satisfaction of the rent. A traditional cash lease is a lease where the tenant pays the landlord a set cash amount regardless of the quantity of the tenant's production of a crop. New types of leases may contain traits of both a share lease and a cash lease. Accordingly, existing program provisions may not accurately and appropriately take these new lease types into consideration.

DATES: We will consider comments that we receive by November 27, 2007.

ADDRESSES: We invite you to submit comments on this advance notice of proposed rulemaking. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

E-Mail: *Salomon.Ramirez@wdc.usda.gov.*

Mail: Director, Production, Emergencies, & Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517.

Fax: Submit comments by facsimile transmission to (202) 690–2130.

Hand Delivery or Courier: Deliver comments to the above address.

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PECD, FSA, USDA, Room 3752–S, South Building, Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Salomon Ramirez, Director, Production Emergencies and Compliance Division, USDA FSA PECD, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, (202) 720–7641, e-mail: *Salomon.Ramirez@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The purpose of this advance notice of proposed rulemaking is to obtain comments with respect to the manner in which so-called "combination" or "flex" leases are viewed by the Department of Agriculture in the administration of various programs that are administered by RMA and FSA, including those programs of CCC that are administered by FSA on behalf of CCC and those programs of FCIC that are administered by RMA on behalf of FCIC. In order to make timely decisions as to whether changes in program provisions are needed to reflect changes in landlord-tenant lease arrangements with respect to programs that may be authorized by Congress with respect to the 2008 crop year.

The desire to obtain comments on this matter is based upon several considerations for FSA and RMA programs.

Significant changes are occurring within agriculture due to increases in land values, input costs, and commodity prices. In attempt to share the direct and indirect impacts of these and related costs, landlords and tenants have formulated leases that are neither a strict crop share lease (that is, a lease where the landlord receives a share of the crop production in full satisfaction of the rent) nor a cash lease (that is, a lease where the landlord receives a set cash amount regardless of the quantity of production of a crop achieved by the tenant). Rather, these new types of leases may contain traits of both a share lease and a cash lease. Accordingly, existing program provisions may not accurately and appropriately take these new lease types into consideration.

FCIC crop insurance policies provide coverage to persons who have an insurable interest in the crop. Generally, a cash rent landlord does not have such an interest, but a share rent landlord does. Thus, leases that have attributes of both a cash lease and a share lease raise the issue of whether the landlord has an insurable interest and, if so, what percentage of the crop production should be considered to be insurable by the landlord.

Over the course of the past 25 years, FSA has been aware of situations where non-traditional leases have been used by persons in attempts to avoid the impact of statutory payment limitation provisions. Generally, in the making of commodity program payments subject to these limitations, FSA looks to the division of crop production as specified in a lease to determine to whom these payments should be paid and accounted for under statutory payment limitation provisions. Thus, FSA takes these concerns into account in relation to the considerations listed above.

FSA and RMA are engaged in efforts to have compatible, if not uniform, terms and conditions between our programs wherever possible. This is of particular importance with respect to the administration of FCIC crop insurance policies and the simultaneous implementation by FSA of the Noninsured Crop Disaster Assistance Program (NAP), where the same crop loss may trigger assistance under FCIC crop insurance policies and under FSA-administered programs.

Types of Leases

Currently, for FSA and RMA programs, three categories of leases are considered: Cash leases, share leases, and combination leases.

A cash lease is a lease in which the tenant agrees to pay to the landlord a set sum of money for the right to use specified land. A cash lease also includes those leases where an in-kind payment is made to the landlord for a specifically agreed upon quantity of an agricultural commodity and title to that quantity must be provided to the landlord by the tenant regardless of the quantity of crops produced on the leased land. In cash leases, the payment must be made regardless of the quantity of crops produced on such land and without regard to the price received for the production of the commodity. The payment of the rent may be made at anytime during the year, either before or after access to the land is provided by the landlord.

A share lease is a lease in which the tenant agrees to provide to the landlord a specified percentage of the crops produced on the leased land. If there is no production, the landlord receives nothing in return for the use of the land.

A combination lease is a lease that contains attributes of both a cash lease and a share lease. Examples of such leases would include those that provide:

- A fixed cash payment of $150 per acre plus 10 percent of the crop production from the leased land.
- A fixed cash payment of $150 per acre plus one-half of the bushels above 150 bushels per acre produced on the farm.
- A fixed cash payment of $150 per acre plus 10 bushels per acre if the crop produces above 150 bushels per acre on the farm.
- A fixed cash payment of $150 per acre plus $0.50 per bushel if the corn price received by the operator exceeds $3.50 per bushel.
- A fixed cash payment of $150 per acre plus $30 per acre if the gross revenue of the crop produced on the farm exceeds $500 per acre.
- A fixed cash payment of $150 per acre plus $30 per acre if the county average yield exceeds 150 bushels per acre.
- A fixed cash payment of $150 per acre plus $10 per acre if the Chicago Board of Trade futures for October delivery exceeds $4.00 per bushel.
- A rental term where the landlord receives one-third of all crops produced on the leased land plus $25 dollar per acre if production is greater than 130 percent of the historical crop yield for the leased land.
- A rental term where the landlord receives one-third of all crops produced on the leased land plus $50 dollar per acre if the market price received by the tenant exceeds a set dollar amount.

Current Treatment of Leases by FSA and CCC in Provisions Applicable to Multiple Programs

The FSA regulations in 7 CFR 718.2 defines a producer as an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. A producer also includes a grower of hybrid seed.

The Farm Security and Rural Investment Act of 2002 requires that the Secretary of Agriculture provide adequate safeguards to protect the interests of tenants and sharecroppers and provides for the sharing of payments for Direct and Counter-Cyclical Program (DCP) among the producers on a farm on a fair and equitable basis. The regulations in 7 CFR 1412.402(a) define an eligible producer for DCP purposes as:

(1) An owner of a farm who assumes all or a part of the risk of producing a crop;

(2) A producer, other than an owner, on a farm with a share-rent lease for such farm, regardless of the length of the lease, if the owner of the farm enters into the same contract;

(3) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring on or after September 30 of the year of the contract in which case the owner is not required to enter into the contract;

(4) A producer, other than an owner, on an eligible farm who cash rents such farm under a lease expiring before September 30 of the year of the contract. The owner of such farm must also enter into the same contract; or

(5) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30 of the year of the contract, if the tenant declines to enter into a contract for the applicable year. In the case of an owner covered by this paragraph, direct and counter-cyclical payments will not begin under the contract until the lease held by the tenant ends.

The regulations in 7 CFR 1412.504 currently outline provisions regarding the sharing of DCP payments, including the conditions upon which a lease is considered a cash or share lease. Program regulations do not prohibit the use of any type of lease agreement, but the type of lease arrangement determines who is eligible to receive a share of the payments. The regulations in 7 CFR 1412.504 provide the following:

Each eligible producer on a farm will be given the opportunity to annually enroll in a contract and receive direct and counter-cyclical payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

Each producer must provide a copy of their written lease to the county committee and, in the absence of a written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease.

A lease will be considered to be a cash lease if the lease provides for only a guaranteed sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement will be considered to be a share lease. The leasing of grazing or haying privileges is not considered cash leasing.

If a lease provides for the greater of a guaranteed amount or share of the crop or crop proceeds, such agreement shall be considered a share lease if the lease provides for both:

(1) A guaranteed amount such as a fixed dollar amount or quantity; and

(2) A share of the crop proceeds.

If the lease is a cash lease, the landlord is not eligible for direct or counter-cyclical payments.

When contract acreage is leased on a share basis, neither the landlord nor the tenant shall receive 100 percent of the contract payment for the farm.

CCC will approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landlords, tenants and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) CCC determines that the interests of tenants and sharecroppers are being protected; and

(3) CCC determines that the payment shares shown on the contract do not circumvent the provisions of 7 CFR part 1400.

These regulations do not prevent tenants and landowners from taking advantage of the various types of leases, including the combination leases,

available in order to adjust for the changing market conditions. The conditions set forth in the lease determine whether the arrangement is considered a share-rent or cash-rent situation for DCP program participation and dictates who is eligible to share in DCP program benefits.

Current Treatment of Leases by RMA and FCIC

RMA and FCIS's Loss Adjustment Manual (LAM) Standards Handbook (FCIC–25010) provides the procedural guidance for verifying or determining the insurable share or interest of the crop being insured. The LAM is located on the RMA public Web site at *http://www.rma.usda.gov/handbooks/25000/2007/07_25010.pdf.* Within section 1, 13 Verifying or Determining Insurable Share, of the LAM provides different scenarios for determining whether the arrangement is a "cash lease" or "crop share lease" between the landlord and tenant. Share arrangements may be written or verbal. The procedures for verifying or determining the insurable share are:

100 Percent Crop Share

A 100 percent crop shares lease is a cash lease that includes 100 percent share as owner or operator or land that is rented for cash, a fixed commodity payment, or any consideration other than a share in the crop.

A lease that provides for either a minimum payment (including, but not limited to, a specified amount of cash, bushels, pounds) or a crop share is considered a cash lease (for example, lease provides for a 50/50 crop share or $100 dollars, whichever is greater).

A lease that contains a crop share, but the percentage is not a fixed amount at the time coverage begins is considered a cash lease. Such leases may contain a cash consideration with an undetermined crop share percentage at the time coverage begins.

Crop Share Lease

In order to have a crop share, the crop share percentage must be specified at the time coverage begins and cannot change based on the amount of production harvested. For examples, see situations 4 and 8 below.

Written or verbal lease agreements containing provisions for both a minimum payment (including, but not limited to, a specified amount of cash, bushels, pounds) and a crop share is considered a crop share lease.

The following nine situations provide examples of share arrangements, including both cash leases and crop share leases.

Situation 1: The tenant (insured) agrees to give the landlord ⅓ of the crop in return for farming the land.

- The agreement is a crop share.
- The insured's share is ⅔ of the crop.

Situation 2: The tenant (insured) agrees to give the landlord ⅓ of all the crops produced on the premises and to guarantee that the landlord's share of the crops will average $35 an acre. In the event that the landlord's share of the crops is worth less than $35 an acre, the tenant will pay the difference in cash to the landlord.

- The agreement is a crop share.
- The insured's share is ⅔ of the crop.

Situation 3: The tenant (insured) agrees to give the landlord $50 per acre cash and ¼ of the crop in return for farming the land.

- The agreement is a crop share.
- The insured's share is ¾ of the crop. RMA does not convert the $50 per acre cash payment to a share basis.

Situation 4: The tenant (insured) agrees to give the landlord $50 per acre cash and ⅓ of all the bushels in excess of 60 bushels per acre. (Average yields for the area are usually around 55–65 bushels.)

- The agreement is a cash lease.
- The insured's share is 100 percent. The bushels in excess of the 60 bushels per acre are a "bonus" above and beyond the insured crop. The share percentage of the entire crop cannot be determined at the time coverage begins since it is dependent on how many bushels in excess of 60 bushels will be produced.

Situation 5: The tenant (insured) agrees to give the landlord $50 per acre cash and 10 bushels per acre.

- The agreement is a cash lease.
- The insured's share is 100 percent. RMA does not convert the 10 bushels to a percentage share. In this scenario the tenant will pay the landlord a fixed amount, cash ($50) and commodity (10 bushels per acre).

Situation 6: The tenant (insured) agrees to give the landlord 25¢ for every bushel of peaches harvested.

- The agreement is a cash lease.
- The insured's share is 100 percent. Because there is no agreement for a set share percentage of the crop at the time coverage begins, the insured's share is considered a cash lease.

Situation 7: The tenant (insured) agrees to pay the landlord $25 per acre or ¼ of the crop, whichever is greater.

- The agreement is a cash lease.
- The insured's share is 100 percent. Since the lease contains an either-or type arrangement, the share is not considered a fixed element of the lease.

Situation 8: The tenant's (insured's) lease agreement states that the tenant will receive the first 85 bushels per acre of corn produced. Of any bushels in excess of 85 bushels per acre, the tenant will receive 60 percent and the landlord will receive 40 percent. The insured's guarantee is 85 bushels and is based on the highest level of coverage that can be elected.

- The agreement is a cash lease.
- The insured's share is 100 percent. Since the insured receives the first 85 bushels and this amount is the insured's guarantee, 85 bushels is the maximum amount that could be insured under the policy.

Situation 9: The tenant's (insured's) actual production history (APH) is 17.0 tons per acre. The tenant's lease agreement contains the following schedule:

Tons produced	Tenant's share (percent)	Landowner's share (percent)
0–8 tons	98	2
8.1–12.0	96	4
12.1–16.0	94	6
16.1–20.0	90	10
20.1–25.0	88	12
25.1 or more	85	15

- The agreement is a share arrangement since there is no mention of cash.
- The base share is derived from the tenant's (insured's) APH. Therefore, the share percentage range for the insured's (tenant's) APH reported on the acreage report would be 90 percent. Since the share is to be established at the time insurance attaches and both still have a share in the crop at the end of the crop year, the share percentage established at the time insurance attached will be retained for indemnity and premium purposes.

CCC Noninsured Crop Disaster Assistance Program (NAP) Payments

NAP payments are CCC payments made to producers in those areas where RMA policies are not available with respect to the specific crop produced by a producer. Specific regulations have not been defined for NAP regarding cash and share lease agreements. Generally, an eligible producer is determined according to the regulations in 7 CFR 718.2 and is based on whether the tenant or owner shares in the risk of producing the crop.

As such, the regulations governing DCP with regard to cash and share lease agreements are not applicable for NAP.

Ad hoc Disaster Payments

Historically, FSA has followed the determinations made by RMA for insured crops with respect to a given lease in that some disaster payments are simply an additional payment made by using FSA or CCC funds to simply supplement an indemnity payment made under an RMA policy. In those instances, FSA does not review the lease but simply issues a payment using a uniform percentage factor that is applied to the indemnity received by a person.

For noninsured crops, FSA has followed the determinations made for NAP with regard to determining whether the tenant or owner shared in the risk of producing the crop.

Marketing Assistance Loans (MLA) and Loan Deficiency Payments (LDP)

These CCC benefits are available only in the event that a crop is produced on a farm. In order to determine to whom such benefits may be made available, FSA makes a determination of whether a person has "beneficial interest" in the production. Regulations in 7 CFR 1421.6 and 1427.5, All Eligible Commodities Except Upland Cotton, and Upland Cotton, respectively, define beneficial interest as a determination by CCC that a person has the requisite title to and control of the commodity tendered to CCC as collateral for a marketing assistance loan or used to determine a loan deficiency payment. In order to have beneficial interest, a person must be the producer of the commodity and have had ownership and control of the commodity at the time it was planted through the earlier of the date the loan was repaid or the maturity date of the loan.

In making this determination of beneficial interest, FSA takes the terms of a lease into account. Generally, the analysis of the lease for these purposes is the same as that used for DCP payments.

Cash-Rent Tenant Rule

The "cash-rent tenant rule" is a current payment eligibility provision applicable to payments under multiple programs. It applies to any producer that rents land from another for cash or a crop share guaranteed as to the amount of the commodity to be paid in rent. If a producer is considered a cash-rent tenant under this rule, the producer is subject to an additional requirement that may make the producer ineligible for payment even though the producer otherwise meets the requirements to be considered "actively engaged in farming."

Impact on Small and Beginning Producers

Renting land under a flexible lease may be advantageous for a small or beginning producer because risks are shared with the owner. Changes to policies related to leases need to ensure that small or beginning producers may benefit from flexible terms and receive all of the direct and counter-cyclical payments on a farm for which they would otherwise be eligible.

Request for Comments

FSA and RMA are reviewing current regulations to determine the feasibility of developing a standardized regulation for defining cash and share lease agreements, including the conditions upon which a lease shall be considered a cash or share lease.

Accordingly, FSA and RMA are soliciting comments with respect to the manner in which lease agreements are viewed by the Department of Agriculture in the administration of various programs. Specifically, we request comments that would facilitate the implementation of terms and conditions that treat a lease in the same, to the maximum extent possible, and still are consistent with FSA and RMA program requirements. Comments should address the following questions:

1. Should combination or flex leases be treated in the same manner for all FSA/CCC and RMA/FCIC purposes? Explain.

2. What adverse consequences or inequities result from treating combination or flex leases as share leases for FSA/CCC program purposes?

3. What adverse consequences or inequities result from treating combination or flex leases as either cash or share leases, depending on the terms, for RMA/FCIC purposes?

4. How can FSA/CCC ensure that combination or flex lease provisions are not being used to circumvent payment limitation provisions?

5. What measures should FSA/CCC take to protect the interests of tenants and sharecroppers?

6. What should the rule for treatment of combination and flex leases be?

Executive Order 12866

This advance notice of proposed rulemaking has been determined to be not significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Thomas B. Hofeller,

Executive Vice President, Commodity Credit Corporation Administrator, Farm Service Agency.

Eldon Gould,

Administrator, Risk Management Agency Manager, Federal Crop Insurance Corporation.

[FR Doc. 07–4755 Filed 9–27–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29334; Directorate Identifier 2006–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Airplanes and A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

All permanent fuselage skin * * * and lap joint doubler * * * repair principles published in the SRM (Structural Repair Manual) * * * have been replaced with Oct/05 Revision by updated, simplified and harmonized repair principles.

These updates led to the de-validation of some repairs and to reassess the repair inspection requirements. This situation if not corrected, can affect the aircraft structural integrity with a possible risk of decompression.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 29, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–29334; Directorate Identifier 2006–NM–268–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directives 2006–0332 and 2006–0333, both dated October 27, 2006 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A review of the repair substantiations of the SRM (Structural Repair Manual) has been done to take into account the latest aircraft operational data (Aircraft Weight Variant and Fatigue Flight Mission Profiles). As a result, all permanent fuselage skin (Figure 202–210/213–214) and lap joint doubler (Figure 215–216) repair principles published in the SRM chapter 53–00–11, Page Block 201 have been replaced with Oct/05 Revision by updated, simplified and harmonized repair principles.
>
> These updates led to the de-validation of some repairs and to reassess the repair inspection requirements. This situation if not corrected, can affect the aircraft structural integrity with a possible risk of decompression.
>
> In order to maintain the structural integrity, this Airworthiness Directive (AD) renders mandatory the inspection of the fuselage to identify possible permanent skin repairs and permanent longitudinal lap joint repairs and to apply the associated corrective actions.

The corrective actions include contacting Airbus for repair/inspection instructions, and repair, as applicable, for skin repairs or longitudinal lap joint repairs that were done in accordance with the repair principles in SRM chapter 53–00–11, Page Block 201, before October 2005, or repairs that were done without using an individual repair design approval sheet provided by Airbus. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A330–53–3161, dated April 14, 2006; A330–53–3162, dated April 6, 2006; and Service Bulletins A340–53–4166 and A340–53–4167, both dated April 6, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 9 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,480, or $720 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2007–29334; Directorate Identifier 2006–NM–268–AD.

Comments Due Date

(a) We must receive comments by October 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes; all certified models, all serial numbers; certificated in any category; except those on which Airbus Modification 49144 (install rudder fly by wire) has been embodied in production.

Subject

(d) Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A review of the repair substantiations of the SRM (Structural Repair Manual) has been done to take into account the latest aircraft operational data (Aircraft Weight Variant and Fatigue Flight Mission Profiles). As a result, all permanent fuselage skin (Figure 202–210/213–214) and lap joint doubler (Figure 215–216) repair principles published in the SRM chapter 53–00–11, Page Block 201 have been replaced with Oct/05 Revision by updated, simplified and harmonized repair principles.

These updates led to the de-validation of some repairs and to reassess the repair inspection requirements. This situation if not corrected, can affect the aircraft structural integrity with a possible risk of decompression.

In order to maintain the structural integrity, this Airworthiness Directive (AD) renders mandatory the inspection of the fuselage to identify possible permanent skin repairs and permanent longitudinal lap joint repairs and to apply the associated corrective actions.

The corrective actions include contacting Airbus for repair/inspection instructions, and repair, as applicable, for skin repairs or longitudinal lap joint repairs that were done in accordance with the repair principles in SRM chapter 53–00–11, Page Block 201, before October 2005, or repairs that were done without using an individual repair design approval sheet provided by Airbus.

Actions and Compliance

(f) Within 18 months after the effective date of this AD, unless already done, do the following actions.

(1) For airplanes with Weight Variant (WV) greater than WV 004 and lower than or equal to WV 027 (for Model A330 airplanes) or WV 029 (for Model A340–200 and –300 series airplanes): Do the actions specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Perform a detailed visual inspection of the fuselage outer skin for permanent skin repairs in the area between frame (FR) 54 and FR 58; and for permanent longitudinal lap joint repairs in the area between FR 53.3 and FR 58 (for Section 15, between FR 53.3 and FR 54, only in the area between stringer (STGR) 22LH (left-hand) and STGR 22RH (right-hand) upper shell); and as applicable, apply the corrective actions before further flight. Perform the actions in accordance with the instructions given in Airbus Service Bulletin A330–53–3161, dated April 14, 2006; or A340–53–4166, dated April 6, 2006; as applicable.

(ii) Perform a detailed visual inspection of the fuselage outer skin for permanent skin repairs in the area between FR 18 and FR 38, and between FR 58 and FR 91; and for permanent longitudinal lap joint repairs in the area between FR 18 and FR 53.3, and between FR 58 and FR 91 (for Section 15, between FR 39 and FR 53.3, only in the area between STGR 22LH (left-hand) and STGR 22RH (right-hand) upper shell); and as applicable, apply the corrective actions before further flight. Perform the actions in accordance with the instructions given in Airbus Service Bulletin A330–53–3162 or A340–53–4167, both dated April 6, 2006, as applicable.

(2) For airplanes with WV lower than or equal to WV 004: Perform a detailed visual inspection of the fuselage outer skin for permanent skin repairs in the area between FR 18 and FR 38, and between FR 54 and FR 91; and for permanent longitudinal lap joint repairs in the area between FR 18 and FR 91 (for Section 15, between FR 39 and FR 54, only in the area between STGR 22LH and STGR 22RH upper shell); and as applicable, apply the corrective actions before further flight. Perform the actions in accordance with the instructions given in Airbus Service Bulletin A330–53–3162 or A340–53–4167, both dated April 6, 2006, as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directives 2006–0332 and 2006–0333, both

dated October 27, 2006; and Airbus Service Bulletins A330–53–3161, dated April 14, 2006; A330–53–3162, dated April 6, 2006; and A340–53–4166 and A340–53–4167, both dated April 6, 2006; for related information.

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19258 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29335; Directorate Identifier 2007–NM–045–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This proposed AD would require repetitive inspections for cracking of the overwing frames from stations 845 to 905 (MD–87 stations 731 to 791), left and right sides, and corrective actions if necessary. This proposed AD results from reports of cracked overwing frames. We are proposing this AD to detect and correct such cracking, which could sever the frame, increase the loading of adjacent frames, and result in damage to adjacent structure and loss of overall structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue. SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2007–29335; Directorate Identifier 2007–NM–045–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that four MD–80 operators reported six instances of cracked overwing frames. The reports indicate two failures at frame station 886 on the left side, three failures at frame station 886 on the right side, and one failure at frame station 905 on the right side. The cracking occurred on airplanes that had accumulated between 25,965 and 40,612 total flight cycles. The cracks, which originate in the upper radius of the frame inboard tab just below the floor, were caused by fatigue. Frames at stations 845 and 864, although not reported to be cracked, are also susceptible to this type of failure. All of the noted frames are a part of MD–80 principal structural element (PSE) 53.80.005 (although the inspections that would be required by this proposed AD are not included in supplemental inspections already required for PSE 53.80.005). If not corrected, an undetected crack might sever the frame, which could increase the loading of adjacent frames, result in damage to adjacent structure, necessitate extensive repair, and ultimately lead to the loss of overall structural integrity of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD80–53A301, Revision 1, dated May 25, 2007. The service bulletin describes procedures for inspections, using general visual and high frequency eddy current methods, to detect cracking of the overwing frames from stations 845 to 905 (MD–87 stations 731 to 791), left and right sides. The service bulletin specifies repeating the inspections within 9,300 flight cycles after any repair, within 20,000 flight cycles after any replacement, and at intervals not to exceed 9,300 flight cycles if no cracks are found. Corrective actions are done before further flight and include a blend out repair of cracks less than 0.125 inch deep, and replacement of any overwing frame with a crack 0.125 inch or deeper.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or

develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 1,189 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
4	$80	None	$320, per inspection cycle	670	$214,400, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2007–29335; Directorate Identifier 2007–NM–045–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracked overwing frames. We are issuing this AD to detect and correct such cracking, which could sever the frame, increase the loading of adjacent frames, and result in damage to adjacent structure and loss of overall structural integrity 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.

Inspections

(f) Before the accumulation of 20,000 total flight cycles, or within 24 months after the effective date of this AD, whichever occurs later: Do general visual and high frequency eddy current inspections, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–53A301, Revision 1, dated May 25, 2007. Do the applicable corrective actions before further flight after accomplishing the inspections. Repeat the inspections thereafter at applicable intervals not to exceed those specified in paragraph 1.E., "Compliance," of the service bulletin.

Actions According to Previous Issue of Service Bulletin

(g) Inspections and related investigative and corrective actions are also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with Boeing Alert Service Bulletin MD80–53A301, dated January 9, 2007.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair

method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19204 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29332; Directorate Identifier 2007–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42 and ATR72 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *.

* * * * *

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an "unsafe condition" * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 29, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site: Go to http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–29332; Directorate Identifier 2007–NM–172–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0219R1, dated June 29, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulations) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: the date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank

systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

ATR has issued the Time Limits Section of Part 1 of the ATR42–200/–300/–320 Maintenance Review Board Report (MRBR), Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; and the ATR 72 MRBR, Revision 8, dated March 26, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 84 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,720, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR–GIE Avions De Transport Regional (Formerly Aerospatiale): Docket No. FAA–2007–29332; Directorate Identifier 2007–NM–172–AD.

Comments Due Date

(a) We must receive comments by October 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all ATR Model ATR42–200, –300, –320, and –500 airplanes; and all ATR Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *http://www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: the date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 3 months after the effective date of this AD or before December 16, 2008, whichever occurs first, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate Task 28.10.00 "Fuel Tank—General," and Task 28.20.00 "Distribution," of the Certification Maintenance Requirements (CMR) Time Limits Section of Part 1 of the ATR–42–200/–300/–320 Maintenance Review Board Report (MRBR), Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable. For all tasks identified in the applicable MRBR, the initial compliance times start from the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, except as provided by paragraph (f)(3) of this AD. The repetitive inspections must be accomplished thereafter at the interval specified in the applicable MRBR.

(i) The effective date of this AD.

(ii) The date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

(2) Within 3 months after the effective date of this AD or before December 16, 2008, whichever occurs first, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in Section 4. "Critical Design Configuration Control List," of the Airworthiness Limitations section of the Time Limits Section of Part 1 of the ATR42–200/–300/–320 Maintenance Review Board Report (MRBR), Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable.

(3) For the task titled "Detailed visual inspection of the fuel tanks and associated equipment, wiring, piping and braids" (CMR (Certification Maintenance Requirements) task reference 28.10.00–1): The initial compliance time is the later of the times specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD. Thereafter, the task titled "Detailed visual inspection of the fuel tanks and associated equipment, wiring, piping and braids" must be accomplished at the repetitive interval specified in Section 4. "Critical Design Configuration Control List," of the Airworthiness Limitations Section of the Time Limits Section of Part 1 of the ATR42–200/–300/–320 MRBR, Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable.

(i) Within 144 months since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

(ii) Within 72 months or 20,000 flight hours after the effective date of this AD, whichever occurs first.

(4) Except as provided by paragraph (g) of this AD: After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspection, inspection intervals, or CDCCLs may be used.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0219R1, dated June 29, 2007, and the service information identified in Table 1 of this AD, for related information.

TABLE 1.—SERVICE INFORMATION

Document	Revision level	Date
Time Limits Section of Part 1 of the ATR42–200/–300/–320 Maintenance Review Board Report	7	March 31, 2006.
Time Limits Section of Part 1 of the ATR42–400/–500 Maintenance Review Board Report	6	March 26, 2007.
Time Limits Section of Part 1 of the ATR72 Maintenance Review Board Report	8	March 26, 2007.

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19201 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29331; Directorate Identifier 2007–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> A crack has been found in an axle adaptor during fatigue testing. It was found that the internal edges of the dowel holes did not have the correct radius and the crack had developed from the edge of one of the dowel holes.
>
> A crack in the axle adaptor can cause the axle adaptor to fail and ultimately lead to loss of the wheels and total loss of brake capability.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 29, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–29331; Directorate Identifier 2007–NM–136–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0263, dated August 29, 2006 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A crack has been found in an axle adaptor during fatigue testing. It was found that the internal edges of the dowel holes did not have the correct radius and the crack had developed from the edge of one of the dowel holes.
>
> A crack in the axle adaptor can cause the axle adaptor to fail and ultimately lead to loss of the wheels and total loss of brake capability.

The corrective action includes doing repetitive ultrasonic inspections to detect cracking in the axle adaptor; replacing the axle adaptor if necessary; and ultimately doing the terminating action of inspecting and modifying the main landing gear (MLG) shock strut and axle adaptors. The inspection is a crack test. The modification includes measuring the dowel hole, and corrective actions if necessary (replacing the axle adaptor, repairing the dowel hole) and, when accomplished, terminates the repetitive inspection requirements. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab has issued Service Bulletin 340–32–133, Revision 01, dated May 3, 2006. APPH Limited has issued APPH Service Bulletin AIR83064–32–12, Revision 3, dated April 26, 2006; and AIR83022–32–32, Revision 3, dated April 26, 2006.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 220 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. Required parts cost would be negligible. The average labor rate is $80 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $158,400, or $720 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket No. FAA–2007–29331; Directorate Identifier 2007–NM–136–AD.

Comments Due Date

(a) We must receive comments by October 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, unless equipped with Main Landing Gear (MLG) shock struts modified in accordance with APPH Service Bulletin AIR83064–32–12 or AIR83022–32–32.

(1) Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) airplanes, serial numbers (S/Ns) SF340A–004 through –159.

(2) Saab Model SAAB 340B airplanes, S/Ns 340B–160 through –459.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A crack has been found in an axle adaptor during fatigue testing. It was found that the internal edges of the dowel holes did not have the correct radius and the crack had developed from the edge of one of the dowel holes.

A crack in the axle adaptor can cause the axle adaptor to fail and ultimately lead to loss of the wheels and total loss of brake capability.

The corrective action includes doing repetitive ultrasonic inspections to detect cracking in the axle adaptor; replacing the axle adaptor if necessary; and ultimately doing the terminating action of inspecting and modifying the main landing gear (MLG) shock strut and axle adaptors. The inspection is a crack test. The modification includes measuring the dowel hole and corrective actions if necessary (replacing the axle adaptor, repairing the dowel hole), and, when accomplished, terminates the repetitive inspection requirements.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 8,000 flight cycles since the last MLG overhaul, or within 1,500 flight cycles, or 6 months after the effective date of this AD, whichever occurs latest: Inspect the MLG in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–133, Revision 01, dated May 3, 2006. If any crack is found, before further flight: Replace the axle adaptor in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–133, Revision 01, dated May 3, 2006.

(2) Repeat the inspection required by paragraph (f)(1) of this AD thereafter at intervals not to exceed 2,000 flight cycles until the terminating action required by paragraph (f)(3) of this AD is accomplished.

(3) Within 12,000 flight cycles after the effective date of this AD, or at the next MLG overhaul, whichever occurs earlier: Inspect and modify the MLG shock strut and axle

adaptors in accordance with the Accomplishment instructions of APPH Service Bulletin AIR83064–32–12, Revision 3, dated April 26, 2006; or AIR83022–32–32, Revision 3, dated April 26, 2006; as applicable.

(4) Actions done before the effective date of this AD in accordance with the service bulletins listed in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this AD, as applicable, are acceptable for compliance with the corresponding actions in this AD.

(i) Saab Service Bulletin 340–32–133, dated April 19, 2006.

(ii) APPH Service Bulletin AIR 83064–32–12, dated January 18, 2006; Revision 1, dated January 23, 2006; and Revision 2, dated March 30, 2006.

(iii) APPH Service Bulletin AIR83022–32–32, dated January 18, 2006; Revision 1, dated January 23, 2006; and Revision 2, dated March 30, 2006.

(5) As of the effective date of this AD, no person may install an MLG shock strut having part number (P/N) AIR83022 or 83064, or axle adaptor having P/N AIR127308, 390226, or AIR130238, unless it has been inspected and modified in accordance with APPH Service Bulletin AIR83022–32–32 or AIR83064–32–12.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2006–0263, dated August 29, 2006; Saab Service Bulletin 340–32–133, Revision 01, dated May 3, 2006; APPH Service Bulletin AIR83064–32–12, Revision 3, dated April 26, 2006; and APPH Service Bulletin AIR83022–32–32, Revision 3, dated April 26, 2006; for related information.

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19202 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29333; Directorate Identifier 2007–NM–141–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require various repetitive inspections to detect cracks along the chemically milled steps of the fuselage skin or missing or loose fasteners in the area of the preventative modification or repairs, replacement of the time-limited repair with the permanent repair if applicable, and applicable corrective actions if necessary, which would end certain repetitive inspections. This proposed AD results from a fatigue test that revealed numerous cracks in the upper skin panel at the chemically milled step above the lap joint. We are proposing this AD to detect and correct such fatigue-related cracks, which could result in the crack tips continuing to turn and grow to the point where the skin bay flaps open, causing decompression of the airplane.

DATES: We must receive comments on this proposed AD by November 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2007–29333; Directorate Identifier 2007–NM–141–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in

person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report that, during a fatigue test of the fuselage of a Boeing Model 737–800 series airplane, numerous cracks were found in the upper skin panel at the chemically milled step above the lap joint at stringers 4 and 10 on both the left and right sides of the airplane. The cracks were caused by fatigue stresses generated by secondary bending in the lap splice. Such fatigue-related cracks, if not detected and corrected in a timely manner, could result in the crack tips continuing to turn and grow to the point where the skin bay flaps open, causing decompression of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–53–1232, dated April 2, 2007. The service information describes the following actions:

INSPECTIONS AND REPLACEMENT, AS APPLICABLE

For airplanes on which—.	The service bulletin describes procedures for doing—
The preventative modification specified in the service bulletin has not been installed.	An external eddy current inspection to detect cracks of the chemically milled steps at the upper skin panels and repetitive external detailed inspections to detect cracks of the skin.
The preventative modification specified in the service bulletin has been installed.	Repetitive external detailed inspections and repetitive external high frequency eddy current (HFEC) inspections to detect cracks or loose or missing fasteners in the area of the preventative modification.
The permanent repair specified in the service bulletin has been installed.	Repetitive external low frequency eddy current (LFEC) inspections to detect cracks in the skin.
	Repetitive external LFEC inspections to detect cracks of the doubler.
	Repetitive external detailed inspections to detect cracks or loose or missing fasteners of the permanent repair.
	Repetitive internal medium frequency eddy current inspections to detect cracks of the skin if doing "Skin Inspection Option 2" specified in Table 2 of the service bulletin
The time-limited repair specified in the service bulletin has been installed.	Repetitive internal and external detailed inspections to detect cracks or loose or missing fasteners of the repaired area and replacement of the time-limited repair with the permanent repair.

The service information also describes procedures for doing applicable corrective actions. The corrective actions include contacting Boeing for certain conditions, replacing any loose or missing fastener with a new fastener, and installing a permanent repair, time-limited repair, and preventative modification. For airplanes on which the preventative modification has not been installed, accomplishing the preventative modification, time-limited repair, or permanent repair ends the repetitive external detailed inspections only.

The service information also specifies the following compliance times:

- *For the initial inspections and replacement:* Compliance times ranging between 1,500 flight cycles and 56,000 total flight cycles, depending on the airplane configuration and the inspection method.
- *For the applicable corrective actions:* A compliance time of before further flight.
- *For repetitive inspections:* Repeat intervals ranging between 1,100 and 8,000 flight cycles, depending on the airplane configuration.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and Service Information."

Difference Between the Proposed AD and Service Information

The service information specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 871 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 378 airplanes of U.S. registry. The proposed inspections would take between 11 and 25 work hours per airplane depending on the airplane configuration, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $332,640 and $756,000, or between $880 and $2,000 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29333; Directorate Identifier 2007–NM–141–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1232, dated April 2, 2007.

Unsafe Condition

(d) This AD results from a fatigue test that revealed numerous cracks in the upper skin panel at the chemically milled step above the lap joint. We are issuing this AD to detect and correct such fatigue-related cracks, which could result in the crack tips continuing to turn and grow to the point where the skin bay flaps open, causing decompression 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.

Service Bulletin

(f) The term "service bulletin," as used in this AD, means Boeing Special Attention Service Bulletin 737–53–1232, dated April 2, 2007.

Inspections and Replacement, as Applicable

(g) At the applicable compliance times listed in Tables 1, 2, and 3 of paragraph 1.E., "Compliance," of the service bulletin, or within the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, whichever occurs later, and thereafter at the applicable repeat intervals listed in Tables 1, 2, and 3: Do the applicable inspections and replacement by accomplishing all the actions specified in the Accomplishment Instructions of the service bulletin.

(1) For airplanes specified in Tables 1 and 2 of paragraph 1.E., "Compliance," of the service bulletin: Do the applicable initial inspection required by paragraph (g) of this AD within 36 months after the effective date of this AD.

(2) For airplanes specified in Table 3 of paragraph 1.E., "Compliance," of the service bulletin: Do the applicable initial inspection and replacement required by paragraph (g) of this AD within 24 months after the effective date of this AD.

Corrective Actions

(h) If any crack or loose or missing fastener is found during any applicable inspection required by paragraph (g) of this AD, before further flight, do the applicable corrective action in accordance with the service bulletin; except, where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Terminating Action for Certain Repetitive Inspections

(i) For airplanes on which the preventative modification specified in the service bulletin has not been installed: Accomplishing the preventative modification, time-limited repair, or permanent repair in accordance with the service bulletin ends the applicable repetitive external detailed inspections required by paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19205 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29176; Directorate Identifier 2007–NE–38–AD]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems Model 4HFR34C653/L106FA Propellers

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for McCauley Propeller Systems model 4HFR34C653/L106FA propellers. This proposed AD would require a onetime fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of the propeller hub for cracks. This proposed AD results from reports of 3 hubs found cracked during propeller overhaul. We are proposing this AD to prevent failure of the propeller hub, which could cause blade separation, damage to the airplane, and loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by November 27, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online 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 McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277–7704; telephone (800) 621–7767.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Wichita, KS 67209; e-mail: *jeff.janusz@faa.gov;* telephone: (316) 946–4148; fax: (316) 946–4107.

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–2007–29176; Directorate Identifier 2007–NE–38–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.dms.dot.gov* or *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. 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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* until September 27, 2007, or the street address listed under **ADDRESSES**. The DOT docket may be offline at times between September 28 through September 30 to migrate to the Federal Docket Management System (FDMS). On October 1, 2007, the internet access to the docket will be at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. Comments will be available in the AD docket shortly after receipt.

Discussion

The FAA received reports of 3 hubs found cracked during propeller overhaul. All 3 hubs had very small cracks located in the hub socket region, in the area of the outer bearing race press-fit surfaces. To date, the cause of these cracks appears to be fretting damage between the outer bearing race and the hub surface. This condition, if not corrected, could result in failure of the propeller hub, which could cause blade separation, damage to the airplane, and loss of control of the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of McCauley Propeller Systems Alert Service Bulletin (ASB) No. ASB254, dated August 20, 2007. That ASB describes procedures for a onetime FPI and ECI of propeller hubs for cracks.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require a onetime FPI and ECI of propeller hubs for cracks. The proposed AD would require you to use the service information described previously to perform these actions.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

We estimate that this proposed AD would affect 128 propellers installed on airplanes of U.S. registry. We also estimate that it would take about 41.5 work-hours per propeller to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $80 per propeller, if the hub passes inspection. Required parts would cost about $4,113 per propeller, if the hub fails inspection. We estimate that 5% of the hubs will require replacement. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $463,991.

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 AD:

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. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

McCauley Propeller Systems: Docket No. FAA–2007–29176; Directorate Identifier 2007–NE–38–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 27, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McCauley Propeller Systems model 4HFR34C653/L106FA propellers. These propellers are installed on, but not limited to, British Aerospace Jetstream 3201 airplanes.

Unsafe Condition

(d) This AD results from reports of 3 hubs found cracked during propeller overhaul. We are issuing this AD to prevent failure of the propeller hub, which could cause blade separation, damage to the airplane, and 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.

(f) For propeller hubs with 6,000 or more operating hours time-since-new (TSN) on the effective date of this AD, perform the procedures in paragraphs (h) through (k) of this AD within 100 operating hours time-in-service (TIS) after the effective date of this AD.

(g) For propeller hubs with fewer than 6,000 operating hours TSN on the effective date of this AD, perform the procedures in paragraphs (h) through (k) of this AD before the propeller hub reaches 6,100 operating hours TSN.

Onetime Propeller Hub Inspection

(h) Remove and disassemble the propeller, and etch the propeller hub, using paragraphs 1.A. through 2.D. of the Accomplishment Instructions of McCauley Propeller Systems Alert Service Bulletin No. ASB254, dated August 20, 2007.

(i) Perform a onetime fluorescent penetrant inspection (FPI) of the propeller hub, using paragraphs 3.A through 3.G. of the Accomplishment Instructions of McCauley Propeller Systems Alert Service Bulletin No. ASB254, dated August 20, 2007.

(j) For hubs that pass the FPI, perform a onetime eddy current inspection of the propeller hub, using paragraphs 4.A. through 4.F. of the Accomplishment Instructions of McCauley Propeller Systems Alert Service Bulletin No. ASB254, dated August 20, 2007.

(k) Remove cracked hubs from service and any other propeller parts found cracked, and return them within 10 days after inspection to McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277–7704, for further evaluation.

Previous Credit

(l) If you performed the onetime inspection of the propeller hub using McCauley Propeller Systems Service Bulletin No. SB238A, or Alert Service Bulletin ASB254, both dated August 20, 2007, before the effective date of this AD, you have satisfied the inspection requirements of this AD.

Reporting Requirements

(m) Record the hub inspection results on reporting form, page 8, of McCauley Alert Service Bulletin No. ASB254, dated August 20, 2007. Within 10 days after the inspection, send the completed reporting form to McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277–7704, telephone (316) 831–4021; fax (316) 831–3858.

(n) Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

Interim Action

(o) These actions are interim actions and we may take further rulemaking actions in the future.

Alternative Methods of Compliance

(p) The Manager, Wichita Aircraft 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.

Special Flight Permits

(q) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by the following conditions:

(1) The propeller must have no signs of external oil leakage from the hub; and

(2) The propeller has no current reports of abnormal operation or vibration.

Related Information

(r) None.

(s) Contact Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Wichita, KS 67209; e-mail: *jeff.janusz@faa.gov;* telephone: (316) 946–4148; fax: (316) 946–4107, for more information about this AD.

Issued in Burlington, Massachusetts, on September 24, 2007.

Thomas A. Boudreau,

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

[FR Doc. E7–19194 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29337; Directorate Identifier 2007–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Corrosion has been reported beneath the heat shield which is located around the APU (auxiliary power unit) exhaust outlet. Such corrosion could result in the fuselage being unable to sustain horizontal and vertical stabiliser loads. This is considered as potentially hazardous/catastrophic. * * *

The unsafe condition is that the horizontal or vertical stabilizer might collapse under excessive load, resulting in loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 29, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–29337; Directorate Identifier 2007–NM–150–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0075, dated March 20, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Corrosion has been reported beneath the heat shield which is located around the APU (auxiliary power unit) exhaust outlet. Such corrosion could result in the fuselage being unable to sustain horizontal and vertical stabiliser loads. This is considered as potentially hazardous/catastrophic. This AD mandates inspections necessary to address the identified unsafe condition.

The unsafe condition is that the horizontal or vertical stabilizer might collapse under excessive load, resulting in loss of control of the airplane. Corrective actions include repetitive detailed visual inspections for corrosion, pitted fasteners, or pillowing of the APU heat shield and surrounding skin and, if applicable, removal of the heat shield and repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.53–191, dated October 25, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $160, or $160 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2007–29337; Directorate Identifier 2007–NM–150–AD.

Comments Due Date

(a) We must receive comments by October 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes; certificated in any category; all models, all serial numbers.

Subject

(d) *Air Transport Association (ATA) of America Code 53:* Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Corrosion has been reported beneath the heat shield which is located around the APU (auxiliary power unit) exhaust outlet. Such corrosion could result in the fuselage being unable to sustain horizontal and vertical stabiliser loads. This is considered as potentially hazardous/catastrophic. This AD mandates inspections necessary to address the identified unsafe condition.

The unsafe condition is that the horizontal or vertical stabilizer might collapse under excessive load, resulting in loss of control of the airplane. Corrective actions include repetitive detailed visual inspections for corrosion, pitted fasteners, or pillowing of the APU heat shield and surrounding skin and, if applicable, removal of the heat shield and repair.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 12 months after the effective date of this AD and thereafter at intervals not to exceed 24 months, perform a detailed visual inspection of the APU heat shield and surrounding skin, in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–191, dated October 25, 2006.

(2) If any corrosion, pitted fastener, or pillowing is found during any detailed visual inspection required by paragraph (f)(1) of this AD, before the next flight, remove the APU heat shield and repair the affected area in accordance with paragraph 2.D. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–191, dated October 25, 2006.

(3) For any airplane modified in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.53–193–60732A, dated November 1, 2006, the repetitive interval specified in paragraph (f)(1) of this AD may be extended to 48 months.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0075, dated March 20, 2007; BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–191, dated October 25, 2006; and BAE Systems (Operations) Limited Modification Service Bulletin SB.53–193–60732A, dated November 1, 2006; for related information.

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19197 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29336; Directorate Identifier 2007–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * accidents which occurred to in-service aircraft caused by the violent opening of the passenger door related to excessive residual pressure in the cabin.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 29, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–29336; Directorate Identifier 2007–NM–143–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0093 R1, dated April 17, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The present AD requires the flight crew to follow the instructions of the "emergency procedure check of delta P = 0" of the Aircraft Flight Manual (AFM) at the latest revision date.
>
> This AD falls within the scope of a set of corrective measures developed by AIRBUS subsequent to accidents which occurred to in-service aircraft caused by the violent opening of the passenger door related to excessive residual pressure in the cabin.
>
> * * *

The corrective action is revising the Emergency Procedures sections of the AFMs to advise the flightcrew of new procedures for emergency evacuation. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 238 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $19,040, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2007–29336; Directorate Identifier 2007–NM–143–AD.

Comments Due Date

(a) We must receive comments by October 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300, A310, and A300–600 series airplanes, certificated in any category, all certified models and all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 21: Air conditioning.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The present AD requires the flight crew to follow the instructions of the "emergency procedure check of delta P = 0" of the Aircraft Flight Manual (AFM) at the latest revision date.

This AD falls within the scope of a set of corrective measures developed by AIRBUS subsequent to accidents which occurred to in-service aircraft caused by the violent opening of the passenger door related to excessive residual pressure in the cabin.

* * *

The corrective action is revising the Emergency Procedures sections of the AFMs to advise the flightcrew of new procedures for emergency evacuation.

Actions and Compliance

(f) Within 30 days after the effective date of this AD, unless already done, do the following actions.

(1) For Model A300 series airplanes without modification 10002 installed, revise the Emergency Procedures sections of the AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM.

"EMERGENCY EVACUATION

AIRCRAFT/PARKING BRAKE	Stop/Set
ATC (VHF 1)	Notify
Cabin crew	Notify
EMER EXIT LT	ON
BOTH FUEL LEVERS	OFF
FIRE handles (ENG and APU)	Pull
AGENTS (ENG and APU)	as rqrd
RAM AIR INLET	Open
Before opening doors:	
ΔP (DIFF PRESS)	Check zero
• If evacuation required:	
Evacuation	Initiate
• If evacuation not required:	
CABIN CREW and PASSENGERS	Notify"

(2) For Model A300 series airplanes on which modification 10002 is installed, revise the Emergency Procedures sections of the AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM.

"EMERGENCY EVACUATION (Mod 10002)

AIRCRAFT/PARKING BRAKE	Stop/Set
ATC (VHF 1)	Notify
Cabin crew	Notify
EMER EXIT LT	ON
CL LT	ON
BOTH FUEL LEVERS	OFF
FIRE handles (ENG and APU)	Pull
AGENTS (ENG and APU)	as rqrd
RAM AIR INLET	Open
Before opening doors:	
ΔP (DIFF PRESS)	Check zero
• If evacuation required:	
Evacuation	Initiate
• If evacuation not required:	
CABIN CREW and PASSENGERS	Notify"

(3) For Model A310 and A300–600 series airplanes, revise the Emergency Procedures sections of the AFM to include the following information. This may be done by inserting a copy of this AD into the AFM.

"Before opening doors:

• IF DEPRESS VALVE selected in MAN mode:	
—DEPRESS VALVE MAN CLT	Full Open
—ΔP (Diff press)	Check zero
• If evacuation required:	
—Evacuation	Initiate
—BAT (before leaving A/C)	OFF/R
• If evacuation not required:	
—CABIN CREW and PASSENGERS	Notify"

Note 1: When the information described in paragraphs (f)(1), (f)(2), or (f)(3) has been included in the general revisions of the AFM, the general revisions may be inserted in the applicable AFM, and the copy of the AD may be removed from that AFM.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0093 R1, dated April 17, 2007, for related information.

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19203 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2652; File No. S7–22–07]

RIN 3235–AJ97

Interpretive Rule Under the Advisers Act Affecting Broker-Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is publishing for comment an interpretive rule that would address the application of the Investment Advisers Act of 1940 to certain activities of broker-dealers. The proposal would reinstate three interpretive provisions of a rule that was vacated by a recent court opinion. The first provision would clarify that a broker-dealer that exercises investment discretion with respect to an account or charges a separate fee, or separately contracts, for advisory services provides investment advice that is not "solely incidental to" its business as a broker-dealer. The second provision would clarify that a broker-dealer does not receive special compensation within the meaning of section 202(a)(11)(C) of the Advisers Act solely because it charges a commission for discount brokerage services that is less than it charges for full-service brokerage. The third provision would clarify that a registered broker-dealer is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subjects it to the Advisers Act.

DATES: Comments should be received on or before November 2, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–22–07 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–22–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days from 10 a.m. to 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: David W. Blass, Assistant Director, or Vincent M. Meehan, Senior Counsel, at (202) 551–6787 or *IArules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission" or "SEC") is proposing to amend rule 202(a)(11)–1 [17 CFR 275.202(a)(11)–1] under the Investment Advisers Act of 1940.

I. Introduction

The Investment Advisers Act of 1940 ("Advisers Act" or "Act")[1] regulates the activities of certain "investment advisers," who are defined in section 202(a)(11) of the Act as persons who receive compensation for providing advice about securities as part of a regular business. Section 202(a)(11)(C) excepts from the definition of "investment adviser" a broker or dealer "whose performance of [advisory] services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor."

In 2005, we adopted the original rule 202(a)(11)–1 under the Advisers Act, the principal purpose of which was to deem broker-dealers offering "fee-based brokerage accounts" as not subject to the Advisers Act.[2] The rule also included several interpretations of section 202(a)(11)(C). On March 30, 2007, the Court of Appeals for the District of Columbia Circuit (the "Court"), in *Financial Planning Association* v. *SEC* (the "*FPA* decision"), vacated the original rule 202(a)(11)–1 on the grounds that the Commission did not have the authority to except broker-dealers offering fee-based brokerage accounts from the definition of "investment adviser."[3] Though the Court did not question the validity of our interpretive positions, it vacated the entire rule, leaving our interpretations potentially in doubt.

We have received requests from broker-dealers that we clarify the status of our interpretive positions.[4] Because of the significance of the interpretations, and in order to provide the public with an opportunity for meaningful comment on them in light of the *FPA* decision, we are re-proposing the interpretive positions.[5] Proposed rule 202(a)(11)–1 would clarify that (i) a broker-dealer provides investment advice that is not "solely incidental to" the conduct of its business as a broker-dealer if it exercises investment discretion (other than on a temporary or limited basis) with respect to an account or charges a separate fee, or separately contracts, for advisory services, (ii) a broker-dealer does not receive "special compensation" solely because it charges different rates for its full-service brokerage services and discount brokerage services, and (iii) a registered broker-dealer is an investment adviser solely with respect to accounts for which it provides services that subject it to the Advisers Act. We discuss these proposed interpretive positions below.

II. Discussion

A. "Solely Incidental"

Section 202(a)(11)(C) of the Advisers Act, as discussed above, provides an exception from the Act for a broker-dealer "whose performance of [advisory services] is solely incidental to his business as a broker-dealer and who receives no special compensation therefor." This exception amounts to a recognition that broker-dealers commonly give a certain amount of advice to their customers in the course of their regular business as broker-dealers and that "it would be inappropriate to bring them within the scope of the [Advisers Act] merely because of this aspect of their business."[6]

In the 2005 Proposing Release, we explained our understanding that investment advice is "solely incidental to" the conduct of a broker-dealer's business within the meaning of section 202(a)(11)(C) when the advisory services rendered to an account are in connection with and reasonably related to the brokerage services provided to that account.[7] We further explained that our understanding is consistent with the legislative history of the Advisers Act, which indicates Congress' intent to exclude broker-dealers providing advice as part of traditional brokerage services. We also explained that it is consistent with the Commission's contemporaneous construction of the Advisers Act as excepting broker-dealers whose investment advice is given "solely as an incident of their regular business."[8]

Many commenters responding to the 2005 Proposing Release urged us to clarify that certain practices are not

[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, where the Advisers Act is codified.

[2] *See Certain Broker-Dealers Deemed Not to be Investment Advisers*, Investment Advisers Act Release No. 2376 (Apr. 12, 2005) [70 FR 20424 (Apr. 19, 2005)] ("2005 Adopting Release"). Fee-based brokerage accounts are similar to traditional full-service brokerage accounts, which provide a package of services, including execution, incidental investment advice, and custody. The primary difference between the two types of accounts is that a customer in a fee-based brokerage account pays a fee based upon the amount of assets on account (an asset-based fee) and a customer in a traditional full-service brokerage account pays a commission (or a mark-up or mark-down) for each transaction.

[3] 482 F.3d 481 (D.C. Cir. 2007).

[4] *See, e.g.*, Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, to Robert E. Plaze, Associate Director, Division of Investment Management and Catherine McGuire, Chief Counsel, Division of Market Regulation (June 27, 2007). This letter and the comment letters cited in this Release are available for viewing and downloading at *http://www.sec.gov/rules/proposed/s72599.shtml*.

[5] As a separate part of our response to the *FPA* decision, we have adopted a temporary rule on an interim final basis that establishes an alternative means for investment advisers who are registered with us as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act, directly or indirectly, in a principal capacity with respect to transactions with certain of their advisory clients. *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients*, Investment Advisers Act Release No. 2653 (Sept. 24, 2007).

[6] *Opinion of General Counsel Relating to Section 202(a)(11)(C) of the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 2 (Oct. 28, 1940) [11 FR 10996 (Sept. 27, 1946)] ("Advisers Act Release No. 2").

[7] *Certain Broker-Dealers Deemed Not to be Investment Advisers*, Investment Advisers Act Release No. 2340 (Jan. 6, 2005) [70 FR 2716 (Jan. 14, 2005)] ("2005 Proposing Release").

[8] *Id.*

solely incidental to brokerage services. Proposed rule 202(a)(11)–1(a) would recodify two of the interpretations we announced in 2005 regarding activity that is not "solely incidental" to brokerage services for purposes of section 202(a)(11)(C). The situations addressed by these interpretations are not the only ones in which a broker-dealer provides advice that is not solely incidental to its business as a broker-dealer.[9] Commenters are invited to suggest other situations that should be addressed by the rule.

1. *Separate Contract or Fee for Advisory Services.* Proposed rule 202(a)(11)–1(a)(1) would provide that a broker-dealer that separately contracts with a customer for, or separately charges a fee for, investment advisory services cannot be considered to be providing advice that is solely incidental to its brokerage. We view a separate contract specifically providing for the provision of investment advisory services to reflect a recognition that the advisory services are provided independent of brokerage services and, therefore, cannot be considered solely incidental to the brokerage services.[10] Similarly, we have long held the view that when a broker-dealer charges its customers a separate fee for investment advice, it clearly is providing advisory services and is subject to the Advisers Act.[11] In light of the *FPA* decision, brokerage firms and other interested parties may be unsure about whether we continue to hold these views. In order to provide certainty to those parties, the proposed rule would codify our interpretations.

We request comment on our interpretation. In the 2005 Adopting Release, we explained our understanding that many broker-dealers already use the payment of a separate fee as a bright line test to distinguish their brokerage activities from their advisory activities and we have received no information since 2005 that would change our understanding. Are we correct? Do broker-dealers also already consider advisory services that are the subject of a separate contract not to be solely incidental to the brokerage services they provide? Commenters are invited to explain to us any situation in which a broker-dealer could charge a separate fee for, or separately contract for, advisory services in a manner that, consistent with the intent of the Advisers Act, is "solely incidental" to the brokerage services provided. For example, could a broker-dealer separately contract for advisory services, but receive no "special compensation" therefore, for purposes of section 202(a)(11)(C) of the Act?

2. *Discretionary Investment Advice.* We have long acknowledged that a broker-dealer's exercise of investment discretion over customer accounts raises serious questions about whether those accounts must be treated as subject to the Advisers Act—even where no special compensation is received.[12] In 2005, we adopted, and today we are reproposing, a rule that would clarify that any account over which a broker-dealer exercises investment discretion is subject to the Advisers Act. Specifically, rule 202(a)(11)–1(a) would clarify that discretionary investment advice is not "solely incidental to" the business of a broker-dealer within the meaning of section 202(a)(11)(C) and, accordingly, brokers and dealers are not excepted from the Act for any accounts over which they exercise investment discretion as that term is defined in section 3(a)(35) of the Exchange Act (except that investment discretion granted by a customer on a temporary or limited basis is excluded).[13]

We believe that a broker-dealer's authority to effect a trade without first consulting a customer is qualitatively distinct from simply providing advice as part of a package of brokerage services. When a broker-dealer exercises investment discretion, it is not only the source of investment *advice*, it also has the authority to make the investment *decision* relating to the purchase or sale of securities on behalf of its client. This, in our view, warrants the protection of the Advisers Act because of the "special trust and confidence inherent" in such a relationship.[14] Most commenters who addressed this aspect of our 2005 proposal, including those representing investors, advisers, and broker-dealers, generally agreed with us.

Under the proposed rule, the exception provided by section 202(a)(11)(C) of the Act is unavailable for any account over which a broker-dealer exercises investment discretion, regardless of the form of compensation and without regard to how the broker-dealer handles other accounts. We believe our interpretation is appropriate for several reasons.[15] First, we believe it would apply the Advisers Act to the sort of relationship with a broker-dealer that the Act was intended to reach. Second, we believe the proposed rule is consistent with the interpretation that a broker-dealer is an investment adviser only with respect to those accounts for which the broker-dealer provides services or receives compensation that subject the broker-dealer to the Advisers Act. Finally, we believe the proposed rule would provide a workable, bright-line test for the availability of the section 202(a)(11)(C) exception.

We request comment on our proposed interpretive provision. Do commenters agree with us that it addresses the sort of relationship that the Advisers Act should reach? One commenter to our 2005 proposal asserted it does not.[16] This commenter argued that Congress, when it adopted the Advisers Act, must have been aware that broker-dealers exercised discretionary authority and, by not expressly stating that brokers offering such accounts were subject to the Act, Congress indicated its intent to

[9] We have removed the text "(among other things, and without limitation)" from the introductory paragraph to proposed rule 202(a)(11)–1(a), though we included that text in 2005. We believe it is clear that the rule as we propose it today does not address all the situations in which a broker-dealer can provide advice that is not "solely incidental" to its business as a broker-dealer for purposes of section 202(a)(11)(C).

[10] 2005 Adopting Release, *supra* note 2 at n.145, and accompanying text.

[11] *Final Extension of Temporary Rules*, Investment Advisers Act Release No. 626 (Apr. 27, 1978) [43 FR 19224 (May 4, 1978)] ("Advisers Act Release No. 626"). *See also* Advisers Act Release No. 2, *supra* note 6 ("a broker or dealer who is specially compensated for the rendition of advice should be considered an investment adviser and not be excluded from the purview of the [Advisers] Act merely because he is also engaged in effecting market transactions in securities").

[12] Advisers Act Release No. 626, *supra* note 11 (brokerage relationships "which include discretionary authority to act on a client's behalf have many of the characteristics of the relationships to which the protections of the Advisers Act are important.").

[13] We would view a broker-dealer's discretion to be temporary or limited within the meaning of rule 202(a)(11)–1(d) when the broker-dealer is given discretion: (i) As to the price at which or the time to execute an order given by a customer for the purchase or sale of a definite amount or quantity of a specified security; (ii) on an isolated or infrequent basis, to purchase or sell a security or type of security when a customer is unavailable for a limited period of time not to exceed a few months; (iii) as to cash management, such as to exchange a position in a money market fund for another money market fund or cash equivalent; (iv) to purchase or sell securities to satisfy margin requirements; (v) to sell specific bonds and purchase similar bonds in order to permit a customer to take a tax loss on the original position; (vi) to purchase a bond with a specified credit rating and maturity; and (vii) to purchase or sell a security or type of security limited by specific parameters established by the customer.

[14] *See Amendment and Extension of Temporary Exemption From the Investment Advisers Act for Certain Brokers and Dealers*, Investment Advisers Act Release No. 471 (Aug. 20, 1975) [40 FR 38156 (Aug. 27, 1975)].

[15] 2005 Adopting Release, *supra* note 2, at n.165 and accompanying text. In that release, we described our position as a change to the staff's prior approach under which a discretionary account is subject to the Act only if the broker-dealer has enough other discretionary accounts to trigger the Act. For the reasons discussed in this Release and in the 2005 Adopting Release, we believe that the interpretation we are proposing today and adopted in 2005 better effectuates the purposes of the Act.

[16] Comment Letter of Morgan, Lewis & Bockius LLP (Feb. 7, 2005).

except such broker-dealers from the Act. We disagree. As we explained in 2005, the Advisers Act does not address directly whether a broker-dealer exercising investment discretion over a commission-based account must comply with the Act. The Act applies unless the advisory services are "solely incidental to" the broker-dealer's business and no "special compensation" is received. We remain unable to conclude that in 1940 Congress would have understood investment discretion to be part of the traditional package of services broker-dealers offered for commissions. We are aware of nothing in the legislative history of section 202(a)(11)(C) (or of the Act as a whole) or in the brokerage practices in 1940 that would preclude our interpretation of that section as being unavailable for all accounts over which broker-dealers exercise investment discretion. Do commenters agree?

We also are interested in understanding the impact on investors of these distinctions. We also request comment on our reference in the proposed rule to the definition of "investment discretion" in section 3(a)(35) of the Exchange Act. Is a different definition more appropriate? If so, what definition should we use? Are we correct in excluding investment discretion given on a temporary or limited basis? Have we correctly identified the circumstances in which a broker-dealer exercises temporary or limited discretion?

3. *Financial Planning.* The rule we adopted in 2005 also contained a provision stating that when a broker-dealer provides advice as part of a financial plan or in connection with providing financial planning services, a broker-dealer provides advice that is not solely incidental if it (i) holds itself out to the public as a financial planner or as providing financial planning services, (ii) delivers to its customer a financial plan, or (iii) represents to the customer that the advice is provided as part of a financial plan or financial planning services.[17]

We have decided not to propose this provision as part of this rule, which many financial services firms found difficult to apply.[18] Instead, we plan to consider issues relating to financial planning in light of the results of a study we commissioned by the RAND Corporation ("RAND Study") comparing the levels of protection afforded customers of broker-dealers and investment advisers under the federal securities laws. The RAND Study is expected to be delivered to us no later than December 2007, several months ahead of schedule.[19]

B. Full-Service and Discount Brokerage Programs

As part of our 2005 rulemaking, we adopted an interpretive provision which clarified that a broker-dealer will not be considered to have received "special compensation" for purposes of section 202(a)(11)(C) of the Advisers Act (and therefore will not be subject to the Act) *solely* because the broker-dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater or less than one it charges another customer.[20] We are re-proposing that interpretive position today as proposed rule 202(a)(11)–1(b).[21]

This interpretive position reflects the longstanding view that, with respect to brokerage commissions or other transaction-based compensation, broker-dealers receive "special compensation" where there is a clearly definable charge for investment advice.[22] But, if a firm negotiates different fees with its customers for similar transactions, the Commission would not conclude that the customer being charged the higher fee is paying "special compensation" for investment advice based solely on differences in charges, because whether the pricing difference is based on the presence or absence of investment advice is "too hypothetical."[23] Similarly, if, for example, a broker-dealer had a general fee schedule for full service brokerage that included access to brokerage personnel, and had a separate fee schedule for automated transactions using an Internet Web site, we would not, absent other factors, view the difference as "special compensation." As one commenter to our 2005 proposal noted, electronic brokerage programs offer "lower expenses and less overhead, [and it is] entirely appropriate, and necessarily competitive, for firms to have reduced their fees for such services, and this reduction is obviously in clients' best interests."[24]

The Commission would not look outside the fee structure of a given firm to determine whether special compensation exists. That is, just because a "discount" firm offered lower rates than a "full-service" firm, we would not consider the "full-service" firm's charges "special compensation."[25] We request comment on this interpretation. Do commenters support it? Should we consider any modifications and, if so, which ones?

C. Dual Registrants

Finally, we adopted in 2005, and are re-proposing today, a rule providing that a broker-dealer that is registered under both the Exchange Act and the Advisers Act is an investment adviser solely with respect to those accounts for which it provides advice or receives compensation that subject the broker-dealer to the Advisers Act.[26] We received few comments regarding this provision of the original rule, and we

[17] 2005 Adopting Release, *supra* note 2, at Section III(E).

[18] Our staff attempted to address some of the interpretive issues that were raised by this provision in a staff interpretive letter. Securities Industry Association, SEC Staff Letter (Dec. 16, 2005), available at *http://www.sec.gov/divisions/investment/guidance.shtml.* That letter is terminated.

[19] *See Commission Seeks Time for Investors and Brokers to Respond to Court Decision on Fee-Based Accounts*, SEC Press Release No. 2007–95 (May 14, 2007). The results of the RAND Study are expected to provide an important empirical foundation for the Commission to consider what action to take to improve the way investment advisers and broker-dealers provide financial services to customers. One option that will be available to the Commission will be making the RAND Study results available to the public and seeking comments on them.

[20] Discount brokerage programs, including electronic trading programs, give customers who do not want or need all the services that traditionally are provided in a full-service brokerage account the ability to trade securities at a reduced commission rate. Electronic trading programs provide customers the ability to trade on-line, typically without the assistance of a broker-dealer's registered representative. Customers trading electronically may devise their own investment or trading strategies, or may seek advice separately from investment advisers.

[21] We have, however, modified the text of the rule to clarify that it is an interpretation of the phrase "special compensation." In addition, in the 2005 rulemaking, we stated that the interpretive position was necessary to supersede past staff interpretations that would lead to a full-service broker-dealer being subject to the Advisers Act "with respect to accounts for which it provides advice incidental to its brokerage business merely because it offers electronic trading or other forms of discount brokerage." 2005 Proposing Release at n.88 and accompanying text. Having revisited those past staff interpretations, we conclude that they do not necessarily lead to the conclusion that a broker-dealer's full-service accounts are advisory accounts subject to the Advisers Act merely because the broker-dealer also offers some form of discount brokerage.

[22] *See* Advisers Act Release No. 626 *supra* note 11. As the Commission's general counsel opined in a 1940 letter responding to questions about "special compensation," where the only difference in the services provided to two brokerage customers is that one receives advice and the other does not, and the firm always charges a higher amount to the customer that receives the advice, the customer paying the higher transaction amount is paying "special compensation." Advisers Act Release No. 2, *supra* note 6.

[23] This view is consistent with the staff position announced in Advisers Act Release No. 626, *supra* note 11.

[24] *See* Comment Letter of Merrill, Lynch, Pierce, Fenner & Smith (Feb. 7, 2005), at p. 7.

[25] *Id.*

[26] Proposed rule 202(a)(11)–1(c).

are proposing it as adopted. The provision would codify a long-standing interpretation of the Act that permits a broker-dealer also registered under the Act to distinguish its brokerage customers from its advisory clients.[27]

III. General Request for Comment

The Commission is proposing the interpretive provisions described above and we welcome your comments. We solicit comment, both specific and general, on each component of the proposals. We request and encourage any interested person to submit comments regarding:

- The proposals that are the subject of this release;
- Additional or different revisions; and
- Other matters that may have an effect on the proposals contained in this release.

Comment is also solicited from the point of view of broker-dealers and investment advisers, their customers and clients, other regulatory bodies (such as state securities regulators), and other interested persons. Any person wishing to submit written comments on any aspect of the proposal is requested to do so.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules, and is considering the costs and benefits of proposed rule 202(a)(11)–1. Proposed rule 202(a)(11)–1 would clarify that if a broker-dealer exercises investment discretion over customer accounts or contracts with a customer for, or charges a separate fee for, advisory services it is not providing advice that is "solely incidental" to its business as a broker-dealer. The proposed rule also would clarify that a broker-dealer does not receive "special compensation" solely because it charges a commission rate to one customer that is greater or less than one it charges another customer. Finally, proposed rule 202(a)(11)–1 would clarify that broker-dealers that also are registered as investment advisers are subject to the Advisers Act solely with respect to accounts for which they provide services or receive compensation that subject them to the Act.

As discussed above, in 2005 we adopted the original rule 202(a)(11)–1 under the Advisers Act. The original rule included, among other things, the interpretive rules we are proposing today. On March 30, 2007, the Court vacated original rule 202(a)(11)–1, though the Court did not question the validity of our interpretive positions. The rules we are proposing today are substantially identical to those interpretive positions. As requested by the Commission, the Court has stayed the issuance of its mandate until October 1, 2007, and thus the interpretive positions contained in original rule 202(a)(11)–1 remain in effect. Accordingly, we would expect that advisers' conduct would have conformed to the interpretive positions contained in original rule 202(a)(11)–1 and therefore the proposed rules, if adopted, would have no effect on advisers' conduct.

The principal benefit of the proposed rule would be to clarify the validity of these interpretations in light of the *FPA* decision.[28] We believe that broker-dealers that currently rely on the interpretation that a broker-dealer would not be deemed to be an investment adviser solely because the broker-dealer charges a commission, mark-up, mark-down, or similar fee for brokerage services that is greater or less than one it charges another customer would benefit because it will be clear that they can continue to offer the same services under the same regulatory regime. Similarly, we believe that broker-dealers relying on the interpretation that permits dually-registered broker-dealers to distinguish their brokerage accounts from their advisory accounts would benefit because it will be clear that they can continue to make these distinctions among their accounts.

We do not believe that the proposed rule would require broker-dealers or investment advisers to incur new or additional costs.[29] As noted, proposed rule 202(a)(11)–1 would re-codify substantially identical interpretations of section 202(a)(11)(C) that were contained in the rule vacated by the FPA decision. Prior to that decision, broker-dealers operated with the understanding that contracting with a customer for, or charging a separate fee for, advisory services or exercising investment discretion (other than on a temporary or limited basis) would not be considered "solely incidental" to the brokerage services they provide for purposes of section 202(a)(11)(C) of the Advisers Act. Similarly, broker-dealers operated full-service and discount brokerage programs relying on the interpretation that they were not subject to the Act solely because they offered different rate structures for those services. Furthermore, dually-registered broker-dealers already distinguish their brokerage customers from their advisory clients in reliance on our previous interpretation contained in the vacated rule. We, therefore, believe the proposed rule would not change existing obligations or relationships. Accordingly, we do not believe that broker-dealers or investment advisers would need to take steps or alter their business practices in such a way that would require them to incur new or additional costs as a result of the adoption of the proposed rule.

We request comment on the assumptions on which we base our preliminary conclusion that broker-dealers and investment advisers would not incur new or additional costs if we determined to adopt the rule as proposed. We encourage commenters to discuss any costs and benefits that we did not consider in our discussion above. We request commenters to provide analysis and empirical data to support their statements regarding any costs or benefits associated with proposed rule 202(a)(11)–1.

V. Paperwork Reduction Act

Proposed rule 202(a)(11)–1 would not impose any new "collections of information" within the meaning of the Paperwork Reduction Act of 1995.[30] The proposed rule would not create any new filing, reporting, recordkeeping, or disclosure reporting requirements for broker-dealers or investment advisers. The proposed rule would re-codify three interpretive provisions. First, the rule would clarify that a broker-dealer that exercises investment discretion with respect to an account or contracts with a customer for, or charges a separate fee for, advisory services provides investment advice that is not "solely incidental to" its business as a broker-dealer. Second, the rule would clarify that a broker-dealer does not receive "special compensation" solely because it charges a commission rate to one customer that is greater or less than one it charges another customer. Third, the rule would clarify that a registered broker-dealer is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject it to the Advisers Act. We believe the proposed

[27] 2005 Adopting Release, *supra* note 2. See also Advisers Act Release No. 626, *supra* note 11.

[28] The Commission previously solicited comment on the benefits of these interpretations. 2005 Proposing Release, *supra* note 7. *See also* 2005 Adopting Release, *supra* note 2, for a discussion of the benefits of each of these proposed interpretations.

[29] The Commission previously solicited comment on the costs of these interpretations. 2005 Proposing Release, *supra* note 7. *See also* 2005 Adopting Release, *supra* note 2, for a discussion of the costs associated with each of these proposed interpretations.

[30] 44 U.S.C. 3501 to 3520.

rule contains no new "collections of information" under the Paperwork Reduction Act that requires the approval of the Office of Management and Budget under 44 U.S.C. 3501. 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.

In our 2005 releases, we estimated that the interpretive provisions we adopted then in the original rule 202(a)(11)–1, and which we are re-proposing today as revised rule 202(a)(11)–1, would have the effect of requiring certain broker-dealers that contract with customers for, or charge a separate fee for, advisory services or provide discretionary brokerage to register under the Advisers Act.[31] We estimated that the rule, which we are proposing today as rule 202(a)(11)–1(a), therefore increased the number of respondents under several existing collections of information, and, correspondingly, increased the annual aggregate burden under those existing collections of information.[32] Accordingly, we submitted to the Office of Management and Budget ("OMB"), in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11, and the OMB approved, amending these collections of information for which we estimated the annual aggregate burden likely increased as a result of the 2005 adoption of rule 202(a)(11)–1. The titles of the affected collections of information are: "Form ADV," "Form ADV–W and Rule 203–2," "Rule 203–3 and Form ADV–H," "Form ADV–NR," "Rule 204–2," "Rule 204–3," "Rule 204A–1," "Rule 206(4)–3," "Rule 206(4)–4," "Rule 206(4)–6," and "Rule 206(4)–7," all under the Advisers Act. The approved collections of information numbers appear under OMB control numbers 3235–0049, 3235–0313, 3235–0538, 3235–0240, 3235–0278, 3235–0047, 3235–0596, 3235–0242, 3235–0345, 3235–0571, and 3235–0585, respectively.

We have determined not to modify these burden estimates because we continue to believe they were appropriate and, with respect to the proposals in this release, that there is no additional paperwork burden.

[31] *See* 2005 Proposing Release, *supra* note 7, at Section VII; 2005 Adopting Release, *supra* note 2, at Section VIII.

[32] In 2005, as today, we estimated that the provisions now contained in proposed rule 202(a)(11)–1(b) and 202(a)(11)–1(c) did not contain any collections of information within the meaning of the Paperwork Reduction Act.

We request comment on whether our assumption that there is no additional paperwork burden is correct.

VI. Initial Regulatory Flexibility Analysis

Section 3(a) of the Regulatory Flexibility Act requires the Commission to undertake an Initial Regulatory Flexibility Analysis of the proposed rule on small entities unless the Commission certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[33] Pursuant to section 605(b) of the Regulatory Flexibility Act, the Commission hereby certifies that proposed rule 202(a)(11)–1 would not, if adopted, have a significant impact on a substantial number of small entities.[34]

Proposed rule 202(a)(11)–1 would re-codify three interpretive provisions. First, the rule would clarify that a broker-dealer that exercises investment discretion with respect to an account or contracts with customers for, or charges a separate fee for, advisory services provides investment advice that is not "solely incidental to" its business as a broker-dealer. Second, the rule would clarify that a broker-dealer does not receive "special compensation" solely because it charges a commission rate to one customer that is greater or less than one it charges another customer. Third, the rule would clarify that a registered broker-dealer is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject it to the Advisers Act. Proposed rule 202(a)(11)–1 would re-codify substantially identical interpretations of section 202(a)(11)(C) of the Advisers Act that we adopted in 2005. Therefore, we do not believe that the proposed rule would have an economic impact on broker-dealers or investment advisers, regardless of whether these broker-dealers or investment advisers are small entities, because these entities would likely have conformed to the interpretive positions previously adopted. Accordingly, the Commission certifies that proposed rule 202(a)(11)–1 would not have a significant economic impact on a substantial number of small entities.

The Commission encourages written comments regarding this certification. We request that commenters describe the nature of any impact on small businesses and provide empirical data to support the extent of the impact.

[33] 5 U.S.C. 603(a).

[34] 5 U.S.C. 605(b).

VII. Statutory Authority

The Commission is proposing to amend Rule 202(a)(11)–1 pursuant to section 211(a) of the Advisers Act.

Text of Rule

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The general authority citation for part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

2. Section 275.202(a)(11)–1 is revised to read as follows:

§ 275.202(a)(11)–1 Certain broker-dealers.

(a) *Solely incidental.* A broker or dealer provides advice that is not solely incidental to the conduct of its business as a broker or dealer within the meaning of section 202(a)(11)(C) of the Advisers Act (15 U.S.C. 80b–2(a)(11)(C)) if the broker or dealer:

(1) Charges a separate fee, or separately contracts, for advisory services; or

(2) Exercises investment discretion (as that term is defined in section 3(a)(35) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78c(a)(35))), except investment discretion granted by a customer on a temporary or limited basis, over such account.

(b) *Special compensation.* A broker or dealer registered pursuant to section 15 of the Exchange Act (15 U.S.C. 78o) does not receive special compensation within the meaning of section 202(a)(11)(C) of the Advisers Act solely because the broker or dealer charges a commission, mark-up, mark-down, or similar fee for brokerage services that is greater than or less than one it charges another customer.

(c) *Special rule.* A broker or dealer registered with the Commission under Section 15 of the Exchange Act is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject the broker-dealer to the Advisers Act.

By the Commission.

Dated: September 24, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19269 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143326–05]

RIN 1545–BE95

S Corporation Guidance Under AJCA of 2004 and GOZA of 2005

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding certain changes made to the rules governing S corporations under the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. The proposed regulations are necessary to replace obsolete references in the current regulations and to allow taxpayers to make proper use of the provisions that made changes to prior law. In particular, the proposed regulations provide guidance on the S corporation family shareholder rules, the definitions of "powers of appointment" and "potential current beneficiaries" (PCBs) with regard to electing small business trusts (ESBTs), the allowance of suspended losses to the spouse or former spouse of an S corporation shareholder, and relief for inadvertently terminated or invalid qualified subchapter S subsidiary (QSub) elections. The proposed regulations will affect S corporations and their shareholders. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 27, 2007. Outlines of topics to be discussed at the public hearing scheduled for January 16, 2008, at 10 a.m., must be received by December 27, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–143326–05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–143326–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (indicate IRS REG–143326–05). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bradford R. Poston, (202) 622–3060; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Kelly Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 27, 2007.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The reporting requirement in these proposed regulations is in § 1.1361–1(m)(2)(ii)(A). This information must be reported by the trustees of trusts electing to be ESBTs. This information will be used by the IRS to determine the number of shareholders of the corporation in which the trust holds stock and thus whether the corporation is an eligible S corporation. The respondents will be trusts making an ESBT election.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on the information that is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 26,000 hours.

Estimated average annual burden: 1 hour.

Estimated number of respondents: 26,000.

Estimated annual frequency of response: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) concerning S corporations under sections 1361, 1362, and 1366 of the Internal Revenue Code (Code). These Code sections were amended by sections 231, 232, 233, 234, 235, 236, 237, 238, and 239 of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418) (the 2004 Act) and sections 403 and 413 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109–135) (the 2005 Act). This document does not address other amendments made by the 2004 Act or the 2005 Act. In addition, this document contains additional proposed amendments to the regulations under Code section 1362 necessary to conform the regulations to the changes made by section 1305(a) of the Small Business Job Protection Act of 1996 (Pub. L. 104–188, 110 Stat. 1755) (the 1996 Act).

Explanation of Provisions

Increase in Maximum Number of Shareholders

Section 232 of the 2004 Act amends Code section 1361(b)(1)(A) by increasing the permitted number of shareholders from 75 to 100 for a small business corporation eligible to make an S election. This provision is effective for taxable years beginning after December 31, 2004. The proposed regulations remove or amend several references in the regulations under Code section 1361 that cite a specific number of permissible S corporation shareholders, except insofar as such references are necessary in an example. This change will accommodate any future statutory changes in the maximum number of permitted shareholders.

Family Shareholders

Section 1361(c)(1), as amended by section 231(a) of the 2004 Act and section 403(b) of the 2005 Act, treats a husband and wife (and their estates), and all members of a family (and their estates) as one shareholder for purposes of the 100 shareholder limitation. Section 403(b) of the 2005 Act eliminated the requirement of an election in order for a family to be treated as one shareholder, providing instead that members of a family would automatically be treated as one shareholder for purposes of Code section 1361(b)(1)(A). This amendment is effective as if included in section 231 of the 2004 Act for tax years beginning after December 31, 2004. Notice 2005–91 (2005–2 CB 1164), see § 601.601(d)(2)(ii)(*b*), issued prior to the enactment of section 403(b) of the 2005 Act, informed taxpayers that the Treasury Department and the IRS intended to issue guidance regarding the family shareholder election under section 1361(c) and provided that taxpayers could rely on the provisions of Notice 2005–91 until the issuance of that guidance. Although the portions of Notice 2005–91 addressing the manner of making the family shareholder election are no longer relevant, the proposed regulations retain the provisions of Notice 2005–91 describing certain entities other than individuals that will be treated as members of the family.

The family members are determined by reference to a common ancestor. Section 1361(c)(1)(B) defines "members of a family" as a common ancestor, any lineal descendant of the common ancestor, and any spouse or former spouse of the common ancestor or any such lineal descendant. Adopted and foster children are included among the lineal descendants as described in section 1361(c)(1)(C). An individual is not eligible to be the common ancestor for purposes of this provision if, on the applicable date, the individual is more than 6 generations removed from the youngest generation of shareholders who would otherwise be members of the family (without regard to the "six generation" test of Code section 1361(c)(1)(B)(ii)). Section 403(b) of the 2005 Act also changed the applicable date in section 1361(c)(1)(B)(iii) on which a person will be tested for qualification as a "common ancestor" to the latest of (1) The date the S election is made, (2) the earliest date an individual who is a "member of the family" holds stock in the S corporation, or (3) October 22, 2004. The regulation clarifies that the "six generation" test is applied only at the date specified in Code section 1361(c)(1)(B)(iii) for determining whether an individual meets the definition of "common ancestor," and has no continuing significance in limiting the number of generations of a family that may hold stock and be treated as a single shareholder. The regulation provides that there is no adverse consequence to a person being a member of two families.

Disregard of Unexercised Powers of Appointment in ESBTs

Potential current beneficiaries (PCBs) are treated as shareholders of the corporation for purposes of Code section 1361(b)(1) (which addresses both shareholder eligibility and the permitted number of shareholders). Section 234 of the 2004 Act amended Code section 1361(e)(2) by providing that in determining an ESBT's PCBs for any period, powers of appointment will be disregarded to the extent not exercised by the end of that period. The amended section also increases the period from 60 days to one year during which an ESBT may safely dispose of S corporation stock after an ineligible shareholder becomes a PCB. These amendments apply to taxable years beginning after December 31, 2004.

The amendment overrides current § 1.1361–1(m)(4)(vi) and the illustrative example which provides that any person who may receive a distribution under a currently exercisable power of appointment is a PCB. Under § 1.1361–1(m)(4)(vi), the broad powers of appointment commonly included in many trusts used for estate planning purposes would preclude those trusts from qualifying as ESBTs, because that power would cause the S corporation to have an excessive number of deemed shareholders or to have as deemed shareholders persons ineligible to hold S corporation stock. The proposed regulations remove and replace the sections of the regulation inconsistent with current law.

The Treasury Department and the IRS have received inquiries concerning whether certain powers held by a trustee or any other person who is not a beneficiary will be considered to be powers of appointment for purposes of Code section 1361(e)(2), and thus be disregarded (to the extent not exercised) in determining the PCBs of the ESBT. In particular, there is concern about the powers to add persons to the class of current beneficiaries or to select from an unlimited class of charitable beneficiaries. Under the current regulations, such powers, regardless of the identity of the holder, could result in the termination of the S corporation election if the class of charities that could currently receive distributions or the class of persons who could be added as beneficiaries is sufficiently large to cause the corporation to have more than the number of shareholders allowed by Code section 1361(b)(1)(A).

"Power of appointment" is not defined or described in either Code section 1361(e)(2) as amended or in current § 1.1361–1(m). However, "power of appointment" is described for estate tax purposes in § 20.2041–1(b) of the Estate Tax Regulations and for gift tax purposes in § 25.2514–1(b) of the Gift Tax Regulations. For transfer tax purposes, a power of appointment generally includes the power to appropriate or consume the principal of the trust or the power to affect the beneficial enjoyment of trust property or its income by altering, amending, or revoking the trust instrument or terminating the trust.

If the transfer tax descriptions are narrowly interpreted, powers held by fiduciaries (who are not also beneficiaries of the trust) to spray or sprinkle trust distributions would generally not be "powers of appointment." Therefore, the relief provided by the amended provision of Code section 1361(e)(2) would not apply to prevent the possible creation of an excessive number of PCBs. These powers would continue to be treated under the general rule of current § 1.1361–1(m)(4)(i), which provides that a PCB "is, with respect to any period, any person who at any time during such period is entitled to, or in the discretion of any person may receive, a distribution from the principal or income of the trust." Any sufficiently broad power to spray or sprinkle trust distributions would result in an excessive number of PCBs and thus

cause the termination of the S corporation election.

Alternatively, if all fiduciary powers to spray or sprinkle trust distributions to a class of current beneficiaries or possible current beneficiaries were deemed to be "powers of appointment" for purposes of Code section 1361(e)(2), this would effectively result in the replacement of "potential current beneficiaries" as a measuring tool under Code section 1361(b)(1) with "current beneficiaries," as only those actually receiving distributions would ever meet the PCB definition. The 2004 Act, however, did not replace "potential current beneficiary" with "current beneficiary".

The Treasury Department and the IRS believe that the proper interpretation of the change made by the 2004 Act is that the provision avoids counting as PCBs an unlimited number of potential appointees who may never become permissible beneficiaries. In this manner, the legislative change prevents the mere presence of common estate planning powers in a trust instrument from resulting in a termination of the S corporation election because of an excessive number of PCBs. The power to select from among an unlimited class of charities within the class of beneficiaries who may receive current distributions from a trust in the discretion of a fiduciary is a common estate planning power.

The proposed regulations amend the definition of "potential current beneficiary" to provide that all members of a class of unnamed charities permitted to receive distributions under a discretionary distribution power held by a fiduciary that is not a power of appointment, will be considered, collectively, to be a single PCB for purposes of determining the number of permissible shareholders under section 1361(b)(1)(A) unless the power is actually exercised, in which case each charity that actually receives distributions will also be a PCB. The ESBT election requirements under § 1.1361–1(m)(2)(ii)(A) are amended to require a trust containing such a power to indicate the presence of the power in the election statement. This amended PCB definition applies only to powers to distribute to one or more members of a class of unnamed charities which is unlimited in number. The amended PCB definition does not apply to a power to make distributions to or among particular named charities.

The proposed regulations further provide that a power to add beneficiaries, whether or not charitable, to a class of current permissible beneficiaries is generally a power of appointment and thus will be disregarded to the extent it is not exercised. However, if the power is exercised and an unlimited class of charitable beneficiaries is added to the class of current permissible beneficiaries, that class will count as a single PCB under the amended definition of PCB, and, to the extent distributions are actually made to one or more charities, those charities will each count as PCBs.

Transfer of Stock Between Spouses or Incident to Divorce

Section 235 of the 2004 Act amended Code section 1366(d)(2) to provide that if the stock of an S corporation is transferred between spouses or incident to divorce under Code section 1041(a), any loss or deduction with respect to the transferred stock which cannot be taken into account by the transferring shareholder in the year of the transfer because of the basis limitation in section 1366(d)(1) shall be treated as incurred by the corporation in the succeeding taxable year with regard to the transferee. Prior to this amendment, any losses or deductions disallowed under section 1366(d) were personal to the shareholder and did not transfer upon the transfer of the S corporation stock to another person. Section 1366(d)(2) is effective for transfers after December 31, 2004.

The proposed regulations amend the provisions of § 1.1366–2(a)(5) to include this exception to the general rule of nontransferability of losses and deductions. Losses and deductions allocable to the transferor spouse for the taxable year immediately preceding the year of transfer that are subject to the basis limitation rule of section 1366(d) will be treated as incurred by the corporation with respect to the transferor spouse in the taxable year of the transfer. The transferor spouse may use all losses and deductions carried over to the year of transfer if the transferor spouse has sufficient basis in the transferor's adjusted basis in stock or adjusted basis in the indebtedness of the corporation to the transferor. Under § 1.1366–2(a)(4), if the transferor's pro rata share of the losses and deductions in the year of transfer exceeds the transferor's basis in stock or the indebtedness of the corporation to the transferor, then the limitation must be allocated among the transferor spouse's pro rata share of each loss or deduction, including disallowed losses and deductions carried over from the prior year. Under the proposed regulations, losses and deductions carried over to the year of transfer that are not used by the transferor spouse in such year will be prorated between the transferor spouse and the transferee spouse based on their stock ownership at the beginning of the succeeding taxable year. The proposed regulations include examples illustrating these rules. The Treasury Department and IRS request comments on the best methods to ensure that losses are properly allocated between the transferor and transferee spouses, including whether a notification requirement should be imposed on the transferor spouse.

Passive Activity Losses and At-risk Amounts of Qualified Subchapter S Trusts

Section 236 of the 2004 Act amends Code section 1361(d)(1) to provide that, for purposes of applying Code sections 465 and 469 to the beneficiary of a qualified subchapter S trust (QSST) with respect to which the beneficiary has made an election under Code section 1361(d)(2), the disposition of S corporation stock by the QSST shall be treated as a disposition by the beneficiary. This creates an exception to the general rule of § 1.1361–1(j)(8), which provides that the trust, rather than the beneficiary, is treated as the owner of the S corporation stock in determining the income tax consequences of a disposition of the stock. The proposed regulations add conforming language to § 1.1361–1(j)(8).

Qualified Subchapter S Subsidiary Relief and Inadvertent Invalid Elections or Terminations

Section 238 of the 2004 Act amends Code section 1362(f) to provide that QSubs are eligible for relief for an inadvertent invalid QSub election or termination under the same standards applied to an inadvertent invalid S corporation election or termination. This provision is effective for elections made and terminations occurring after December 31, 2004. The proposed regulations make conforming changes to § 1.1362–4. The proposed regulations make additional changes to § 1.1362–4 addressing the change to Code section 1362(f) made by section 1305(a) of the 1996 Act, which provided relief for corporations with inadvertently invalid S corporation elections, in addition to the relief already available for inadvertent terminations of valid S corporation elections.

Effect on Other Documents

The following publication is proposed to be obsoleted as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**:

Notice 2005–91 (2005–2 CB 1164).

Proposed Effective Date

These regulations are proposed to be effective on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it has been determined that these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6) because the collection of information required by these regulations is imposed on electing small business trusts and such entities are not "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Additionally, the information collection burden imposed on the electing small business trusts is minimal. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 16, 2008, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 27, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Bradford R. Poston of the Office of Associate Chief Counsel (Passthroughs and Special Industries).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1361–0 is amended by adding a new entry in the table of contents for § 1.1361–1(e)(3) to read as follows:

§ 1.1361–0 Table of contents.

* * * * *

§ 1.1361–1 S Corporation defined.

* * * * *

(e) * * *

(3) Special rules relating to stock owned by members of a family.

Par. 3. Section 1.1361–1 is amended by:

1. Revising paragraphs (b)(1)(i) and (e)(1).
2. Adding paragraphs (e)(3), (h)(1)(vii), and (h)(3)(i)(G).
3. Adding a new sentence to the end of paragraph (j)(8).
4. Adding a new sentence to the end of paragraph (k)(2)(i).
5. Revising paragraphs (m)(2)(ii)(A), (m)(4)(iii), and (m)(4)(vi).
6. Revising paragraph (m)(8), *Example 2.*
7. Revising the seventh sentence of paragraph (m)(8), *Example 5.*
8. Revising paragraph (m)(8), *Example 7.*
9. Adding paragraph (m)(8), *Example 8.*
10. Adding paragraph (m)(8), *Example 9.*
11. Adding a sentence to the end of paragraph (m)(9).

The revisions and additions read as follows:

§ 1.1361–1 S Corporation defined.

* * * * *

(b) * * * (1) * * *

(i) More than the number of shareholders provided in section 1361(b)(1)(A);

* * * * *

(e) *Number of shareholders*—(1) *General rule.* A corporation does not qualify as a small business corporation if it has more than the number of shareholders provided in section 1361(b)(1)(A). Ordinarily, the person who would have to include in gross income dividends distributed with respect to the stock of the corporation (if the corporation were a C corporation) is considered to be the shareholder of the corporation. For example, if stock (owned other than by a husband and wife or members of a family described in section 1361(c)(1)) is owned by tenants in common or joint tenants, each tenant in common or joint tenant is generally considered to be a shareholder of the corporation. (For special rules relating to stock owned by husband and wife or members of a family, see paragraphs (e)(2) and (3) of this section, respectively; for special rules relating to restricted stock, see paragraphs (b)(3) and (6) of this section.) The person for whom stock of a corporation is held by a nominee, guardian, custodian, or an agent is considered to be the shareholder of the corporation for purposes of this paragraph (e) and paragraphs (f) and (g) of this section. For example, a partnership may be a nominee of S corporation stock for a person who qualifies as a shareholder of an S corporation. However, if the partnership is the beneficial owner of the stock, then the partnership is the shareholder, and the corporation does not qualify as a small business corporation. In addition, in the case of stock held for a minor under a uniform transfers to minors or similar statute, the minor and not the custodian is the shareholder. Except as otherwise provided in paragraphs (h) and (j) of this section, and for purposes of this paragraph (e) and paragraphs (f) and (g) of this section, if stock is held by a decedent's estate or a trust described in section 1361(c)(2)(A)(ii) or (iii), the estate or trust (and not the beneficiaries of the estate or trust) is considered to be the shareholder; however, if stock is held by a subpart E trust (which includes a voting trust) or an electing QSST described in section 1361(d)(1), the deemed owner of the

trust is considered to be the shareholder. If stock is held by an ESBT described in section 1361(c)(2)(A)(v), each potential current beneficiary of the trust shall be treated as a shareholder, except that the trust shall be treated as the shareholder during any period in which there is no potential current beneficiary of the trust. If stock is held by a trust described in section 1361(c)(2)(A)(vi), the individual for whose benefit the trust was created shall be treated as the shareholder. See paragraph (h) of this section for special rules relating to trusts.

* * * * *

(3) *Special rules relating to stock owned by members of a family*—(i) In general. For purposes of paragraph (e)(1) of this section, stock owned by members of a family is treated as owned by one shareholder. Members of a family include a common ancestor, any lineal descendant of the common ancestor, and any spouse (or former spouse) of the common ancestor or of any lineal descendants of the common ancestor. An individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than six generations removed from the youngest generation of shareholders who would (but for this six-generation test) be members of the family. For purposes of this test, a spouse (or former spouse) is treated as being of the same generation as the individual to whom the spouse is or was married. This test is applied on the latest of the date the election under section 1362(a) is made for the corporation, the earliest date that a member of the family holds stock in the corporation, or October 22, 2004. For this purpose, the date the election under section 1362(a) is made for the corporation is the effective date of the election, not the date it is signed or received by any person. The test is only applied as of the applicable date, and lineal descendants (and spouses) more than six generations removed from the common ancestor will be treated as members of the family even if they acquire stock in the corporation after that date. The members of a family are treated as one shareholder under this paragraph (e)(3) solely for purposes of section 1361(b)(1)(A), and not for any other purpose, whether under section 1361 or any other provision. Specifically, each member of the family who owns or is deemed to own stock must meet the requirements of sections 1361(b)(1)(B) and (C) (regarding permissible shareholders) and section 1362(a)(2) (regarding shareholder consents to an S corporation election). Although a person may be a member of more than one family under this paragraph (e)(3), each family (not all of whose members are also members of the other family) will be treated as one shareholder. For purposes of this paragraph (e)(3), any legally adopted child of an individual, any child who is lawfully placed with an individual for legal adoption by that individual, and any eligible foster child of an individual (within the meaning of section 152(f)(1)(C)), shall be treated as a child of such individual by blood.

(ii) *Certain entities treated as members of a family.* For purposes of this paragraph (e)(3), the estate or trust (described in section 1361(c)(2)(A)(ii) or (iii)) of a deceased member of the family will be considered to be a member of the family during the period in which the estate or such trust (if the trust is described in section 1361(c)(2)(A)(ii) or (iii)), holds stock in the S corporation. The members of the family also will include—

(A) In the case of an ESBT, each potential current beneficiary who is a member of the family;

(B) In the case of a QSST, the income beneficiary who makes the QSST election, if that income beneficiary is a member of the family;

(C) In the case of a trust created primarily to exercise the voting power of stock transferred to it, each beneficiary who is a member of the family;

(D) The individual for whose benefit a trust described in section 1361(c)(2)(A)(vi) was created, if that individual is a member of the family;

(E) The deemed owner of a trust described in section 1361(c)(2)(A)(i) if that deemed owner is a member of the family; and

(F) The owner of an entity disregarded as an entity separate from its owner under § 301.7701–3 of the Procedure and Administration Regulations, if that owner is a member of the family.

* * * * *

(h) * * * (1) * * *

(vii) *Individual retirement accounts.* In the case of a corporation which is a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank or company as of October 22, 2004. Individual retirement accounts (including Roth IRAs) are not otherwise eligible S corporation shareholders.

* * * * *

(3) * * * (i) * * *

(G) If stock in an S corporation bank or depository institution holding company is held by an individual retirement account (including a Roth IRA) described in paragraph (h)(1)(vii) of this section, the individual for whose benefit the trust was created shall be treated as the shareholder.

* * * * *

(j) * * *

(8) * * * However, solely for purposes of applying sections 465 and 469 to the income beneficiary, a disposition of S corporation stock by a QSST shall be treated as a disposition by the income beneficiary.

* * * * *

(k) * * * (2) * * *

(i) * * * Paragraphs (b)(1)(i), (e)(1), (e)(3), (h)(1)(vii), (h)(3)(i)(G), and the fifth sentence of paragraph (j)(8) are effective on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

(m) * * * (2) * * *

(ii) * * *

(A) The name, address, and taxpayer identification number of the trust, the potential current beneficiaries, and the S corporations in which the trust currently holds stock. If the trust includes a power described in paragraph (m)(4)(vi)(B) of this section, then the election statement must include a statement that such a power is included in the instrument, but does not need to include the name, address, or taxpayer identification number of any particular charity or any other information regarding the power.

* * * * *

(4) * * *

(iii) *Special rule for dispositions of stock.* Notwithstanding the provisions of paragraph (m)(4)(i) of this section, if a trust disposes of all of the stock which it holds in an S corporation, then, with respect to that corporation, any person who first met the definition of a potential current beneficiary during the 1-year period ending on the date of such disposition is not a potential current beneficiary and thus is not a shareholder of that corporation.

* * * * *

(vi) *Currently exercisable powers of appointment and other powers*—(A) *Powers of appointment.* A person to whom a distribution may be made during any period pursuant to a power of appointment (as described for transfer tax purposes in section 2041 and § 20.2041–1(b) of this chapter and section 2514 and § 25.2514–1(b) of this chapter) is not a potential current

beneficiary unless the power is exercised in favor of that person during the period. It is immaterial for purposes of this paragraph (m)(4)(vi)(A) whether such power of appointment is a "general power of appointment" for transfer tax purposes as described in § 20.2041–1(c) and § 25.2514–1(c) of this chapter. The mere existence of one or more powers of appointment during the lifetime of a power holder that would permit current distributions from the trust to be made to more than the number of persons described in section 1361(b)(1)(A) or to a person described in section 1361(b)(1)(B) or (C), will not cause the S corporation election to terminate unless one or more of such powers are exercised, collectively, in favor of an excessive number of persons or in favor of a person who is ineligible to be an S corporation shareholder. For purposes of this paragraph (m)(4)(vi)(A), a "power of appointment" includes a power, regardless of by whom held, to add a beneficiary or class of beneficiaries to the class of potential current beneficiaries, but generally does not include a power held by a fiduciary who is not also a beneficiary of the trust to spray or sprinkle trust distributions among beneficiaries. Nothing in this paragraph (m)(4)(vi)(A) alters the definition of "power of appointment" for purposes of any provision of the Internal Revenue Code or the regulations.

(B) *Powers to distribute to certain organizations not pursuant to powers of appointment.* If a trustee or other fiduciary has a power (that does not constitute a power of appointment for transfer tax purposes as described in §§ 20.2041–1(b) and 25.2514–1(b) of this chapter) to make distributions from the trust to one or more members of a class of organizations described in section 1361(c)(6), such organizations will be counted collectively as only one potential current beneficiary for purposes of this paragraph (m), except that each organization receiving a distribution also will be counted as a potential current beneficiary. This paragraph (m)(4)(vi)(B) shall not apply to a power to currently distribute to one or more particular charitable organizations named in the instrument. Each of such organizations is a potential current beneficiary of the trust.

* * * * *

(8) * * *

Example 2. (i) *Invalid potential current beneficiary.* Effective January 1, 2005, Trust makes a valid ESBT election. On January 1, 2006, *A*, a nonresident alien, becomes a potential current beneficiary of Trust. Trust does not dispose of all of its S corporation stock within one year after January 1, 2006. As of January 1, 2006, *A* is the potential current beneficiary of Trust and therefore is treated as a shareholder of the S corporation. Because *A* is not an eligible shareholder of an S corporation under section 1361(b)(1), the S corporation election of any corporation in which Trust holds stock terminates effective January 1, 2006. Relief may be available under section 1362(f).

(ii) *Invalid potential current beneficiary and disposition of S stock.* Assume the same facts as in *Example 2* (i) except that within one year after January 1, 2006, trustee of Trust disposes of all Trust's S corporation stock. *A* is not considered a potential current beneficiary of Trust and therefore is not treated as a shareholder of any S corporation in which Trust previously held stock.

* * * * *

Example 5. * * * Trust-2 itself will not be counted toward the shareholder limit of section 1361(b)(1)(A). * * *

* * * * *

Example 7. Potential current beneficiaries and powers of appointment. M creates Trust from which *A* has a right to all net income and funds it with S corporation stock. *A* also has a currently exercisable power to appoint income or principal to anyone except *A*, *A*'s creditors, *A*'s estate, and the creditors of *A*'s estate. The potential current beneficiaries of Trust for any period will be *A* and each person who receives a distribution from Trust pursuant to *A*'s exercise of *A*'s power of appointment during that period.

Example 8. Power to distribute to an unlimited class of charitable organizations not pursuant to a power of appointment. M creates Trust from which *A* has a right to all net income and funds it with S corporation stock. In addition, the trustee of Trust, who is not *A* or a descendant of *M*, has the power to make discretionary distributions of principal to the living descendants of *M* and to any organizations described in section 1361(c)(6). The potential current beneficiaries of Trust for any period will be *A*, each then-living descendant of *M*, and each exempt organization described in section 1361(c)(6) that receives a distribution during that period. In addition, the class of exempt organizations will be counted as one potential current beneficiary.

Example 9. Power to distribute to a class of named charitable organizations not pursuant to a power of appointment. M creates Trust from which *A* has a right to all net income and funds it with S corporation stock. In addition, the trustee of Trust, who is not *A* or a descendant of *M*, has the power to make discretionary distributions of principal to the living descendants of *M* and to *X*, *Y*, and *Z*, each of which is an organization described in section 1361(c)(6). The potential current beneficiaries of Trust for any period will be *A*, *X*, *Y*, *Z*, and each living descendant of *M*.

(9) *Effective/applicability date.* * * * Paragraphs (m)(2)(ii)(A), (m)(4)(iii) and (vi), and (m)(8), *Example 2*, *Example 5*, *Example 7*, *Example 8*, and *Example 9* are effective on and after the date of publication of the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Par. 4. Section 1.1361–4 is amended by revising paragraph (a)(1) and adding new paragraph (a)(9) to read as follows:

§ 1.1361–4 Effect of QSub Election.

(a) *Separate existence ignored*—(1) *In general.* Except as otherwise provided in paragraphs (a)(3), (a)(6), (a)(7), (a)(8), and (a)(9) of this section, for Federal tax purposes—

(i) A corporation which is a QSub shall not be treated as a separate corporation; and

(ii) All assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and items of income, deduction, and credit of the S corporation.

* * * * *

(9) *Information returns*—(i) *In general.* Except to the extent provided by the Secretary, paragraph (a)(1) of this section shall not apply to part III of subchapter A of chapter 61, relating to information returns.

(ii) *Effective/applicability date.* This paragraph (a)(9) is effective on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 5. Section 1.1361–6 is amended by revising the first sentence as follows:

§ 1.1361–6 Effective date.

Except as provided in §§ 1.1361–4(a)(3)(iii), 1.1361–4(a)(5)(i), 1.1361–4(a)(6)(iii), 1.1361–4(a)(7)(ii), 1.1361–4(a)(8)(ii), 1.1361–4(a)(9), and 1.1361–5(c)(2), the provisions of §§ 1.1361–2 through 1.1361–5 apply to taxable years beginning on or after January 20, 2000; however, taxpayers may elect to apply the regulations in whole, but not in part (aside from those sections with special dates of applicability), for taxable years beginning on or after January 1, 2000, provided all affected taxpayers apply the regulations in a consistent manner.

* * *

Par. 6. Section 1.1362–0 is amended by revising the heading of the table of contents for § 1.1362–4 to read as follows:

§ 1.1362–0 Table of contents.

* * * * *

§ 1.1362–4 Inadvertent terminations and inadvertently invalid elections.

* * * * *

Par. 7. Section 1.1362–4 is amended by:

1. Revising the section heading and paragraphs (a), (b), (c), (d), and (f).

2. Adding paragraph (g).

The addition and revisions read as follows:

§ 1.1362–4 Inadvertent terminations and inadvertently invalid elections.

(a) *In general.* A corporation is treated as continuing to be an S corporation or a QSub (or, an invalid election to be either an S corporation or a QSub is treated as valid) during the period specified by the Commissioner if—

(1) The corporation made a valid election under section 1362(a) or section 1361(b)(3) and the election terminated or the corporation made an election under section 1362(a) or section 1361(b)(3) that was invalid;

(2) The Commissioner determines that the termination or invalidity was inadvertent;

(3) Steps were taken by the corporation to return to or qualify for small business corporation or QSub status within a reasonable period after discovery of the terminating event or invalid election, or the required shareholder consents are acquired; and

(4) The corporation and shareholders agree to adjustments that the Commissioner may require for the period.

(b) *Inadvertent termination or inadvertently invalid election.* For purposes of paragraph (a) of this section, the determination of whether a termination or invalid election was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination or invalid election was inadvertent. The fact that the terminating event or invalidity of the election was not reasonably within the control of the corporation and, in the case of a termination, was not part of a plan to terminate the election, or the fact that the terminating event or circumstance took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event or circumstance, tends to establish that the termination or invalidity of the election was inadvertent.

(c) *Corporation's request for determination of an inadvertent termination or invalid election.* A corporation that believes that the termination or invalidity of its election was inadvertent may request a determination from the Commissioner that the termination or invalidity of its election was inadvertent. The request is made in the form of a ruling request and should set forth all relevant facts pertaining to the event or circumstance including, but not limited to, the facts described in paragraph (b) of this section, the date of the corporation's election (or intended election) under section 1362(a) or 1361(b)(3), a detailed explanation of the event or circumstance causing the termination or invalidity, when and how the event or circumstance was discovered, and the steps taken under paragraph (a)(3) of this section.

(d) *Adjustments.* The Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation or QSub during the period specified by the Commissioner. In the case of stock held by an ineligible shareholder that causes an inadvertent termination or invalid election for an S corporation under section 1362(f), the Commissioner may require the ineligible shareholder to be treated as a shareholder of the S corporation during the period the ineligible shareholder actually held stock in the corporation. Moreover, the Commissioner may require protective adjustments that prevent the loss of any revenue due to the holding of stock by an ineligible shareholder (for example, a nonresident alien).

* * * * *

(f) *Status of corporation.* The status of the corporation after the terminating event or invalid election and before the determination of inadvertence is determined by the Commissioner. Inadvertent termination or inadvertent invalid election relief may be granted retroactively for all years for which the terminating event or circumstance giving rise to invalidity is effective, in which case the corporation is treated as if its election was valid or had not terminated. Alternatively, relief may be granted only for the period in which the corporation became eligible for subchapter S or QSub treatment, in which case the corporation is treated as a C corporation or, in the case of a QSub with an inadvertently terminated or invalid election, as a separate C corporation, during the period for which the corporation was not eligible for its intended status.

(g) *Effective/applicability date.* Paragraphs (a), (b), (c), (d), and (f) of this section are effective on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 8. Section 1.1366–0 is amended by adding new entries in the table of contents for § 1.1366–2(a)(5)(i) through (iii) to read as follows:

§ 1.1366–0 Table of contents.

* * * * *

§ 1.1366–2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) * * *

(5) * * * (i) *In general.*

(ii) *Exceptions for transfers of stock under section 1041(a).*

(iii) *Examples.*

Par. 9. Section 1.1366–2(a)(5) is amended by:

1. Adding the heading and revising the first sentence of paragraph (a)(5)(i).

2. Adding paragraphs (a)(5)(ii) and (a)(5)(iii).

The revisions and additions read as follows:

§ 1.1366–2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) *In general.* * * *

(5) *Nontransferability of losses and deductions*—(i) *In general.* Except as provided in paragraph (a)(5)(ii) of this section, any loss or deduction disallowed under paragraph (a)(1) of this section is personal to the shareholder and cannot in any manner be transferred to another person. * * *

(ii) *Exceptions for transfers of stock under section 1041(a).* If a shareholder transfers stock of an S corporation after December 31, 2004, in a transfer described in section 1041(a), any loss or deduction with respect to the transferred stock that is disallowed to the transferring shareholder under paragraph (a)(1) of this section shall be treated as incurred by the corporation in the following taxable year with respect to the transferee spouse or former spouse. The amount of any loss or deduction with respect to the stock transferred shall be determined by prorating any losses or deductions disallowed under paragraph (a)(1) for the year of the transfer between the transferor and the spouse or former spouse based on the stock ownership at the beginning of the following taxable year. If a transferor claims a deduction for losses in the taxable year of transfer, then under paragraph (a)(4) of this section, if the transferor's pro rata share of the losses and deductions in the year of transfer exceeds the transferor's basis in stock or the indebtedness of the corporation to the transferor, then the limitation must be allocated among the transferor spouse's pro rata share of each loss or deduction, including disallowed losses and deductions carried over from the prior year.

(iii) *Examples.* The following examples illustrates the provisions of paragraph (a)(5)(ii) of this section:

Example 1. *A* owns all 100 shares in *X*, a calendar year S corporation. For *X*'s taxable year ending December 31, 2006, *A* has zero basis in the shares and *X* does not have any indebtedness to *A*. For the 2006 taxable year, *X* had $100 in losses which *A* cannot use

because of the basis limitation in section 1366(d)(1) and which are treated as incurred by the corporation with respect to *A* in the following taxable year. Halfway through the 2007 taxable year, *A* transfers 50 shares to *B*, *A*'s former spouse in a transfer to which section 1041(a) applies. In the 2007 taxable year, *X* has $80 in losses. On *A*'s 2007 individual income tax return, *A* may use the entire $100 carryover loss from 2006, as well as *A*'s share of the $80 2007 loss determined under section 1377(a) ($60), assuming *A* acquires sufficient basis in the *X* stock. On *B*'s 2007 individual income tax return, *B* may use *B*'s share of the $80 2007 loss determined under section 1377(a) ($20), assuming *B* has sufficient basis in the *X* stock. If any disallowed 2006 loss is disallowed to *A* under section 1366(d)(1) in 2007, that loss is prorated between *A* and *B* based on their stock ownership at the beginning of 2008. On *B*'s 2008 individual income tax return, *B* may use that loss, assuming *B* acquires sufficient basis in the *X* stock. If neither *A* nor *B* acquires any basis during the 2007 taxable year, then as of the beginning of 2008, the corporation will be treated as incurring $50 of loss with respect to *A* and $50 of loss with respect to *B* for the $100 of disallowed 2006 loss, and the corporation will be treated as incurring $60 of loss with respect to *A* and $20 with respect to *B* for the $80 of disallowed 2007 loss.

Example 2. Assume the same facts as *Example 1*, except that during the 2007 taxable year, *A* acquires $10 of basis in *A*'s shares in *X*. For the 2007 taxable year, *A* may claim a $10 loss deduction, which represents $6.25 of the disallowed 2006 loss of $100 and $3.75 of *A*'s 2007 loss of $60. The disallowed 2006 loss is reduced to $93.75. As of the beginning of 2008, the corporation will be treated as incurring half of the remaining $93.75 of loss with respect to *A* and half of that loss with respect to *B* for the remaining $93.75 of disallowed 2006 loss, and if *B* does not acquire any basis during 2007, the corporation will be treated as incurring $56.25 of loss with respect to *A* and $20 with respect to *B* for the remaining disallowed 2007 loss.

* * * * *

Par. 10. Section 1.1366–5 is amended by adding a new sentence at the end.

The addition reads as follows:

§ 1.1366–5 Effective/applicability date.

* * * Paragraphs 1.1366–2(a)(5)(i), (ii) and (iii) are effective on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–18987 Filed 9–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107592–00; REG–105964–98]

RIN 1545–BA11; RIN 1545–AW30

Consolidated Returns; Intercompany Obligations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and withdrawal of proposed regulations.

SUMMARY: This document contains proposed regulations that provide guidance regarding the treatment of transactions involving obligations between members of a consolidated group and the treatment of transactions involving the provision of insurance between members of a consolidated group. The regulations will affect corporations filing consolidated returns.

DATES: Written or electronic comments and requests for a public hearing must be received by December 27, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–107592–00), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–107592–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–107592–00).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments and/or requests for a public hearing, Kelly Banks (202) 622–7180; concerning the proposed regulations, Frances L. Kelly (202) 622–7770 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On July 18, 1995, final regulations (TD 8597) under § 1.1502–13 were published in the **Federal Register** [60 FR 36671], amending the intercompany transaction system of the consolidated return regulations. These final regulations included rules under § 1.1502–13(e) governing the treatment of insurance transactions between members of a consolidated group and rules under § 1.1502–13(g) governing the treatment of obligations between members of a consolidated group (the Current Regulations).

On December 21, 1998, a notice of proposed rulemaking (REG–105964–98) was published in the **Federal Register** [63 FR 70354], which proposed amendments to the intercompany obligation rules of § 1.1502–13(g) (the 1998 Proposed Regulations). After consideration of comments received regarding the Current Regulations and the 1998 Proposed Regulations, the IRS and the Treasury Department believe that the rules governing the treatment of intercompany obligations need to be revised. Accordingly, the IRS and the Treasury Department are withdrawing the 1998 Proposed Regulations and issuing these new proposed regulations in their place. However, for purposes of determining the tax treatment of transactions undertaken prior to the finalization of these proposed regulations, taxpayers may continue to rely upon the form and timing of the recast transaction, as clarified by the 1998 Proposed Regulations.

In addition, the IRS and the Treasury Department propose to revise certain of the rules under § 1.1502–13(e) that apply to intercompany transactions involving the provision of insurance between group members.

Explanation of Provisions

I. Intercompany Obligation Regulations

A. General Application

Section 1.1502–13(g) prescribes rules relating to the treatment of transactions involving intercompany obligations. An intercompany obligation is generally defined as an obligation between members of a consolidated group, but only for the period during which both the creditor and debtor are members of the group.

Section 1.1502–13(g) can apply to three types of transactions: (1) Transactions in which an obligation between a group member and a nonmember becomes an intercompany obligation, such as the purchase by a consolidated group member of another member's debt from a nonmember creditor or the acquisition by a consolidated group member of stock of a nonmember creditor or debtor (inbound transactions); (2) transactions in which an intercompany obligation ceases to be an intercompany obligation, such as the sale by a creditor member of another member's debt to a nonmember or the deconsolidation of either the debtor or creditor member (outbound transactions); and (3) transactions in which an intercompany obligation is assigned or extinguished within the consolidated group (intragroup transactions).

B. The Deemed Satisfaction-Reissuance Model—Current Regulations and 1998 Proposed Regulations

For all three types of transactions—inbound, outbound, and intragroup—the Current Regulations and the 1998 Proposed Regulations generally provide that an obligation is treated as satisfied and, if the obligation remains outstanding, reissued as a new obligation (the deemed satisfaction-reissuance model). These regulations are intended to minimize the effects of intercompany obligations on a consolidated group's taxable income.

For inbound transactions, the deemed satisfaction-reissuance model mirrors the mechanics and single-entity policies underlying the section 108(e)(4) regulations. However, in contrast to those regulations, the deemed satisfaction-reissuance model also applies to obligations acquired for a premium and governs the treatment of the creditor as well as the debtor.

For outbound transactions, the deemed satisfaction-reissuance model furthers single-entity treatment by treating a consolidated group as a single issuer, and an intercompany obligation acquired or assumed by a nonmember as newly-issued debt. Thus, if a nonmember purchases an intercompany obligation at a discount, the nonmember will be treated as having acquired a new instrument with original issue discount to which section 1272 applies rather than market discount to which sections 1276 through 1278 apply.

For all three types of transactions, the deemed satisfaction-reissuance model preserves the location of a creditor and debtor member's items from an intercompany obligation, matches the timing of such items, and ensures that future items of original issue discount or premium between the creditor and debtor will similarly correspond in amount and timing.

Since the issuance of the 1998 Proposed Regulations, the IRS and the Treasury Department have considered whether, with respect to intragroup transactions, the objectives of § 1.1502–13(g) could be better accomplished without a deemed satisfaction-reissuance model, and could instead be achieved solely through the matching and acceleration principles of § 1.1502–13. After considering this approach, it was determined that special rules (in addition to the matching rule of § 1.1502–13(c) and the acceleration rule of § 1.1502–13(d)) would be necessary to ensure that transactions involving intercompany obligations clearly reflect consolidated taxable income. For example, if an intercompany obligation is sold to another member, the special rules and elections of the various debt regimes (that is, the rules for original issue discount, market discount, and acquisition premium) would have to be reconciled with the intercompany transaction rules through coordinating adjustments among the selling creditor, debtor, buying creditor, and any subsequent member creditors. The IRS and the Treasury Department have concluded that the deemed satisfaction-reissuance model is preferable to the complexity inherent in any such special rules.

Nonetheless, the IRS and the Treasury Department also have concluded that the deemed satisfaction-reissuance model can be improved in several respects. First, with respect to intragroup and outbound transactions, the mechanics of the model can be simplified and the amount for which an intercompany obligation is satisfied and reissued can be clarified. Second, the application of the model can be limited to those transactions for which its purposes are essential. Accordingly, these proposed regulations provide several exceptions to the application of the deemed satisfaction-reissuance model.

With respect to inbound transactions, the IRS and the Treasury Department have concluded that the mechanics of the deemed satisfaction-reissuance model and its application produce appropriate results and, therefore, no change has been proposed (except for the addition of a subgroup exception described in part I.H. of this preamble).

C. Revised Deemed Satisfaction-Reissuance Model for Intragroup and Outbound Transactions

1. Simplified Mechanics

Under the Current Regulations, and as revised under the 1998 Proposed Regulations, the mechanics of the deemed satisfaction and reissuance model are the same for both intragroup and outbound transactions. These mechanics generally treat an intercompany obligation as satisfied before an intragroup or outbound transaction and, if the obligation remains outstanding, reissued immediately after the transaction. Because these mechanics may affect the treatment of the actual transaction, they create uncertainties that have raised concerns among taxpayers.

To address these concerns, these proposed regulations adopt new and more precise mechanics for the application of the deemed satisfaction-reissuance model to certain intragroup and outbound transactions (or "triggering transactions" as described in part I.D. of this preamble). In general, the new model deems the following sequence of events to occur immediately before, and independently of, the actual transaction: (1) The debtor is deemed to satisfy the obligation for a cash amount equal to the obligation's fair market value; and (2) the debtor is deemed to immediately reissue the obligation to the original creditor for that same cash amount. The parties are then treated as engaging in the actual transaction but with the new obligation. For example, assume that S holds a B note with an adjusted issue price and basis of $100 and a fair market value of $70, and that S sells the B note to nonmember X for $70. Under the new deemed satisfaction-reissuance model, B is deemed, immediately before the sale to X, to satisfy the note for its fair market value of $70, resulting in $30 of cancellation of indebtedness income for B and $30 of loss for S (which is treated as ordinary loss under the attribute redetermination rule of § 1.1502–13(c)(4)(i)). B is then treated as reissuing to S a new note with identical terms for $70 and S is treated as selling this new note to X.

By separating the deemed satisfaction and reissuance from the actual transaction in which the obligation is transferred, the new model avoids confusion regarding whether or how the deemed satisfaction proceeds are integrated with the actual transaction. The new model operates to trigger all built-in items arising from the obligation, and then reissue the obligation with an issue price equal to its basis (and generally, its fair market value) before the actual transaction. Thus, no further gain, loss, income, or deduction with respect to the obligation will result from the actual transaction. In the example above, because S has a basis in the new B note of $70, S recognizes no gain or loss in the actual sale of the note to X, and X acquires the new B note with original issue discount of $30. See section 1278(a)(2)(B) (coordination where bond has original issue discount). After the obligation is deemed satisfied and reissued, the occurrence of the actual transaction does not result in an additional deemed satisfaction and reissuance.

2. The Deemed Satisfaction-Reissuance Amount

The Current Regulations and the 1998 Proposed Regulations provide that the deemed satisfaction and reissuance amount generally should be determined using the original issue discount principles of sections 1273 and 1274. The IRS and the Treasury Department

have concluded, however, that for transactions where it is appropriate to require a deemed satisfaction and reissuance, the deemed satisfaction and reissuance amount generally should be equal to the obligation's fair market value.

The IRS and the Treasury Department acknowledge the inherent difficulty in valuing intercompany obligations. Nonetheless, the use of fair market value pricing more accurately preserves the location of a creditor and debtor member's items from an intercompany obligation and results in less distortion of the members' income, particularly where the issue price and value of the obligation differ significantly. Furthermore, in many transactions to which the deemed satisfaction-reissuance model applies under these proposed regulations, the group will often be required to determine the fair market value of the intercompany obligation because there is a taxable exchange of property for which the appropriate amount of gain or loss must be determined under general Internal Revenue Code (Code) principles. Accordingly, the IRS and the Treasury Department generally believe that requiring a deemed satisfaction and reissuance at fair market value will not be overly burdensome.

However, these proposed regulations also provide that where the creditor's amount realized with respect to the intercompany obligation in the transaction differs from the fair market value of the obligation, and the transaction is not an intragroup exchange of an intercompany obligation for a newly issued intercompany obligation, the deemed satisfaction and reissuance amount is the amount realized. For example, the amount realized with respect to an intercompany obligation may differ from fair market value if the creditor sells the obligation in a transaction to which section 1060 applies. In such cases, the use of amount realized rather than fair market value as the satisfaction amount for the deemed satisfaction and reissuance ensures that no additional items with respect to the obligation will result from the actual transaction.

If the transaction is an intragroup exchange of an intercompany obligation for a newly issued intercompany obligation, these proposed regulations provide that the obligation is deemed satisfied and reissued for its fair market value. In addition, for all such intragroup debt exchanges (other than routine intragroup debt modifications as discussed in part I.D.4 of this preamble), the newly issued obligation will be treated as having an issue price equal to its fair market value.

In addition, if a member's amount realized with respect to an intercompany obligation results from a mark to fair market value under section 475, then the obligation will be treated as satisfied and reissued under these regulations but will not otherwise be marked to fair market value under section 475 immediately thereafter. Because the deemed satisfaction and reissuance causes all built-in items from the obligation to be recognized, there is no need for an additional mark to fair market value under section 475. However, the rules of section 475 will continue to apply to the newly-reissued obligation with respect to future events.

These proposed regulations do not provide specific rules for intercompany obligations that are not debt instruments. The regulations generally provide that the principles applied to debt instruments will similarly apply (with appropriate adjustments) to such non-debt instruments. The IRS and the Treasury Department request comments on whether additional rules are needed for such instruments.

D. Limitations on the Application of the Deemed Satisfaction-Reissuance Model to Intragroup Transactions

The Current Regulations and the 1998 Proposed Regulations apply the deemed satisfaction-reissuance model to intragroup transactions in which a member realizes an amount (under the Current Regulations, an amount of income, gain, deduction, or loss, other than zero) with respect to an intercompany obligation from the assignment or extinguishment of all or part of its remaining rights or obligations under the intercompany obligation (or from a comparable transaction).

These proposed regulations generally retain the deemed satisfaction-reissuance model for such intragroup transactions. Specifically, these proposed regulations apply the model upon a "triggering transaction," which is defined as any intercompany transaction in which a member realizes an amount, directly or indirectly, from the assignment or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation (or from a comparable transaction). However, in recognition of the administrative burden involved in valuing intercompany obligations in certain transactions and in order to limit the effects of § 1.1502–13(g) on certain routine intragroup transactions involving intercompany obligations (such as an intragroup merger of one member into another), these proposed regulations provide a number of exceptions from the application of the deemed satisfaction and reissuance model (subject to the material tax benefit rule described in part I.E. of this preamble).

In general, and as further described in this preamble, the IRS and the Treasury Department have sought to apply the deemed satisfaction-reissuance model only to those intragroup transactions that have the greatest potential to create distortions of consolidated taxable income and to exclude those transactions where the administrative burdens of either requiring precise valuation of intercompany obligations or requiring the additional mechanics of the deemed satisfaction-reissuance model outweigh the benefits of increased precision. The IRS and the Treasury Department request comments as to whether some or all of these exceptions are appropriate, as well as suggestions for other exceptions.

1. Intragroup Sections 332, 351, and 361 Exchanges

Under these proposed regulations, and subject to the material tax benefit rule as described in part I.E. of this preamble, assignments of intercompany obligations in certain intragroup nonrecognition transactions are excepted from the application of the deemed satisfaction-reissuance model. These transactions include transfers and assumptions of intercompany obligations in intragroup exchanges to which section 332 or section 361 apply if neither the creditor nor the debtor recognizes an amount of income, gain, deduction, or loss in the transaction, or in intragroup exchanges to which section 351 applies if no such amount is recognized by the creditor.

2. Intragroup Taxable Assumption Transactions

These proposed regulations also provide an exception to the application of the deemed satisfaction-reissuance model for taxable intragroup sales of assets where intercompany obligations are assumed as part of the transaction. Where indebtedness is assumed incident to a sale of assets, in most cases, the location of gain or loss from an intercompany obligation is appropriately reflected in increased or reduced sales proceeds for the assets. Such transactions generally present less potential for distortion of consolidated taxable income. Accordingly, subject to the material tax benefit rule as described in part I.E. of this preamble, the regulations do not require a deemed satisfaction and reissuance where an

intercompany obligation is assumed in a taxable intragroup sale of assets.

3. Intragroup Extinguishments—In General

These proposed regulations except from the application of the deemed-satisfaction reissuance model many intragroup transactions in which an intercompany obligation is extinguished. In general, where an intercompany obligation is extinguished, the Code and regulations will cause the creditor and debtor to recognize their respective items from the obligation, and thus preserve the location of such items. In such cases, a deemed satisfaction-reissuance model is not necessary. Thus, under these proposed regulations and subject to the material tax benefit rule as described in part I.E. of this preamble, the deemed satisfaction-reissuance model does not apply where the adjusted issue price of the obligation is equal to the creditor's basis in the obligation and the creditor's and debtor's items from the extinguishment transaction offset in amount.

These proposed regulations provide that certain Code provisions, such as section 108(a) and section 354 are inapplicable to gains and losses from intercompany obligations (and clarify that section 355(a)(1) is also inapplicable to such gains and losses). Turning off these provisions ensures single entity treatment by correcting mismatches that occur under the Code (where, for instance, a debtor has discharge of indebtedness income from the retirement of a security but the creditor's corresponding loss is not recognized) and requiring immediate recognition of both the debtor's and the creditor's items. The Current Regulations and the 1998 Proposed Regulations also provide that these Code provisions are inapplicable in many circumstances.

In the context of extinguishment transactions, the "turn-off" rule in these proposed regulations is applied first to determine whether the transaction is a triggering transaction. Because the rule imposes symmetrical treatment of the debtor and the creditor and requires that each member recognize their respective items, in many cases the debtor's and creditor's items will offset in amount and the exception described above will apply. For example, assume a note with an adjusted issue price and basis of $100 is extinguished in a fully taxable transaction for $20 and that the debtor's cancellation of indebtedness income would otherwise be excluded under section 108(a). Because the turn-off rule makes section 108(a) inapplicable, the creditor's $80 loss and the debtor's $80 of cancellation of indebtedness income will offset in amount and the extinguishment transaction will not be subject to the deemed satisfaction and reissuance model.

However, the deemed satisfaction-reissuance model will continue to apply in those cases where, after taking into account the above-described "turn-off" rule, the creditor's and debtor's items from the transaction do not offset in amount. In these cases, depending upon the circumstances, the net amount of income, gain, loss, or deduction from the intercompany obligation may or may not be redetermined, under the principles of § 1.1502–13(c)(1), to be excluded from gross income or treated as a noncapital, nondeductible amount.

4. Routine Intragroup Modifications of Intercompany Obligations

In general, the exchange of intercompany debt for newly issued intercompany debt presents a high potential for distortion of consolidated taxable income. Accordingly, these proposed regulations apply the deemed satisfaction-reissuance model at fair market value to such intragroup exchanges and generally provide that the newly issued obligation will be treated as issued for its fair market value. However, in order to avoid requiring valuation of intercompany obligations in routine debt modifications, the proposed regulations provide an exception for certain debt-for-debt exchanges involving a single issuer, subject to the material tax benefit rule as described in part I.E. of this preamble. Thus, if a member's intercompany debt is extinguished in exchange (or deemed exchange) for the member's newly issued intercompany debt, and the issue price of the new debt is equal to both the adjusted issue price and basis of the extinguished debt, the deemed satisfaction-reissuance model does not apply (and the newly issued debt is not treated as issued for its fair market value).

5. Other Exceptions for Intragroup Transactions

These proposed regulations retain the exceptions in the Current Regulations for transactions involving an obligation that became an intercompany obligation by reason of an event described in § 1.108–2(e), and for amounts realized from reserve accounting under section 585. However, consistent with the 1998 Proposed Regulations, these proposed regulations do not include the exception in the Current Regulations for transactions in which the deemed satisfaction and reissuance will not have a significant effect on any person's Federal income tax liability for any year.

E. Material Tax Benefit Rule

Although these proposed regulations provide exceptions to the deemed satisfaction-reissuance model, the IRS and the Treasury Department remain concerned that the shifting of built-in items from intercompany obligations can give rise to significant potential for distortion. Intercompany obligations present special concerns because debt between members never increases or diminishes the wealth of the group (one member's economic gain is matched by the other's economic loss) and because, in comparison to other types of property, they can be easily created, transferred, modified, and extinguished within the group at little or no economic cost.

Therefore, in order to prevent distortions that may result from the shifting of built-in items from intercompany obligations, these proposed regulations include a special rule (the material tax benefit rule) that applies to intragroup transactions otherwise excepted from the deemed satisfaction-reissuance model under the exceptions for certain intragroup nonrecognition exchanges, taxable assumption transactions, extinguishment transactions, and routine debt modifications as described in parts I.D.1, 2, 3 and 4 of this preamble. The rule is directed at intragroup transactions that would have a distortive effect on members' attributes or the basis of member stock using built-in items from intercompany obligations.

The material tax benefit rule generally applies to an intragroup assignment or extinguishment that would otherwise be excepted from the deemed satisfaction-reissuance model if, at the time of the transaction, it is reasonably foreseeable (regardless of intent) that the shifting of items of built-in gain, loss, income, or deduction from an intercompany obligation between members will secure a material tax benefit that would not otherwise be enjoyed. In such cases, the intercompany transaction will be treated as a "triggering transaction" and will be subject to the deemed satisfaction-reissuance model as described in part I.C. of this preamble.

F. Off-Market Issuance Rule

The IRS and the Treasury Department also believe that inappropriate distortions of consolidated taxable income could result from intercompany obligations that are issued at a materially off-market rate of interest. Such lending transactions may create

built-in gain or loss in a newly issued obligation that could facilitate the manipulation of a member's attributes or the basis of member stock. Although off-market lending transactions are subject to various limitations under the Code and regulations (for example, sections 482, 1274, and 7872), the IRS and the Treasury Department believe that an additional rule is necessary to properly reflect consolidated taxable income.

Accordingly, these proposed regulations include a special rule (the off-market issuance rule) that generally applies if an intercompany obligation is issued at a rate of interest that is materially off-market, and at the time of issuance, it is reasonably foreseeable that the shifting of built-in items from the obligation from one member to another member will secure a material tax benefit. In such cases, the intercompany obligation will be treated as originally issued for its fair market value, and any difference between the amount loaned and the fair market value of the obligation will be treated as transferred between the creditor member and the debtor member at the time of issuance (for example, as a distribution or a contribution to capital). This rule is not intended to apply to intragroup lending at interest rates that approximate those that would have been charged in an arm's length transaction.

The IRS and the Treasury Department are continuing to explore the relationship between the intragroup off-market issuance rule and the other limitations imposed by the Code and regulations on such lending transactions, and request comments in this regard.

G. Outbound Transactions

These proposed regulations have retained the deemed satisfaction-reissuance model (with the aforementioned new mechanics) for outbound transactions, as well as the exception in the Current Regulations for outbound transactions involving an obligation that became intercompany obligation in an event described in § 1.108–2(e). These proposed regulations also include two additional exceptions applicable to outbound transactions.

The first, the subgroup exception, provides that the deemed satisfaction and reissuance model will not apply if the creditor and debtor to an intercompany obligation cease to be members of a consolidated group in a transaction in which neither member otherwise recognize an item with respect to the intercompany obligation, and immediately after the transaction, such creditor and debtor are members of another consolidated group. In such cases, a deemed satisfaction and reissuance is unnecessary because any built-in items with respect to the obligation will be appropriately preserved and offset in the new consolidated group. However, to minimize distortions in the new group that may result from these built-in items (for example, if S and B are acquired in different chains), the exception requires that the creditor and the debtor bear a relationship described in section 1504(a)(1) to each other through an intercompany obligation subgroup parent (which may be the debtor or the creditor).

These proposed regulations provide a second exception for an intercompany obligation that is newly issued in an intragroup reorganization and pursuant to the plan of reorganization, is distributed to a nonmember shareholder or creditor in a transaction to which section 361(c) applies. Because the obligation is newly issued in the reorganization and is distributed outside of the group as part of the same plan, the IRS and the Treasury Department believe that a deemed satisfaction and reissuance of the obligation is not necessary to carry out the purposes of § 1.1502–13.

These proposed regulations also provide a rule that prevents indirect acceleration of a loss from an intercompany obligation through the sale of the obligation to a nonmember in exchange for a newly-issued obligation (the issue price of which is determined under section 1273(b)(4) or section 1274(a)) followed by a sale of the nonmember obligation at a loss. The regulations under section 108(e)(4) contain a similar rule.

H. Inbound Transactions

Both the Current Regulations and the 1998 Proposed Regulations apply a deemed satisfaction-reissuance model for transactions in which a nonintercompany obligation becomes an intercompany obligation. For such transactions, the obligation is treated as satisfied and reissued immediately after it becomes an intercompany obligation.

These proposed regulations retain the deemed satisfaction-reissuance model for inbound transactions, but also include a "subgroup" exception for certain of these transactions. The subgroup exception for inbound transactions is similar to the subgroup exception for outbound transactions as described in part I.G. of this preamble.

In addition, these proposed regulations provide a special rule to prevent inappropriate acceleration of a deduction for repurchase premium in certain inbound transactions. A single corporation that repurchases its own debt in exchange for a newly-issued debt, the issue price of which is determined under either section 1273(b)(4) or section 1274, must amortize any repurchase premium over the term of the newly-issued debt instrument. See § 1.163–7(c). Because the IRS and the Treasury Department believe that it would be inconsistent with single-entity principles to permit consolidated groups an immediate deduction in similar circumstances, these proposed regulations provide that if indebtedness of a member is acquired in exchange for the issuance of indebtedness to a nonmember and the issue price of the newly-issued indebtedness is not determined by reference to its fair market value (for example, the issue price is determined under section 1273(b)(4) or section 1274(a)), then the repurchase premium from the deemed satisfaction will be amortized over the term of the obligation issued to the nonmember.

I. Other Request for Comments

In general, these proposed regulations retain the definition of intercompany obligation found in the Current Regulations and the 1998 Proposed Regulations. This definition excludes executory obligations to purchase or provide goods or services. The IRS and the Treasury Department are considering whether this exclusion is appropriate in all instances, and request comments in this regard.

As described in part I.G. of this preamble, these proposed regulations except from the deemed satisfaction-reissuance model outbound transfers of intercompany obligations where the obligation is newly issued in an intragroup reorganization and is then distributed to a nonmember shareholder or creditor in a transaction to which section 361(c) applies. These proposed regulations do not provide an exception for such transactions where the newly issued obligation is distributed within the group to a member shareholder or creditor. The IRS and the Treasury Department are studying the effects of the deemed satisfaction-reissuance model on such intragroup distributions and are considering various approaches to ensure the appropriate single-entity treatment of such transactions. Comments are requested in this regard.

These proposed regulations do not provide special rules for the treatment of intercompany obligations transferred or assumed in transactions under section 338. The IRS and the Treasury

Department request comments in this regard.

The application of the deemed satisfaction-reissuance model and the matching principles of § 1.1502–13(c) generally align the basis and issue price (or adjusted issue price) of an intercompany obligation and, thus, reduce potential distortions. For newly issued obligations, however, in certain circumstances the Code and regulations produce disparities between issue price and basis (such as the issuance of note by a subsidiary to its parent in a distribution to which section 301 applies). The IRS and the Treasury Department are considering whether it would be beneficial to eliminate any such disparity created upon the issuance of an obligation (for example, by treating such obligations as issued for fair market value) and request comments in this regard.

II. Intercompany Insurance Regulations

A. Current Regulations

Under the Current Regulations, a member's special status as an insurance company is respected and, in some circumstances, results in an exception to the general single entity treatment for intercompany transactions. Under § 1.1502–13(e)(2)(ii)(A), if a member provides insurance to another member in an intercompany transaction, the transaction is taken into account on a separate entity basis. Thus, premiums, reserve increases and decreases, and other similar items are determined and taken into account under the members' separate entity method of accounting rather than under the matching rule of § 1.1502–13(c) and the acceleration rule of § 1.1502–13(d). It was believed that such transactions would not have a substantial effect on consolidated taxable income, and therefore, it was appropriate to except these transactions from single entity treatment. This exception was intended to avoid the complexity that would result from adjustments needed to produce single entity results, and, thus, simplify intercompany accounting. See CO–11–91, 1994–1 CB 724 [59 FR 18011]. However, except with respect to the amount of any reserve item listed in section 807(c) or section 832(b)(5) resulting from an intercompany reinsurance transaction, this departure from single entity treatment does not extend to intercompany reinsurance transactions. See § 1.1502–13(e)(2)(ii)(B).

Subsequent to the issuance of the Current Regulations, the IRS determined that it would no longer invoke the "economic family theory" in addressing whether captive insurance transactions constituted insurance for federal income tax purposes. Rev. Rul. 2001–31 (2001–1 C.B. 1348), (See § 601.601(d)(2)(ii)(*b*).) In addition, the IRS and the Treasury Department have become aware of the increasing prevalence of captive insurance arrangements within consolidated groups. Thus, the separate entity treatment of insurance payments from one member of a group to a captive insurance member may now have a greater effect on consolidated taxable income than was anticipated when the Current Regulations were issued.

B. Single Entity Treatment for Significant Insurance Members

The IRS and the Treasury Department believe that separate entity treatment for direct insurance transactions is inappropriate where a significant amount of the insuring member's business arises from transactions with other group members. Accordingly, these proposed regulations provide that, where a significant portion (5 percent or more) of the business of the insuring member (in such case, a "significant insurance member") arises from insuring the risks of other members (either by issuing insurance contracts directly to members or by reinsuring risks on contracts issued to members), it is appropriate to take into account the items from the intercompany transactions on a single entity basis. In such cases, the treatment of the members' items from the insurance transactions are subject to the matching and acceleration rules of § 1.1502–13.

Under these rules, the insured member's deduction and the significant insurance member's income from the transaction will generally be taken into account currently. However, the effects of the intercompany transaction will otherwise be treated in a manner comparable to "self-insurance" by a single corporation. For example, the significant insurance member's discounted unpaid losses under section 832(b)(5) will be determined without regard to the intercompany insurance transaction, and such member will instead take deductions with respect to losses incurred on intercompany insurance under the principles of sections 162 and 461. On the other hand, if a significant insurance member assumes all or a portion of the risk on an insurance contract written by another member with respect to risks of a nonmember, then under single entity principles, these proposed regulations generally permit the significant insurance member to increase its reserve item under section 807(c) or 832(b)(5) with respect to the premium payment.

These proposed regulations continue to except intercompany insurance transactions from single entity treatment where intercompany insurance represents less than 5 percent of the insuring member's business.

Reinsurance transactions engaged in by group members that attempt to circumvent the single entity rules of § 1.1502–13(e) may be subject to the anti-avoidance rules of § 1.1502–13(h). Thus, for example, if a member enters into an insurance contract with a third-party insurer and the contract is then reinsured with a member of the group in order to avoid treatment as an intercompany transaction, appropriate adjustments will be made to carry out the purposes of the intercompany transaction regulations. See also section 845, which allows the Secretary to allocate, recharacterize, or make other adjustments with respect to two or more related persons who are parties to a reinsurance agreement in order to reflect the proper amount, source, or character of taxable income related to such an agreement, or to make proper adjustments with respect to a party to a reinsurance contract if the contract has a significant tax avoidance effect.

C. Request for Comments

The determination of whether an insuring member is a "significant insurance member" and, therefore, is subject to the special rules described above, is made on an annual basis by comparing the amount of the insuring member's business that arises from insuring the risks of other members with its total insurance business. In making this determination, these proposed regulations use an amount determined under section 832(b)(4)(A) (gross premiums written during the taxable year less return premiums and premiums paid for reinsurance) to measure the insuring member's annual insurance business. The IRS and the Treasury Department request comments as to whether this is an appropriate measure of an insuring member's business, as well as suggestions for alternatives. The IRS and the Treasury Department are also considering whether the status of an insuring member as a "significant insurance member" should be an annual determination and whether additional rules are needed when an insuring member's status changes. The IRS and the Treasury Department request comments in this regard, in addition to whether any additional special rules are needed to accomplish single entity treatment for intercompany insurance transactions.

Proposed Effective/Applicability Date and Reliance

These proposed regulations under § 1.1502–13(g) apply to transactions involving intercompany obligations occurring in consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**. However, for purposes of determining the tax treatment of transactions undertaken prior to the finalization of these proposed regulations, taxpayers may continue to rely upon the form and timing of the recast transaction, as clarified by the 1998 Proposed Regulations (REG–105964–98) [63 FR 70354].

These proposed regulations under § 1.1502–13(e) apply to intercompany transactions involving the provision of insurance occurring in consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Frances L. Kelly, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–105964–98) that was published in the **Federal Register** on Monday, December 21, 1998, [63 FR 70354] is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entry in numerical order to read in part as follows:

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

Section 1.1502–13 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–13 is amended by:

1. Revising the fifth paragraph heading, each entry for Examples 1 through 5, and adding new Examples 6 through 11 in the table of examples in paragraph (a)(6)(ii).
2. Revising the first sentence of paragraph (e)(2)(i).
3. Adding new paragraph (e)(2)(ii)(C).
4. Revising paragraph (g).
5. Removing paragraph (j)(9) *Example 5(c).*

The addition and revisions read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(6) * * *

(ii) * * *

* * * * *

Obligations of members. (§ 1.1502–13(g)(7)(ii))

Example 1. Interest on intercompany obligation.
Example 2. Intercompany obligation becomes nonintercompany obligation.
Example 3. Loss or bad debt deduction with respect to intercompany obligation.
Example 4. Intercompany nonrecognition transactions.
Example 5. Assumption of intercompany obligation.
Example 6. Extinguishment of intercompany obligation.
Example 7. Exchange of intercompany obligations.
Example 8. Material tax benefit rule.
Example 9. Issuance at off-market rate of interest.
Example 10. Nonintercompany obligation becomes intercompany obligation.
Example 11. Notional principal contracts.

* * * * *

(e) * * *

(2) * * * (i) * * * Except as provided in paragraph (g)(4)(v) of this section (deferral of items from an intercompany obligation), a member's addition to, or reduction of, a reserve for bad debts that is maintained under section 585 is taken into account on a separate entity basis. * * *

(ii) * * *

(C) *Significant insurance member—(1) Single entity treatment for direct insurance and reinsurance.* If a significant insurance member (as defined in paragraph (e)(2)(ii)(*C*)(*2*)(*i*) of this section) insures the risk of another member (the insured member) in an intercompany transaction, paragraphs (e)(2)(ii)(A) and (B) of this section do not apply and the intercompany transaction is taken into account by both members on a single entity basis. For example, the timing and attributes of items from a premium payment from an insured member to a significant insurance member will be taken into account under the matching and acceleration rules, and the premiums earned with respect to the intercompany payment will not be accounted for by the significant insurance member under the rules of section 832(b)(4). The significant insurance member's deduction for losses incurred with respect to the intercompany insurance will be taken into account under the rules of sections 162 and 461 (including § 1.461–2), rather than section 832(b)(5). However, under single-entity principles, if a significant insurance member assumes all or a portion of the risk on an insurance contract written by another member with respect to risks of a nonmember, then the matching and acceleration rules will generally permit the significant insurance member to increase its reserve item under section 807(c) or 832(b)(5) with respect to the premium payment.

(*2*) *Definitions.* For purposes of this paragraph (e)(2)(ii)(C), the following definitions apply:

(*i*) *Significant insurance member.* A member is a significant insurance member if it is an insurance company subject to tax under subchapter L and five percent or more of the member's

insurance premiums written during the taxable year arise from insuring risks of other members of the group.

(*ii*) *Insurance premiums written during the taxable year* means gross premiums written (as defined in § 1.832–4(a)(4) and as reported by the insuring member under the method prescribed by § 1.832–4(a)(5)) on insurance contracts during the taxable year, less return premiums (as defined in § 1.832–4(a)(6)) and premiums paid for reinsurance.

(*3*) *Effective/applicability date.* The rules of this paragraph (e)(2)(ii)(C) apply to intercompany transactions involving the provision of insurance occurring in consolidated return years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

(g) *Obligations of members*—(1) *In general.* In addition to the general rules of this section, the rules of this paragraph (g) apply to intercompany obligations.

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Obligation of a member* is a debt or security of a member.

(A) *Debt of a member* is any obligation of the member constituting indebtedness under general principles of Federal income tax law (for example, under nonstatutory authorities, or under section 108, section 163, or § 1.1275–1(d)), but not an executory obligation to purchase or provide goods or services.

(B) *Security of a member* is any security of the member described in section 475(c)(2)(D) or (E), and any commodity of the member described in section 475(e)(2)(A), (B), or (C), but not if the security or commodity is a position with respect to the member's stock. See paragraphs (f)(4) and (f)(6) of this section for special rules applicable to positions with respect to a member's stock.

(ii) *Intercompany obligation* is an obligation between members, but only for the period during which both parties are members.

(iii) *Intercompany obligation subgroup* is comprised of two or more members that include the creditor and debtor on an intercompany obligation if the creditor and debtor bear the relationship described in section 1504(a)(1) to each other through an intercompany obligation subgroup parent.

(iv) *Intercompany obligation subgroup parent* is the corporation (including either the creditor or debtor) that bears the same relationship to the other members of the intercompany obligation subgroup as a common parent bears to the members of a consolidated group. Any reference to an intercompany obligation subgroup parent includes, as the context may require, a reference to a predecessor or successor. For this purpose, a predecessor is a transferor of assets to a transferee (the successor) in a transaction to which section 381(a) applies.

(v) *Material tax benefit* is the benefit of a material net reduction in income or gain, or a material net increase in loss, deduction, credit, or allowance. A material tax benefit includes, but is not limited to, the use of a built-in item or items from an intercompany obligation to materially reduce gain or increase loss on the sale of member stock, or to create or absorb a material tax attribute of a member or subgroup.

(3) *Deemed satisfaction and reissuance of intercompany obligations in triggering transactions*—(i) *Scope*—(A) *Triggering transactions.* For purposes of this paragraph (g)(3), a triggering transaction includes the following:

(*1*) *Assignment and extinguishment transactions.* Any intercompany transaction in which a member realizes an amount, directly or indirectly, from the assignment or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation or any comparable transaction in which a member realizes any such amount, directly or indirectly, from an intercompany obligation (for example, a mark to fair market value of an obligation or a bad debt deduction). However, a reduction of the basis of an intercompany obligation pursuant to sections 108 and 1017 and § 1.1502–28 (basis reductions upon the exclusion from gross income of discharge of indebtedness) or any other provision that adjusts the basis of an intercompany obligation as a substitute for income, gain, deduction, or loss, is not a comparable transaction.

(*2*) *Outbound transactions.* Any transaction in which an intercompany obligation becomes an obligation that is not an intercompany obligation.

(B) *Exceptions.* Except as provided in paragraph (g)(3)(i)(C) of this section, a transaction is not a triggering transaction as described in paragraph (g)(3)(i)(A) of this section if any of the exceptions in this paragraph (g)(3)(i)(B) apply. In making this determination, if a creditor or debtor realizes an amount in a transaction in which a creditor assigns all or part of its rights under an intercompany obligation to the debtor, or a debtor assigns all of or part of its obligations under an intercompany obligation to the creditor, the transaction will be treated as an extinguishment and will be excepted from the definition of "triggering transaction" only if either of the exceptions in paragraphs (g)(3)(i)(B)(*5*) or (*6*) of this section apply.

(*1*) *Intragroup section 332, 351, or 361 exchange.* The transaction is an intercompany exchange to which section 332 or section 361 applies in which no amount of income, gain, deduction or loss is recognized by the creditor or debtor, or an intercompany exchange to which section 351 applies in which no such amount is recognized by the creditor (unless section 362(e)(2) applies to the exchange).

(*2*) *Intragroup assumption transaction.* All of the debtor's obligations under an intercompany obligation are assumed in connection with the debtor's sale or other disposition of property (other than money) in an intercompany transaction to which section 1001 applies.

(*3*) *Exceptions to the application of section 108(e)(4).* The obligation became an intercompany obligation by reason of an event described in § 1.108–2(e) (exceptions to the application of section 108(e)(4)).

(*4*) *Reserve accounting.* The amount realized is from reserve accounting under section 585 (see paragraph (g)(4)(v) of this section for special rules).

(*5*) *Intragroup extinguishment transaction.* All or part of the rights and obligations under the intercompany obligation are extinguished in an intercompany transaction (other than an exchange or deemed exchange of an intercompany obligation for a newly issued intercompany obligation), the adjusted issue price of the obligation is equal to the creditor's basis in the obligation, and the debtor's corresponding item and the creditor's intercompany item (after taking into account the special rules of paragraph (g)(4)(i)(C) of this section) with respect to the obligation offset in amount.

(*6*) *Routine modification of intercompany obligation.* All of the rights and obligations under the intercompany obligation are extinguished in an intercompany transaction that is an exchange (or deemed exchange) for a newly issued intercompany obligation, and the issue price of the newly issued obligation equals both the adjusted issue price of the extinguished obligation and the creditor's basis in the extinguished obligation.

(*7*) *Outbound distribution of newly issued intercompany obligation.* The intercompany obligation becomes an

obligation that is not an intercompany obligation in a transaction in which a member that is a party to the reorganization exchanges property in pursuance of the plan of reorganization for a newly issued intercompany obligation of another member that is a party to the reorganization and distributes such intercompany obligation to a nonmember shareholder or nonmember creditor in a transaction to which section 361(c) applies.

(*8*) *Outbound subgroup exception.* The intercompany obligation becomes an obligation that is not an intercompany obligation in a transaction in which the members of an intercompany obligation subgroup cease to be members of a consolidated group, neither the creditor nor the debtor recognize any income, gain, deduction, or loss with respect to the intercompany obligation, and such members constitute an intercompany obligation subgroup of another consolidated group immediately after the transaction.

(C) *Material tax benefit rule.* If an assignment or extinguishment of an intercompany obligation in an intercompany transaction would otherwise be excepted from the definition of triggering transaction under paragraph (g)(3)(i)(B)(*1*), (*2*), (*5*), or (*6*) of this section, but at the time of the assignment or extinguishment, it is reasonably foreseeable that the shifting of items of built-in gain, loss, income, or deduction from the obligation from one member to another member will secure a material tax benefit (as defined in paragraph (g)(2)(v) of this section) that the group or its members would not otherwise enjoy in a consolidated or separate return year, then the assignment or extinguishment will be a triggering transaction to which paragraph (g)(3)(ii) of this section applies.

(ii) *Application of deemed satisfaction and reissuance.* This paragraph (g)(3)(ii) applies if a triggering transaction occurs.

(A) *General rule.* If the intercompany obligation is debt of a member, then (except as provided in the following sentence) the debt is treated for all Federal income tax purposes as having been satisfied by the debtor for cash in an amount equal to its fair market value, and then as having been reissued as a new obligation (with a new holding period but otherwise identical terms) for the same amount of cash, immediately before the triggering transaction. However, if the creditor realizes an amount with respect to the debt in the triggering transaction that differs from the debt's fair market value, and the triggering transaction is not an exchange (or deemed exchange) of debt of a member for newly issued debt of a member, then the debt is treated for all Federal income tax purposes as having been satisfied by the debtor for cash in an amount equal to such amount realized, and reissued as a new obligation (with a new holding period but otherwise identical terms) for the same amount of cash, immediately before the triggering transaction. If the triggering transaction is a mark to fair market value under section 475, then the intercompany obligation will be deemed satisfied and reissued for its fair market value (as determined under section 475 and applicable regulations) and section 475 will not otherwise apply with respect to that triggering transaction. If the intercompany obligation is a security of a member, similar principles apply (with appropriate adjustments) to treat the security as having been satisfied and reissued immediately before the triggering transaction.

(B) *Treatment as separate transaction.* The deemed satisfaction and reissuance is treated as a separate transaction from the triggering transaction. The deemed satisfaction and reissuance of a member's debt will not cause the debt to be recharacterized as other than debt for Federal income tax purposes immediately before the triggering transaction.

(4) *Special rules*—(i) *Timing and attributes.* For purposes of applying the matching rule and the acceleration rule to a transaction involving an intercompany obligation (other than a transaction to which paragraph (g)(5) of this section applies)—

(A) Paragraph (c)(6)(i) of this section (treatment of intercompany items if corresponding items are excluded or nondeductible) will not apply to exclude any amount of income or gain attributable to a reduction of the basis of the intercompany obligation pursuant to sections 108 and 1017 and § 1.1502–28, or any other provision that adjusts the basis of an intercompany obligation as a substitute for income or gain;

(B) Paragraph (c)(6)(ii) of this section (limitation on treatment of intercompany income or gain as excluded from gross income) does not apply to prevent any intercompany income or gain from the intercompany obligation from being excluded from gross income;

(C) Any income, gain, deduction, or loss from the intercompany obligation is not subject to section 108(a), section 354, section 355(a)(1), section 1091, or, in the case of an extinguishment of an intercompany obligation in a transaction in which the creditor transfers the obligation to the debtor in exchange for stock in such debtor, section 351(a); and

(D) Section 108(e)(7) does not apply upon the extinguishment of an intercompany obligation.

(ii) *Newly issued obligation in intracgroup exchanges.* If an intercompany obligation is exchanged (or is deemed exchanged) for a newly issued intercompany obligation and the exchange (or deemed exchange) is not a routine modification of an intercompany obligation (as described in paragraph (g)(3)(i)(B)(*6*) of this section), then the newly issued obligation will be treated for all Federal income tax purposes as having an issue price equal to its fair market value.

(iii) *Off-market issuance.* If an intercompany obligation is issued at a rate of interest that is materially off-market (off-market obligation) and at the time of issuance, it is reasonably foreseeable that the shifting of items of built-in gain, loss, income, or deduction from the obligation from one member to another member will secure a material tax benefit (as defined in paragraph (g)(2)(v) of this section), then the intercompany obligation will be treated, for all Federal income tax purposes, as originally issued for its fair market value, and any difference between the amount loaned and the fair market value of the obligation will be treated as transferred between the creditor and the debtor at the time the obligation is issued. For example, if S lends $100 to B in return for an off-market B note with a value of $130, and at that time, it is reasonably foreseeable that a material tax benefit will be secured by the shifting of items from the note, then the B note will be treated as issued for $130. The $30 difference will be treated as a distribution or capital contribution between S and B (as appropriate) at the time of issuance, and this amount will be reflected in future payments on the note as bond issuance premium. An adjustment to an off-market obligation under this paragraph (g)(4)(iii) will be made without regard to the application of, and in lieu of any adjustment under, section 467 (certain payments for the use of property or services), 482 (allocations among commonly controlled taxpayers), 483 (interest on certain deferred payments), 1274 (determination of issue price for certain debt instruments issued for property), or 7872 (treatment of loans with below-market interest rates.

(iv) *Deferral of loss or deduction with respect to nonmember indebtedness acquired in certain debt exchanges.* If a creditor transfers an intercompany obligation to a nonmember (former intercompany obligation) in exchange

for newly issued debt of a nonmember (nonmember debt), and the issue price of the nonmember debt is not determined by reference to its fair market value (for example, the issue price is determined under section 1273(b)(4) or 1274(a) or any other provision of applicable law), then any loss of the creditor otherwise allowable on the subsequent disposition of the nonmember debt, or any comparable tax benefit that would otherwise be available in any other transaction that directly or indirectly results from the disposition of the nonmember debt, is deferred until the date the debtor retires the former intercompany obligation.

(v) *Bad debt reserve.* A member's deduction under section 585 for an addition to its reserve for bad debts with respect to an intercompany obligation is not taken into account, and is not treated as realized for purposes of paragraph (g)(3)(i)(A)(*1*) of this section, until the intercompany obligation is extinguished or becomes an obligation that is not an intercompany obligation.

(5) *Deemed satisfaction and reissuance of obligations becoming intercompany obligations*—(i) *Application of deemed satisfaction and reissuance*—(A) *In general.* This paragraph (g)(5) applies if an obligation that is not an intercompany obligation becomes an intercompany obligation.

(B) *Exceptions.* This paragraph (g)(5) does not apply to an intercompany obligation if either of the following exceptions apply.

(*1*) *Exceptions to the application of section 108(e)(4).* The obligation becomes an intercompany obligation by reason of an event described in § 1.108–2(e) (exceptions to the application of section 108(e)(4)); or

(*2*) *Inbound subgroup exception.* The obligation becomes an intercompany obligation in a transaction in which the members of an intercompany obligation subgroup cease to be members of a consolidated group, neither the creditor nor the debtor recognize any income, gain, deduction, or loss with respect to the intercompany obligation, and such members constitute an intercompany obligation subgroup of another consolidated group immediately after the transaction.

(ii) *Deemed satisfaction and reissuance*—(A) *General rule.* If the intercompany obligation is debt of a member, then the debt is treated for all Federal income tax purposes, immediately after it becomes an intercompany obligation, as having been satisfied by the debtor for cash in an amount determined under the principles of § 1.108–2(f), and then as having been reissued as a new obligation (with a new holding period but otherwise identical terms) for the same amount of cash. If the intercompany obligation is a security of a member, similar principles apply (with appropriate adjustments) to treat the security, immediately after it becomes an intercompany obligation, as satisfied and reissued by the debtor for cash in an amount equal to its fair market value.

(B) *Treatment as separate transaction.* The deemed satisfaction and reissuance is treated as a separate transaction from the transaction in which the debt becomes an intercompany obligation, and the tax consequences of the transaction in which the debt becomes an intercompany obligation must be determined before the deemed satisfaction and reissuance occurs. (For example, if the debt becomes an intercompany obligation in a transaction to which section 351 applies, any limitation imposed by section 362(e) on the basis of the intercompany obligation in the hands of the transferee member is determined before the deemed satisfaction and reissuance.) The deemed satisfaction and reissuance of a member's debt will not cause the debt to be recharacterized as other than debt for Federal income tax purposes.

(6) *Special rules*—(i) *Timing and attributes.* If paragraph (g)(5) of this section applies to an intercompany obligation—

(A) Section 108(e)(4) does not apply;

(B) The attributes of all items taken into account from the satisfaction of the intercompany obligation are determined on a separate entity basis, rather than by treating S and B as divisions of a single corporation; and

(C) Any intercompany gain or loss realized by the creditor is not subject to section 354 or section 1091.

(ii) *Waiver of loss carryovers from separate return limitation years.* Solely for purposes of § 1.1502–32(b)(4) and the effect of any election under that provision, any loss taken into account under paragraph (g)(5) of this section by a corporation that becomes a member as a result of the transaction in which the obligation becomes an intercompany obligation is treated as a loss carryover from a separate return limitation year.

(iii) *Deduction of repurchase premium in certain debt exchanges.* If an obligation to which paragraph (g)(5) of this section applies is acquired in exchange for the issuance of an obligation to a nonmember and the issue price of this newly issued obligation is not determined by reference to its fair market value (for example, the issue price is determined under section 1273(b)(4) or 1274(a) or any other provision of applicable law), then, under the principles of § 1.163–7(c), any repurchase premium from the deemed satisfaction of the intercompany obligation under paragraph (g)(5)(ii) of this section will be amortized by the debtor over the term of the obligation issued to the nonmember in the same manner as if it were original issue discount and the obligation to the nonmember had been issued directly by the debtor.

(7) *Examples*—(i) *In general.* For purposes of the examples in this paragraph (g), unless otherwise stated, interest is qualified stated interest under § 1.1273–1(c), and the intercompany obligations are capital assets and are not subject to section 475.

(ii) The application of this section to obligations of members is illustrated by the following examples:

Example 1. Interest on intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. B fully performs its obligations. Under their separate entity methods of accounting, B accrues a $10 interest deduction annually under section 163, and S accrues $10 of interest income annually under section 61(a)(4) and § 1.446–2.

(ii) *Matching rule.* Under paragraph (b)(1) of this section, the accrual of interest on B's note is an intercompany transaction. Under the matching rule, S takes its $10 of income into account in each of years 1 through 5 to reflect the $10 difference between B's $10 of interest expense taken into account and the $0 recomputed expense. S's income and B's deduction are ordinary items. (Because S's intercompany item and B's corresponding item would both be ordinary on a separate entity basis, the attributes are not redetermined under paragraph (c)(1)(i) of this section.)

(iii) *Original issue discount.* The facts are the same as in paragraph (i) of this *Example 1*, except that B borrows $90 (rather than $100) from S in return for B's note providing for $10 of interest annually and repayment of $100 at the end of year 5. The principles described in paragraph (ii) of this *Example 1* for stated interest also apply to the $10 of original issue discount. Thus, as B takes into account its corresponding expense under section 163(e), S takes into account its intercompany income under section 1272. S's income and B's deduction are ordinary items.

(iv) *Tax-exempt income.* The facts are the same as in paragraph (i) of this *Example 1*, except that B's borrowing from S is allocable under section 265 to B's purchase of state and local bonds to which section 103 applies. The timing of S's income is the same as in paragraph (ii) of this *Example 1*. Under paragraph (c)(4)(i) of this section, the attributes of B's corresponding item of disallowed interest expense control the attributes of S's offsetting intercompany interest income. Paragraph (c)(6) of this

section does not prevent the redetermination of S's intercompany item as excluded from gross income because section 265(a)(2) permanently and explicitly disallows B's corresponding deduction and because, under paragraph (g)(4)(i)(B) of this section, paragraph (c)(6)(ii) of this section does not apply to prevent any intercompany income from the B note from being excluded from gross income. Accordingly, S's intercompany income is treated as excluded from gross income.

Example 2. Intercompany obligation becomes nonintercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has paid the interest accruing under the note and S sells B's note to X for $70, reflecting an increase in prevailing market interest rates. B is never insolvent within the meaning of section 108(d)(3).

(ii) *Deemed satisfaction and reissuance.* Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $70 immediately before S's sale to X. As a result of the deemed satisfaction of the note for less than its adjusted issue price, B takes into account $30 of discharge of indebtedness income under § 1.61–12. On a separate entity basis, S's $30 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's $30 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis in the hands of S. S is then treated as selling the new note to X for the $70 received by S in the actual transaction. Because S has a basis of $70 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new note held by X is not an intercompany obligation, it has a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis. The $30 of original issue discount will be taken into account by B and X under sections 163(e) and 1272.

(iii) *Creditor deconsolidation.* The facts are the same as in paragraph (i) of this *Example 2*, except that P sells S's stock to X (rather than S selling B's note to X). Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its $70 fair market value immediately before S becomes a nonmember. The treatment of S's $30 of loss and B's $30 of discharge of indebtedness income is the same as in paragraph (ii) of this *Example 2*. The new note held by S upon deconsolidation is not an intercompany obligation, it has a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis. The $30 of original issue discount will be taken into account by B and S under sections 163(e) and 1272.

(iv) *Debtor deconsolidation.* The facts are the same as in paragraph (i) of this *Example 2*, except that P sells B's stock to X (rather than S selling B's note to X). The results to S and B are the same as in paragraph (iii) of this *Example 2*.

(v) *Subgroup exception.* The facts are the same as in paragraph (i) of this *Example 2*, except that P owns all of the stock of S, S owns all of the stock of B, and P sells all of the S stock to X, the parent of another consolidated group. Because B and S, members of an intercompany obligation subgroup, cease to be members of the P group in a transaction that does not cause either member to recognize an item with respect to the B note, and such members constitute an intercompany obligation subgroup in the X group, P's sale of S stock is not a triggering transaction under paragraph (g)(3)(i)(B)(*8*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. After the sale, the note held by S has a $100 issue price, a $100 stated redemption price at maturity, and a $100 basis. The results are the same if the S stock is sold to an individual and the S–B affiliated group elects to file a consolidated return for the period beginning on the day after S and B cease to be members of the P group.

(vi) *Section 338 election.* The facts are the same as paragraph (i) of this *Example 2*, except that P sells S's stock to X and a section 338 election is made with respect to the stock sale. Under section 338, S is treated as selling all of its assets to X, including the B note, at the close of the acquisition date. The aggregate deemed sales price (within the meaning of § 1.338–4) allocated to the B note is $70. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued immediately before S's deemed sale to X for $70, the amount realized with respect to the note (the aggregate deemed sales price allocated to the note under § 1.338–6). The results to S and B are the same as in paragraph (ii) of this *Example 2*.

(vii) *Appreciated note.* The facts are the same as in paragraph (i) of this *Example 2*, except that S sells B's note to X for $130 (rather than $70), reflecting a decline in prevailing market interest rates. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $130 immediately before S's sale to X. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under § 1.163–7(c). On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $130 issue price, $100 stated redemption price at maturity, and $130 basis in the hands of S. S is then treated as selling the new note to X for the $130 received by S in the actual transaction. Because S has a basis of $130 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new note held by X is not an intercompany obligation, it has a $130 issue price, a $100 stated redemption price at maturity, and a $130 basis. The treatment of B's $30 of bond issuance premium under the new note is determined under § 1.163–13.

Example 3. Loss or bad debt deduction with respect to intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. On January 1 of year 3, the fair market value of the B note has declined to $60 and S sells the B note to P for property with a fair market value of $60. B is never insolvent within the meaning of section 108(d)(3). The B note is not a security within the meaning of section 165(g)(2).

(ii) *Deemed satisfaction and reissuance.* Because S realizes an amount of loss from the assignment of the B note, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $60 immediately before S's sale to P. As a result of the deemed satisfaction of the note for less than its adjusted issue price ($100), B takes into account $40 of discharge of indebtedness income under § 1.61–12. On a separate entity basis, S's $40 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's $40 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $60 issue price, $100 stated redemption price at maturity, and $60 basis in the hands of S. S is then treated as selling the new note to P for the $60 of property received by S in the actual transaction. Because S has a basis of $60 in the new note, S recognizes no gain or loss from the sale to P. After the sale, the note is an intercompany obligation, it has a $60 issue price and a $100 stated redemption price at maturity, and the

$40 of original issue discount will be taken into account by B and P under sections 163(e) and 1272.

(iii) *Partial bad debt deduction.* The facts are the same as in paragraph (i) of this *Example 3*, except that S claims a $40 partial bad debt deduction under section 166(a)(2) (rather than selling the note to P). Because S realizes a deduction from a transaction comparable to an assignment of the B note, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $60 immediately before section 166(a)(2) applies. The treatment of S's $40 loss and B's $40 of discharge of indebtedness income are the same as in paragraph (ii) of this *Example 3*. After the reissuance, S has a basis of $60 in the new note. Accordingly, the application of section 166(a)(2) does not result in any additional deduction for S. The $40 of original issue discount on the new note will be taken into account by B and S under sections 163(e) and 1272.

(iv) *Insolvent debtor.* The facts are the same as in paragraph (i) of this *Example 3*, except that B is insolvent within the meaning of section 108(d)(3) at the time that S sells the note to P. As explained in paragraph (ii) of this *Example 3*, the transaction is a triggering transaction and the B note is treated as satisfied and reissued for its fair market value of $60 immediately before S's sale to P. On a separate entity basis, S's $40 loss would be capital, B's $40 income would be excluded from gross income under section 108(a), and B would reduce attributes under section 108(b) or section 1017 (see also § 1.1502–28). However, under paragraph (g)(4)(i)(C) of this section, section 108(a) does not apply to characterize B's income as excluded from gross income. Accordingly, the attributes of S's loss and B's income are redetermined in the same manner as in paragraph (ii) of this *Example 3*.

Example 4. Intercompany nonrecognition transactions. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $130, reflecting a decline in prevailing market interest rates. On January 1 of year 3, S transfers the note and other assets to a newly formed corporation, Newco, for all of Newco's stock in an exchange to which section 351 applies. The aggregate adjusted bases of property transferred does not exceed the fair market value of such property immediately after the transfer.

(ii) *No deemed satisfaction and reissuance.* Because the assignment of the B note is an exchange to which section 351 applies and S recognizes no gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*1*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

(iii) *Receipt of other property.* The facts are the same as in paragraph (i) of this *Example 4*, except that the other assets transferred to Newco have a basis of $100 and a fair market value of $260, and S receives, in addition to Newco stock, $15 of cash. Because S would recognize $15 of gain under section 351(b), the assignment of the B note is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $130 immediately before the transfer to Newco. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under § 1.163–7(c). On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $130 issue price, $100 stated redemption price at maturity, and $130 basis in the hands of S. S is then treated as transferring the new note to Newco for the Newco stock and cash received by S in the actual transaction. Because S has a basis of $130 in the new B note, S recognizes no gain or loss with respect to the transfer of the note in the section 351 exchange, and S recognizes $10 of gain with respect to the transfer of the other assets under section 351(b). After the transfer, the note has a $130 issue price and a $100 stated redemption price at maturity. The treatment of B's $30 of bond issuance premium under the new note is determined under § 1.163–13.

(iv) *Intercompany obligation transferred in section 332 transaction.* The facts are the same as in paragraph (i) of this *Example 4*, except that S transfers the B note to P in complete liquidation under section 332. Because the transaction is an exchange to which section 332 applies, and neither S nor B recognize gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*1*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

Example 5. Assumption of intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. The note is fully recourse and is incurred for use in Business Z. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $110 reflecting a decline in prevailing market interest rates. Business Z has a fair market value of $95. On January 1 of year 3, B transfers all of the assets of Business Z and $15 of cash to M in exchange for the assumption by M of all of B's obligations under the note. The terms and conditions of the note are not modified in connection with the sales transaction, and no amount of income, gain, loss, or deduction is recognized by S, B, or M with respect to the note.

(ii) *No deemed satisfaction and reissuance.* Because all of B's obligations under the B note are assumed by M in connection with the sale of the Business Z assets, the assignment of B's obligations under the note is not a triggering transaction under paragraph (g)(3)(i)(B)(*2*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

Example 6. Extinguishment of intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. The note is a security within the meaning of section 351(d)(2). As of January 1 of year 3, B has fully performed its obligations, but the fair market value of the B note is $130, reflecting a decline in prevailing market interest rates, and S transfers the note to B in exchange for $130 of B stock in a transaction to which section 351 applies.

(ii) *No deemed satisfaction and reissuance.* As a result of the satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under § 1.163–7(c). Although the transfer of the B note is a transaction to which section 351 applies, under paragraph (g)(4)(i)(C) of this section, any gain or loss from the intercompany obligation is not subject to section 351(a), and therefore, S has a $30 gain under section 1001. Because the note is extinguished in a transaction in which the adjusted issue price of the note is equal to the creditor's basis in the note, and the debtor's and creditor's items offset in amount, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*5*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. Under paragraph (g)(4)(i)(D) of this section, section 108(e)(7) does not apply upon the extinguishment of the B note, and therefore, the B stock received by S in the exchange will not be treated as section 1245 property.

Example 7. Exchange of intercompany obligations. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 20. As of January 1 of year 3, B has fully performed its obligations and, pursuant to a recapitalization to which section 368(a)(1)(E) applies, B issues a new note to S in exchange for the original B note. The new B note has an issue price, stated redemption price at maturity, and stated principal amount of $100, but contains terms that differ sufficiently from the terms of the original B note to cause a realization event under § 1.1001–3. The original B note and the new B note are both securities (within the meaning of section 354(a)(1)).

(ii) *No deemed satisfaction and reissuance.* Because the original B note is extinguished in exchange for a newly issued B note and the issue price of the new B note is equal to both the adjusted issue price of the original B note and S's basis in the original B note, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*6*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. B has neither income from discharge of indebtedness under section 108(e)(10) nor a deduction for repurchase premium under § 1.163–7(c). Although the exchange of the original B note for the new B note is a transaction to which section 354 applies, under paragraph (g)(4)(i)(C) of this section, any gain or loss from the intercompany obligation is not subject to section 354. Under section 1001, S has no gain or loss from the exchange of notes.

Example 8. Material tax benefit rule. (i) *Facts.* T is a member with a material loss from a separate return limitation year (SRLY). S holds a materially appreciated B note which it transfers to T as part of an exchange which otherwise qualifies for nonrecognition treatment under section 351.

(ii) *Deemed satisfaction and reissuance.* Under paragraph (g)(3)(i)(B)(*1*) of this section, absent the application of the material tax benefit rule of paragraph (g)(3)(i)(C) of this section, the assignment of the B note would not be a triggering transaction. However, because at the time of the assignment, it is reasonably foreseeable that the shifting of the built-in income or gain from the obligation will secure a material tax benefit that the group or its members would not otherwise enjoy, under paragraph (g)(3)(i)(C) of this section, the assignment of the B note is a triggering transaction to which paragraph (g)(3)(ii) of this section applies. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value, immediately before S's transfer to T. As a result of the deemed satisfaction of the note for more than its adjusted issue price, S takes into account gain and B has a corresponding repurchase premium deduction. B is also treated as reissuing, immediately after the deemed satisfaction, a new note to S with an issue price and basis equal to its fair market value. S is then treated as transferring the new note to T as part of the section 351 exchange. Because T will have a fair market value basis in the reissued B note immediately after the exchange, T's intercompany item from the subsequent retirement of the B note will not reflect any of S's built-in gain (and the amount of SRLY loss that may be absorbed by such item will be limited to any appreciation in the B note accruing after the exchange).

(iii) *No material tax benefit.* The facts are the same as in paragraph (i) of this *Example 8*, except that S has a SRLY loss that exceeds, and will expire prior to, that of T. Further, it is anticipated that S and T will each generate similar amounts of income for the foreseeable future, and there is no plan or intention to sell the stock of either member. Because the built-in income or gain from the B note could have been used to facilitate the absorption of S's SRLY loss (rather than an equal amount of T's SRLY loss), the group and its members have not secured a material tax benefit from the assignment that it would not have otherwise enjoyed. Accordingly, the assignment is not subject to the material tax benefit rule of paragraph (g)(3)(i)(C) of this section, and the B note is not deemed satisfied and reissued under paragraph (g)(3)(ii) of this section.

Example 9. Issuance at off-market rate of interest. (i) *Facts.* T is a member with a material loss from a separate return limitation year (SRLY). T's sole shareholder, P, borrows an amount from T in return for a P note that provides for a materially above market rate of interest. As a result, the P note will generate additional interest income to T over the term of the note which will facilitate the absorption of T's SRLY loss each year and will result in a material tax benefit.

(ii) *Reasonably foreseeable.* Because at the time of the issuance, it is reasonably foreseeable that the shifting of interest income from the off-market obligation will secure a material tax benefit that the group or its members would not otherwise enjoy, under paragraph (g)(4)(iii) of this section, the intercompany obligation is treated, for all Federal income tax purposes, as originally issued for its fair market value so T is treated as purchasing the note at a premium. The difference between the amount loaned and the fair market value of the obligation is treated as transferred from P to T as a capital contribution at the time the note is issued. Throughout the term of the note, T takes into account interest income and bond premium and P takes into account interest deduction and bond issuance premium under generally applicable Internal Revenue Code sections. Because paragraph (g)(4)(iii) of this section applies, no adjustment is made under section 482.

Example 10. Nonintercompany obligation becomes intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from X in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $70, reflecting an increase in prevailing market interest rates. On January 1 of year 3, P buys all of X's stock. B is solvent within the meaning of section 108(d)(3).

(ii) *Deemed satisfaction and reissuance.* Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied for $70 (determined under the principles of § 1.108–2(f)(2)) immediately after it becomes an intercompany obligation. Both X's $30 capital loss (under section 1271(a)(1)) and B's $30 of discharge of indebtedness income (under § 1.61–12) are taken into account in determining consolidated taxable income for year 3. Under paragraph (g)(6)(i)(B) of this section, the attributes of items resulting from the satisfaction are determined on a separate entity basis. But see section 382 and § 1.1502–15 (as appropriate). B is also treated as reissuing a new note to X. The new note is an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and X in the same manner as provided in paragraph (iii) of *Example 1* of this paragraph (g)(7).

(iii) *Amortization of repurchase premium.* The facts are the same as in paragraph (i) of this *Example 10*, except that on January 1 of year 3, the B note has a fair market value of $130 and rather than purchasing the X stock, S purchases the B note from X by issuing its own note. The S note has an issue price, stated redemption price at maturity, stated principal amount, and a fair market value of $130. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied for $130 (determined under the principles of § 1.108–2(f)(1)) immediately after it becomes an intercompany obligation. As a result of the deemed satisfaction of the note, S has no gain or loss and B has $30 of repurchase premium. Under paragraph (g)(6)(iii) of this section, B's $30 of repurchase premium from the deemed satisfaction is amortized by B over the term of the newly issued S note in the same manner as if it were original issue discount and the newly issued S note had been issued directly by B. B is also treated as reissuing a new note to S. The new note is an intercompany obligation, it has a $130 issue price and $100 stated redemption price at maturity, and the treatment of B's $30 of bond issuance premium under the new B note is determined under § 1.163–13.

(iv) *Election to file consolidated returns.* Assume instead that B borrows $100 from S during year 1, but the P group does not file consolidated returns until year 3. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied and reissued as a new note immediately after the note becomes an intercompany obligation. The satisfaction and reissuance are deemed to occur on January 1 of year 3, for the fair market value of the obligation (determined under the principles of § 1.108–2(f)(2)) at that time.

Example 11. Notional principal contracts. (i) *Facts.* On April 1 of year 1, M1 enters into a contract with counterparty M2 under which, for a term of five years, M1 is obligated to make a payment to M2 each April 1, beginning in year 2, in an amount equal to the London Interbank Offered Rate (LIBOR), as determined by reference to LIBOR on the day each payment is due, multiplied by a $1,000 notional principal amount. M2 is obligated to make a payment to M1 each April 1, beginning in year 2, in an amount equal to 8 percent multiplied by the same notional principal amount. LIBOR is 7.80 percent on April 1 of year 2, and therefore, M2 owes $2 to M1.

(ii) *Matching rule.* Under § 1.446–3(d), the net income (or net deduction) from a notional principal contract for a taxable year is included in (or deducted from) gross income. Under § 1.446–3(e), the ratable daily portion of M2's obligation to M1 as of December 31 of year 1 is $1.50 ($2 multiplied by 275/365). Under the matching rule, M1's net income for year 1 of $1.50 is taken into account to reflect the difference between M2's net deduction of $1.50 taken into account and the $0 recomputed net deduction. Similarly, the $.50 balance of the $2 of net periodic payments made on April 1 of year 2 is taken into account for year 2 in M1's and M2's net income and net deduction from the contract.

In addition, the attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. (Although M1 is the selling member with respect to the payment on April 1 of year 2, it might be the buying member in a subsequent period if it owes the net payment.)

(iii) *Dealer.* The facts are the same as in paragraph (i) of this *Example 11*, except that M2 is a dealer in securities, and the contract with M1 is not inventory in the hands of M2. Under section 475, M2 must mark its securities to fair market value at year-end. Assume that under section 475, M2's loss from marking to fair market value the contract with M1 is $10. Because M2 realizes an amount of loss from the mark to fair market value of the contract, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(1) of this section. Under paragraph (g)(3)(ii) of this section, M2 is treated as making a $10 payment to M1 to terminate the contract immediately before a new contract is treated as reissued with an up-front payment by M1 to M2 of $10. M1's $10 of income from the termination payment is taken into account under the matching rule to reflect M2's deduction under § 1.446–3(h). The attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. Accordingly, M1's income is treated as ordinary income. Under § 1.446–3(f), the deemed $10 up-front payment by M1 to M2 in connection with the issuance of a new contract is taken into account over the term of the new contract in a manner reflecting the economic substance of the contract (for example, allocating the payment in accordance with the forward rates of a series of cash-settled forward contracts that reflect the specified index and the $1,000 notional principal amount). (The timing of taking items into account is the same if M1, rather than M2, is the dealer subject to the mark-to-market requirement of section 475 at year-end. However in this case, because the attributes of the corresponding deduction control the attributes of the intercompany income, M1's income from the deemed termination payment from M2 might be ordinary or capital). Under paragraph (g)(3)(ii)(A) of this section, section 475 does not apply to mark the notional principal contract to fair market value after its deemed satisfaction and reissuance.

(8) *Effective/applicability date.* The rules of this paragraph (g) apply to transactions involving intercompany obligations occurring in consolidated return years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–19134 Filed 9–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 406, 407, and 408

[CMS–4129–P]

RIN 0938–A077

Medicare Program; Special Enrollment Period and Medicare Premium Changes

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide a special enrollment period (SEP) for Medicare Part B and premium Part A for certain individuals who are sponsored by prescribed organizations as volunteers outside of the United States and who have health insurance that covers them while outside the United States. Under the SEP provision, qualifying volunteers can delay enrollment in Part B and premium Part A, or terminate such coverage, for the period of service outside of the United States and reenroll without incurring a premium surcharge for late enrollment or reenrollment.

This proposed rule would also codify provisions that require certain beneficiaries to pay an income-related monthly adjustment amount (IRMAA) in addition to the standard Medicare Part B premium, plus any applicable increase for late enrollment or reenrollment. The income-related monthly adjustment amount is to be paid by beneficiaries who have a modified adjusted gross income that exceeds certain threshold amounts. It also represents the amount of decreases in Medicare Part B premium subsidy, that is, the amount of the Federal government's contribution to the Federal Supplementary Medicare Insurance (SMI) Trust Fund.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 27, 2007.

ADDRESSES: In commenting, please refer to file code CMS–4129–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4129–P, P.O. Box 8017, Baltimore, MD 21244–8017.

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–4129–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 (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may

submit comments on this document's paperwork requirements by mailing your comments to the addresses provided 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: Sam DellaVecchia, (410) 786–4481. Denise Cox, (410) 786–3195.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–4129–P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. 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.cms.hhs.gov/eRulemaking.* Click on the link "Electronic Comments on CMS Regulations" 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

A. General

Medicare is a Federal health insurance program that helps millions of Americans pay for health care. Beneficiaries include eligible individuals age 65 or older and certain people younger than age 65 who also qualify to receive Medicare. These individuals include those who have disabilities and those who have permanent kidney failure (end stage renal disease).

Medicare Parts A and B are the subject of this proposed rule. Hospital insurance (Part A) helps to pay for inpatient care in hospitals, skilled nursing facilities, as well as home health care and hospice care. Part B or supplementary medical insurance (SMI) helps to pay for physicians' services, outpatient hospital services, durable medical equipment, and a number of other medical services and supplies that are not covered under Part A.

Part A is financed primarily through compulsory payroll taxes under the Federal Insurance Contributions Act ("FICA"). Individuals age 65 or over who are entitled to receive Social Security or railroad retirement benefits, or who are eligible for Social Security benefits and have filed an application for hospital insurance, are entitled to receive Part A benefits without paying a monthly premium. However, individuals who do not qualify for premium-free Part A, may voluntarily enroll in Part A but are required to pay a monthly premium. These individuals generally include those who have not worked 10 years in Medicare-covered employment or are not the spouse, divorced spouse or widow(er) of an individual who has worked 10 years in Medicare-covered employment. In addition, they must meet the following requirements: (1) Be at least age 65; (2) a resident of the United States; (3) a United States citizen or an alien who has been lawfully admitted for permanent residence and who has resided continuously in the United States for the 5 year period immediately preceding the month of enrollment; (4) not otherwise eligible to receive Part A benefits without having to pay a premium; and (5) entitled to Part B or are eligible and have enrolled.

Enrollment in Part B is open to all persons who are entitled to Part A benefits, as well as to persons who are not entitled to Part A benefits provided certain requirements are satisfied. Part B is financed primarily through premiums paid by or on behalf of beneficiaries, along with transfers made from the General Fund of the Treasury. Section 1839(a) of the Social Security Act (the Act) requires the Secretary of Health and Human Services to determine the Medicare Part B standard monthly premium amount annually. Currently, the standard monthly premium represents approximately 25 percent of the estimated total Part B program cost for each aged enrollee. The remaining 75 percent of the total estimated cost is subsidized by the Federal government through transfers to the Federal SMI Trust Fund from the General Fund of the Treasury.

Individuals who do not enroll in Part B or premium Part A when first eligible or who enroll and later terminate their coverage may only enroll during the general enrollment period, which is January through March of each year, unless an exception applies. The coverage will be effective the following July 1. Under section 1839(b) of the Act, individuals who delay enrolling in premium Part A or Part B for 12 or more months must pay a premium surcharge.

B. General Enrollment Period Exceptions

1. Special Enrollment Period (SEP)

Currently, section 1837(i) provides a special enrollment period (SEP) for individuals age 65 or over who are working or who are the spouses of working individuals who are covered under a group health plan (GHP). For disabled individuals, who are under age 65, the SEP applies if the individual is covered by a GHP by reason of the current employment status of the individual or the individual's spouse, or if the individual is covered by a large group health plan (LGHP) by reason of the current employment status of the individual or a member of the individual's family. In this type of situation, enrollment in Part B can take place anytime the individual is covered under the GHP or LGHP based on current employment status or during the 8-month period that begins the first full month after the GHP or LGHP coverage ends. Because section 1818(c) of the Act provides that the enrollment provisions in section 1837 (except subsection f thereof) apply to persons authorized to enroll in premium Part A, we have extended this SEP to premium Part A enrollments.

2. Transfer Enrollment Period (TEP)

Another exception is the transfer enrollment period (TEP) for enrollment in premium Part A. The TEP is for individuals age 65 or older who are otherwise eligible to enroll in premium Part A; are enrolled in a plan with an organization listed in section 1876 of the Act; and whose coverage under the plan is terminated for any reason. Here, an individual may enroll in premium Part A beginning any month that the individual is enrolled in the plan, and ending with the last day of the 8-month period following the last month in which the individual is no longer enrolled in the plan.

3. Statutory Changes

Section 5115(a)(2) of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) amended section 1837 of the Act to add a new subsection (k), which provides a SEP for certain international volunteers. Beginning January 1, 2007, a SEP for Part B is provided to qualifying international volunteers who are eligible

to enroll in Part B because they meet the requirements in section 1836(1) or (2) of the Act, but who do not enroll in Part B during the initial enrollment period or who terminate enrollment during a month in which they qualify as an international volunteer. Enrollment can take place during the 6-month period beginning on the first day of the month which includes the date the individual no longer qualifies under this provision. Coverage for an individual who enrolls during a SEP in accordance with this provision begins on the first day of the month following the month in which the individual enrolls.

Under new section 1837(k)(3) of the Act, an individual qualifies as an international volunteer if he or she is serving in a program outside of the United States that covers at least a 12-month period, and that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (the Code) and exempt from taxation under section 501(a) of the same Code. The individual must also have health insurance coverage to cover medical services while serving overseas in the program. Specifically, qualifying organizations under section 501(c)(3) of the Code that are exempt from taxation under section 501(a) of the Code are "corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals * * *". Furthermore, to qualify for this exemption, no part of the net earnings of the organization can inure to the benefit of any private shareholder or individual and no substantial part of the activities can be used for propaganda, or otherwise attempt to influence legislation (except as otherwise provided in section 510(h) of the Code) or participate or intervene (including the publishing or distributing of statements) in political campaigns on behalf of (or in opposition to) any candidate for public office.

C. Income-Related Monthly Adjustment Amount under Medicare Part B

Section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amends section 1839 of the Act and establishes a Medicare Part B premium subsidy reduction referred to as the "Income-Related Monthly Adjustment Amount" (IRMAA). Section 1839(i) of the Act requires that an income-related monthly adjustment amount be added to beneficiary's Part B premium if his or her modified adjusted gross income exceeds the established threshold amounts. The IRMAA reduces the amount that the beneficiary's premium is subsidized by the Federal government. All beneficiaries will continue to receive some subsidy of their premium.

Section 1839(i) of the Act establishes a sliding scale that we would use to establish four income-related monthly adjustment amounts that would increase a beneficiary's Medicare Part B premium by specific percentages. If a beneficiary's modified adjusted gross income is greater than the statutory threshold amounts, the beneficiary will pay a larger portion of the estimated total cost of Part B coverage. The income ranges, as set forth in section 1839(i)(3)(C)(i) of the Act, start at $80,000 for a beneficiary filing an individual tax return, and $160,000 for a beneficiary filing a joint income tax return, and are listed in the following table:

Individual tax filers with income:	Joint tax filers with income:	Premium percentage
Greater than $80,000 and less than or equal to $100,000	Greater than $160,000 and less than or equal to $200,000	35
Greater than $100,000 and less than or equal to $150,000	Greater than $200,000 and less than or equal to $300,000	50
Greater than $150,000 and less than or equal to $200,000	Greater than $300,000 and less than or equal to $400,000	65
Greater than $200,000	Greater than $400,000	80

In calendar year (CY) 2007, individual tax filers with income less than or equal to $80,000 and joint tax filers with income less than or equal to $160,000 will continue to pay the standard premium which represents roughly 25 percent of the estimated total Part B program costs. As specified in section 1839(i)(5) of the Act, each dollar amount in this table would be adjusted annually based on the Consumer Price Index.

Section 811 of the MMA also provided for a 5-year phase-in of the Medicare Part B premium subsidy reduction. However, section 1839(i) was subsequently amended by section 5111 of the DRA to provide for a 3-year phase-in period. Therefore, the percentages presented in this table reflect the Part B premium percentages that certain beneficiaries would pay once IRMAA is fully phased-in.

The "hold-harmless" provision in section 1839(f) of the Act provides for a reduction to the Part B premium for beneficiaries whose Social Security [or Railroad Board (RRB) annuity] cost of living adjustments (COLAs) are not sufficient to cover the Part B premium increase. If in a given year, the increase in the Part B premium would cause an individual's Social Security or RRB check to be less than it was the year before, the premium is reduced to ensure that the amount of the individual's Social Security benefit (or RRB annuity) stays the same. To be held harmless, a beneficiary must have had the Part B premium deducted from both the December check of the prior year and the January check of the next year. Under section 1839(f) of the Act, the "hold-harmless" provision does not apply to beneficiaries who are required to pay an IRMAA based on their modified adjusted gross income. These beneficiaries must pay the full Medicare Part B standard monthly premium, plus any applicable penalty for late enrollment or reenrollment, plus the income-related monthly adjustment amount.

Section 702(a)(5) of the Act allows SSA to make the rules and regulations necessary or appropriate to carry out the functions of SSA. Other provisions in section 811 of the MMA provide SSA with additional specific authorization to make rules and regulations to determine which beneficiaries are required to pay the different income-related monthly adjustment amounts.

On October 27, 2006, SSA issued a final rule implementing regulations governing SSA's determination of income-related monthly adjustment amounts (71 FR 62923). This final rule explains: (1) The statutory requirement to implement an income-related adjustment to the Part B premium subsidy; (2) the information that would be used to determine whether a beneficiary must pay an income-related monthly adjusted amount and the amount of any adjustment; (3) when SSA will consider a major life-changing event that results in a significant reduction in a beneficiary's modified

adjusted gross income; and (4) how a beneficiary can appeal SSA's determination about the beneficiary's income-related monthly adjustment amount. For a more detailed discussion see the October 27, 2006 SSA final rule (71 FR 62923).

II. Provisions of the Proposed Rule

We are proposing to add a new § 406.25, which would allow certain individuals who are sponsored by prescribed organizations as volunteers outside of the United States and have health care insurance to qualify for a SEP for premium hospital insurance (Part A) special enrollment period. We recognize that section 5115 of the DRA, in amending section 1839(b) of the Act, explicitly provides only for a SEP for Part B. However, since section 1818(c) of the Act applies all of the provisions of section 1837 of the Act (except subsection (f) thereof) to persons authorized to enroll under section 1818 of the Act, we believe that the SEP provided in section 5115 of the DRA also applies to enrollment in premium Part A.

In § 406.33(a)(3), we propose to make a technical correction by removing an incorrect phrase "the 7-month special enrollment period under § 406.21(e)" and replacing it with the phrase "the special enrollment period under § 406.24."

In § 406.33(a)(5) and (6), we propose to exclude from the calculation of the premium surcharge those months the individual qualifies for the SEP described in § 406.25(a).

We are proposing to add a new § 407.21, which implements section 5115 of the DRA by allowing certain individuals who are sponsored by prescribed organizations as volunteers outside of the United States and have health care insurance that covers medical services while serving overseas to qualify for a Medicare Part B SEP.

In proposed § 408.20(e)(3)(iii), we would implement section 811(b)(1)(c) of the MMA by excluding from the "hold harmless" provision (known as the "nonstandard premium") individuals who are required to pay the income-related monthly adjustment amount (IRMAA). Such beneficiaries must pay the full Medicare Part B standard monthly premium plus any applicable premium surcharge for late enrollment or re-enrollment, plus the income-related monthly adjustment amount.

In proposed § 408.24(a)(10), we would implement section 5115(a) of the DRA by excluding from the calculation of the premium surcharge those months the individual meets the requirements of proposed § 407.21. We are also making a conforming change in § 408.24(b)(2)(i) of this section by revising the cross reference to include the new paragraph § 408.24(a)(10).

Finally, we propose to add a new § 408.28, to specify that, beginning January 1, 2007, we would inform Medicare beneficiaries that they may be required to pay an income-related monthly adjustment amount in addition to the standard Part B premium, plus any applicable increase for late enrollment or reenrollment, if their modified adjusted gross income exceeds the threshold limits specified in 20 CFR 418.1115.

III. 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 each of these issues for the following sections of this document that contain information collection requirements.

Special Enrollment Period for Volunteers Outside of the United States (§ 406.25)

Section 406.25 outlines the requirements that an individual volunteer must meet to qualify for a SEP. A qualifying individual can enroll or reenroll without incurring a surcharge for a late enrollment or reenrollment. Specifically, § 406.25(a)(3)(i) states that an individual volunteer must demonstrate that his or her period of service is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of the Internal Revenue Code.

The burden associated with this requirement is the time and effort associated with demonstrating the tax-exempt status of the organization sponsoring the individual. The estimated burden associated with this requirement is 15 minutes per individual. We estimate that 1500 individuals will be subject to this requirement on a yearly basis for a total annual burden of 375 burden hours.

In addition, § 406.25(a)(3)(ii) requires that an individual demonstrate that he or she has health insurance that covers medical services received outside of the United States during his or her period of service. The burden associated with this requirement is the time and effort associated with demonstrating possession of health insurance coverage that covers the medical services received outside of the United States. We estimate the burden for verifying coverage to be 15 minutes per individual; we also estimate that 1500 individuals will be subject to this requirement on a yearly basis. The total estimated burden is 375 annual burden hours.

Special Enrollment Period for Volunteers Outside the United States (§ 407.21)

Section 407.21 addresses the provision of a SEP for an individual who elects not to enroll or to be deemed enrolled in SMI when first eligible and an individual who terminates SMI enrollment. To be eligible for the SEP, the individual must meet the criteria outlined in the regulations text. As stated in § 407.21(a), the individual must: (1) Volunteer in a program for a 12-month or longer period of service outside of the United States; (2) volunteer in a program sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of such Code; and (3) demonstrate that he or she had health insurance coverage that covers medical services received outside of the United States during his or her period of service, respectively.

The burden associated with the introductory text to § 407.21(a), as well as § 407.21(a)(1) and (a)(2), is the time and effort associated with verifying the individual's volunteer period of service, verifying the tax-exempt status of the organization sponsoring the individual, and submitting the information to CMS. The estimated burden associated with these requirements is 15 minutes per individual. We estimate that 1500 individuals will be required to verify their volunteer service. The total annual burden associated with this requirement is 375 burden hours.

The burden associated with the § 407.21(a)(3) is the time and effort

associated with an individual demonstrating that he or she has health insurance that covers medical services received outside of the United States during his or her period of service. We estimate the burden for verifying coverage to be 15 minutes per individual; we also estimate that 1500 individuals will be subject to this requirement on a yearly basis. The total estimated burden is 375 annual burden hours.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements contained in this section. These requirements are not final until they are approved by OMB.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: William N. Parham III, CMS–4129–P, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, CMS–4129–P, *carolyn_lovett@omb.eop.gov*. Fax (202) 395–6974.

IV. 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. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We do not anticipate that there will be more than 1500 beneficiaries (international volunteers) at any one time who will qualify for a SEP. To qualify under this SEP, the Medicare beneficiary must have elected not to enroll in Part B or premium Part A during the initial enrollment period, or terminated enrollment, because the individual was serving as a volunteer outside the United States. In addition, the individual must have served as a volunteer outside of the United States through a program that covers at least a 12-month period, and that is sponsored by an organization described in section 501(C)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code, and must have health care insurance coverage that covers medical services while serving overseas in the program. It is for this reason, that we anticipate that the overall expenditure for this provision of the Medicare program projected over a 5-year period would be negligible. In addition, this rule only codifies the income-related monthly adjustment amount provision of MMA. It is for these reasons that this rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 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 of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act, because we have determined 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 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this proposed rule does not impose any costs on State or local governments, therefore the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 407

Medicare.

42 CFR Part 408

Medicare.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR Chapter IV as follows:

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Premium Hospital Insurance

2. Section 406.25 is added to read as follows:

§ 406.25 Special enrollment period for volunteers outside the United States.

(a) *General rule.* An individual described in paragraph (a)(2) may use a SEP as defined in § 406.24(a)(4) of this section if—

(1) At the time the individual first met the requirements of § 406.10 through 406.15 or § 406.20(b), the individual elected not to enroll in premium Part A during the individual's initial enrollment period; or

(2) The individual terminated enrollment in premium hospital insurance during a month in which the individual was described in paragraph (a)(2) of this section.

(3) For purposes of paragraphs (a)(1) and (a)(2) of this section, an individual—

(i) Is serving as a volunteer outside of the United States through a program that covers at least a 12-month period and that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

(ii) Can demonstrate that he or she has health insurance that covers medical services that the individual receives outside the United States while serving in the program.

(b) *Duration of SEP.* The SEP is the 6-month period beginning on the first day of the month which includes the date that the individual no longer meets the description in paragraph (a)(2) of this section.

(c) *Effective date of coverage.* If the individual enrolls in premium hospital insurance in accordance with a SEP authorized by this section, coverage begins on the first day of the month following the month in which the individual enrolls.

3. Section 406.33 is amended by—

A. Revising paragraph (a)(3).

B. Adding paragraphs (a)(5) and (a)(6).

The revision and additions read as follows:

§ 406.33 Determination of months to be counted for premium increase: Enrollment.

* * * * *

(a) * * *

* * * * *

(3) Any months during the SEP under § 406.24 of this part, during which premium hospital insurance coverage is in effect.

* * * * *

(5) For premiums due for months after December 2006, any months during which the individual met the provisions of § 406.25(a) of this subpart.

(6) Any months during the 6-month SEP described in § 406.25(b) of this part during which premium hospital insurance coverage is in effect.

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

4. The authority citation for part 407 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Individual Enrollment and Entitlement for SMI

5. Section 407.21 is added to read as follows:

§ 407.21 Special enrollment period for volunteers outside the United States.

(a) *General rule.* A SEP, as defined in § 406.24(a)(4) of this subchapter, is provided for an individual who does not elect to enroll or to be deemed enrolled in Part B (SMI) when first eligible, or who terminates SMI enrollment, if while serving as a volunteer outside of the United States—

(1) The individual is in a program that covers at least a 12-month period of service outside of the United States;

(2) The program is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

(3) The individual demonstrates that he or she has health insurance that covers medical services that the individual receives outside of the United States during his or her period of service.

(b) *Duration of SEP.* The SEP is the 6-month period beginning on the first day of the month which includes the date that the individual no longer satisfies the provisions of paragraph (b) of this section.

(c) *Effective date of coverage.* For individuals enrolling in an SEP under this section, coverage begins on the first day of the month following the month in which the individual enrolls.

PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE

6. The authority citation for part 408 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Amount of Monthly Premiums

7. Section 408.20 is amended by adding paragraph (e)(3)(iii) to read as follows:

§ 408.20 Monthly premiums.

* * * * *

(e) * * *

(3) * * *

(iii) Beginning with CY 2007, a nonstandard premium may not be applied to individuals who are required to pay an income-related monthly adjustment amount described in § 408.28 of this part.

* * * * *

8. Section 408.24 is amended by—

A. Adding paragraph (a)(10).

B. Revising paragraph (b)(2)(i).

The addition and revision read as follows:

§ 408.24 Individuals who enrolled or reenrolled before April 1, 1981 or after September 30, 1981.

(a) * * *

* * * * *

(10) For premiums due for months beginning with January 1, 2007, the following:

(i) Any months after December 2006 during which the individual met the conditions under § 407.21(a) of this chapter.

(ii) Any months of SMI coverage for which the individual enrolled during a special enrollment period as provided in § 407.21(b) of this chapter.

(b) * * *

(2) * * *

(i) Any of the periods specified in paragraph (a); and

* * * * *

9. Section 408.28 is added to read as follows:

§ 408.28 Increased premiums due to the income-related monthly adjustment amount (IRMAA).

Beginning January 1, 2007, Medicare beneficiaries must pay an income-related monthly adjustment amount in addition to the Part B standard monthly premium plus any applicable increase for late enrollment or reenrollment if the beneficiary's modified adjusted gross income exceeds the threshold amounts specified in 20 CFR 418.1115.

(Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: March 1 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 4, 2007.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on September 14, 2007.

[FR Doc. E7–18467 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 440 and 447

[CMS–2213–P]

RIN 0938–AO17

Medicaid Program; Clarification of Outpatient Clinic and Hospital Facility Services Definition and Upper Payment Limit

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulatory definition of outpatient hospital services for the Medicaid program. Outpatient hospital services are a mandatory part of the standard Medicaid benefit package. The current regulatory definition at 42 CFR 440.20 is broader than the definition in Medicare, and can overlap with other covered benefit categories. The purpose of this amendment is to align the Medicaid definition more closely to the Medicare definition in order to improve the functionality of the applicable upper payment limits under 42 CFR 447.321 (which are based on a comparison to Medicare payments for the same services), provide more transparency in determining available coverage in any State, and generally clarify the scope of services for which Federal financial participation (FFP) is available under the outpatient hospital services benefit category.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 29, 2007.

ADDRESSES: In commenting, please refer to file code CMS–2213–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2213–P, 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 (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2213–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 (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jeremy Silanskis, (410) 786–1592.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2213–P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. 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.cms.hhs.gov/eRulemaking.* Click on the link "Electronic Comments on CMS Regulations" 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. Introduction

Title XIX of the Social Security Act (the Act) authorizes the Secretary of the Department of Health and Human Services (the Secretary) to provide grants to States to partially finance programs furnishing medical assistance (State Medicaid programs) to specified groups of needy individuals in accordance with an approved State Plan. "Medical Assistance" is defined at section 1905(a) as payment for part or all of the cost of a list of specified care and services, including at section 1905(a)(2)(A), "outpatient hospital services."

Details concerning the scope of covered services, the groups of eligible individuals, the payment methodologies for covered services, and all other information necessary to assure that the plan can be a basis for Federal Medicaid funding must be set forth in the approved Medicaid State Plan. For approval, the Medicaid State plan must comply with requirements set forth in section 1902(a) of the Social Security Act (the Act), as implemented and interpreted in applicable regulations and guidance issued by the Centers for Medicare & Medicaid Services (CMS). The Secretary has delegated overall authority for the Federal Medicaid program, including State Plan approval, to CMS.

Medicaid services are jointly funded by the Federal and State governments in accordance with section 1903(a) of the Act. Section 1903(a)(1) of the Act provides for payments to States of a percentage of expenditures under the approved State Plan for covered medical assistance. The percentage of Federal financial participation (FFP) is the "Federal Medicaid assistance percentage" (FMAP). For ordinary medical assistance, the FMAP varies

among the States based on a complex formula set forth in section 1905(b) of the Act.

Section 1902(a)(30)(A) of the Act requires a State Medicaid plan to meet certain requirements in setting payment amounts for covered care and services. One of these requirements is that State Plan methodologies must assure that payments are consistent with efficiency, economy, and quality of care. This provision provides authority for specific upper payment limits (UPLs) set forth in Federal regulations in 42 CFR part 447 relating to certain Medicaid covered services. The UPL applicable to outpatient hospital services is at § 447.321.

The purpose of this proposed rule is to clarify the definition of the benefit for "outpatient hospital services" under section 1905(a)(2)(A) of the Act, and the application of that definition under the applicable UPL. This rule proposes to describe the scope of services States may include in the outpatient hospital UPL and define appropriate Medicare references that States must use when calculating the UPL for Medicaid outpatient hospital services. The rule proposes to align the Medicaid definition of outpatient services with the Medicare definition of outpatient services and clarify Medicaid's corresponding UPLs for outpatient hospital and clinic services.

II. Background

A. Medicaid Outpatient Hospital Services as Currently Defined

Section 1905(a)(2)(A) of the Act lists outpatient hospital services as a benefit that can be covered under a State Medicaid program, and it is among those benefits that is mandatory for the most eligible Medicaid populations under sections 1902(a)(10)(A) and 1902(a)(10)(C)(iv) of the Act. The statute does not provide a definition for these services. The current implementing regulation at § 440.20 describes "outpatient hospital services" as preventive, diagnostic, therapeutic, rehabilitative, or palliative services that—

(1) Are furnished to outpatients;

(2) Are furnished by or under the direction of a physician or dentist; and

(3) Are furnished by an institution that—(i) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting; and (ii) Meets the requirements for participation in Medicare as a hospital;

(4) May be limited by a Medicaid agency in the following manner: A Medicaid agency may exclude from the definition of "outpatient hospital services" those types of items and services that are not generally furnished by most hospitals in the State.

An "outpatient" is defined in § 440.2(a) as "a patient of an organized medical facility, or distinct part of that facility who is expected by the facility to receive and who does receive professional services for less than a 24-hour period regardless of the hour of admission, whether or not a bed is used, or whether or not the patient remains in the facility past midnight."

Because the regulatory definition of outpatient hospital services is so broad, there is a high possibility of overlap between outpatient hospital services and other covered benefits. This overlap results in circumstances in which payment for services is made at the high levels customary for outpatient hospital services instead of the levels associated with the other covered benefits. For example, there have been instances of claims for payment of physician services as outpatient hospital services, which result in payment far in excess of the rates available in the State for physician services. In addition, the Fifth Circuit Court of Appeals, in Louisiana Department of Health and Hospitals v. CMS, 346 F. 3d 571 (2003), found that hospital-based rural health clinic services were within the current definition of outpatient hospital services and, although paid under a separate methodology, could be included in calculating supplemental payments for uncompensated care costs of outpatient hospital services. The result of these overlapping definitions is payment for identical services of a higher amount under the outpatient hospital benefit than otherwise available under the State Plan.

In addition, the current broad definition of outpatient hospital services is not clear on whether outpatient hospital services can include types of services that are outside the normal responsibility of outpatient hospitals, such as practitioner, school-based, and rehabilitative services. In other words, the current broad definition does not clearly limit the scope of the outpatient hospital service benefit to those services over which the outpatient hospital has oversight and control.

Also important, as we discuss further in the following section below, the broad definition of Medicaid outpatient hospital services is inconsistent with the applicable UPL, which is based on the premise of some level of comparability between the Medicare and Medicaid definitions of outpatient hospital and clinic services. The UPL regulation at § 447.321 limits outpatient service payments to what Medicare would pay for equivalent services. This proposed regulation would clarify the scope of services that may be included in the State Plan definition of outpatient hospital services to clarify coverage and payment requirements for outpatient services.

B. Medicaid Outpatient Hospital Services Upper Payment Limit as Currently Defined

Limitations on aggregate State payments for outpatient hospital and clinic services are established in regulation at § 447.321, "Outpatient hospital services and clinic services: Application of upper limits of payments." This regulation requires that aggregate State Medicaid payments for outpatient hospital and/or clinic services not exceed a reasonable estimate of the amount the provider would be paid under Medicare payment principles, forming a UPL for these services. The aggregate Medicaid payments and corresponding UPL for outpatient hospital and/or clinic services are calculated for private facilities. FFP is not available for State expenditures that exceed the upper payment limit.

Before 1981, States were required to pay rates for hospital and long-term care services that were directly related to Medicare reasonable cost reimbursement. To comply with this requirement, many States set Medicaid hospital rates using reasonable costs as determined by Medicare. The Congress removed the Medicare cost-based reimbursement requirements by enacting legislation in 1980 and 1981, collectively referred to as the Boren Amendment.

Under section 962 of the Omnibus Reconciliation Act of 1980 (ORA 1980), Pub. L. 96–499, and Section 2173 of the Omnibus Budget Reconciliation Act of 1981 (OBRA 1981), Pub. L. 97–85, the Congress provided States flexibility to deviate from Medicare cost determinations for hospital reimbursement. In lieu of using Medicare cost reimbursement rates, States were allowed to set rates based on the costs of efficiently and economically operated facilities.

Though the Boren Amendment removed the specific requirement that States adhere to Medicare cost principles, the legislative history indicates the intent that the Secretary continue to require that payments made to hospitals and other inpatient facilities under the State Plan not exceed Medicare payment principles.

The Senate Finance Committee stated that "the Secretary would be expected

to continue to apply current regulations that require that payments made under State plans do not exceed amounts that would be determined under Medicare principles of reimbursement (S. Rep. No. 471, 96th Cong. 1st Sess. (1979))." These limitations provide us with the authority to establish UPLs for outpatient and inpatient hospital services.

The Congress allowed for even more flexibility for State payments to hospital and other providers under the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33. The BBA effectively replaced the requirements of the Boren Amendment with a public process to determine the rates of payment under the State Plan. The public process requires that States publish proposed and final rates, the methodologies underlying the established rates, and the justification for the rates. Providers, beneficiaries, and other concerned State residents have an opportunity to review and comment on the rates before they become final.

Section 705 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) required that we publish final regulations authorizing transition periods for States to comply with the UPL regulations. In response to this statutory directive, we modified the UPL regulations for inpatient and outpatient hospital services through a final regulation on January 12, 2001 (66 FR 3147).

In addition, on May 29, 2007 (72 FR 29748), CMS published a final rule (CMS–2258–FC) which will impact the outpatient and inpatient hospital upper payment limits for services provided by units of government. Congress has enacted a one year moratorium that delays CMS from implementing the policies established under that final rule. The provisions proposed in this regulation address completely different policy matters than those set forth in CMS–2258–FC.

The current outpatient hospital UPL regulation prohibits States from paying more, in the aggregate, for Medicaid outpatient hospital services than the "reasonable estimate" that Medicare would pay for equivalent services in privately operated facilities.

As with the scope of outpatient hospital services that may be included under the State Plan, the "reasonable estimate" of what Medicare would pay for equivalent Medicaid services has had varied interpretations. Some States have proposed to use their own hospital cost reports to assess the "reasonable estimate" of Medicare payment. These cost reports may not represent finalized data or accurately reflect Medicare payment and/or charge rates. To establish standardization across all States, the proposed rule would require States to base the "reasonable estimate" upon service charge ratios reported in the most recently filed Medicare hospital cost report, or a State cost report for which the State can clearly demonstrate gathers data elements directly from the proposed standard worksheets and lines on the most recently filed Medicare cost report. We believe that these standards will provide an accurate resource for the "reasonable estimate" of what Medicare would pay for equivalent Medicaid services.

C. General Intention of Proposed Rule

In our review of Medicaid State Plans, we have noted instances where the State allows non-facility services and/or non-traditional outpatient hospital services to be paid under the outpatient hospital benefit. The definition of outpatient hospital services in current regulation may allow States to include such non-facility services (that is, physician and professional services) and/or non-traditional outpatient hospital services (that is, school-based and rehabilitative services) within the State Plan definition of outpatient hospital services. We do not believe that such a broad definition of outpatient hospital services is consistent with congressional intent when enacting section 1905(a)(2)(A) of the Act.

Therefore, as discussed in more detail below, we are proposing to change the definition and scope of outpatient hospital services, and the corresponding UPL for outpatient hospital and clinic services, in an effort to clarify the current regulatory language and make it consistent with the intent of the Congress in enacting section 1905(a)(2)(A) of the Act. This revised definition of outpatient hospital services would align the outpatient services covered by Medicaid with those covered by Medicare. As a result, the calculation of the Medicaid UPLs would reflect a comparison of like services. The revised definition would also narrow the scope of Medicaid outpatient services to those traditionally and typically recognized as outpatient facility services. While we recognize that Medicaid covers certain services that are not covered by Medicare, this regulation would not prohibit States from covering any Medicaid service allowable under section 1905(a) of the Act. Rather, the regulation would only define services that may be covered, and reimbursed, under the outpatient hospital services benefit in the Medicaid State Plan.

In addition, a number of States have requested that we clarify in regulation the requirements for calculating Medicare comparable UPLs on outpatient and clinic services. The current regulation at § 447.321 limits outpatient hospital and rural health clinic payments in privately operated facilities to "a reasonable estimate of the amount that would be paid for services furnished by the group of facilities under Medicare payment principles."

The current regulation does not address how this estimate should be made, nor does it address the treatment of services that are not comparable to a service furnished under Medicare. As States provide an array of services in a variety of settings authorized under § 440.90, we are proposing to set forth effective UPLs to limit Medicaid payments in all clinic settings.

To address these concerns, as discussed below in more detail, in addition to revising the definition of "outpatient hospital services" for consistency between Medicare and Medicaid, we are proposing changes to address the method for calculating the UPL. The proposed UPL definition of outpatient hospital services and clinics would establish payments as reported on the most recently filed Medicare cost report, or a State cost report for which the State can clearly demonstrate gathers data elements directly from the proposed standard worksheets and lines on the most recently filed Medicare cost report, as the standard for the reasonable estimate of what Medicare would pay for equivalent Medicaid services. The Medicare cost report reflects cost-to-charge ratios for all outpatient services reimbursed prospectively or reimbursed under a fee schedule by Medicare. Additionally, payment-to-charge ratios may be derived from the Medicare cost report for all facility payments reported to the Medicare fiscal intermediary. Medicare regularly updates these payment systems to recover costs for providers.

We believe that the Medicare costs or payments reported in the most recently filed Medicare cost reports, or an equivalent State cost report as described above, provide the most accurate measure of what Medicare would pay for Medicaid-equivalent outpatient hospital services.

D. Medicaid Outpatient Hospital Service Definition

Scope of Outpatient Hospital Services—Proposed Rule

The BBA required CMS (formerly the Health Care Financing Administration) to implement an outpatient prospective

payment system (OPPS) for hospital services reimbursed under the Medicare program. Before the implementation of OPPS, services were reimbursed on a formula-driven basis. As part of the development process for the OPPS, we published a proposed rule on September 8, 1998 (63 FR 47552) that, among other provisions, described the services that would be paid for by Medicare on a prospective basis. The final rule was published in the **Federal Register** on April 7, 2000 (65 FR 18434).

Regulations at 42 CFR part 419—Prospective Payment System for hospital Outpatient Department Services—describes the categories of hospitals and the services that are included and excluded from the Medicare hospital OPPS. The proposed rule references the services that Medicare pays for under the OPPS, defined at § 419.2. In addition, the proposed rule references other outpatient hospital facility services that Medicare pays through an alternate methodology, such as a fee schedule, as coverable Medicaid outpatient hospital services. While Medicare pays for both professional and facility services through alternate payment methodologies, the proposed rule would limit Medicaid coverage and payment for outpatient hospital services to facility services only. For example, States may cover and reimburse prosthetic devices, prosthetics, supplies, and orthotic devices, durable medical equipment, and clinical diagnostic laboratory services as outpatient hospital services.

In addition, the proposed rule would allow States to cover outpatient services provided outside of the hospital only in a department of a provider that meets the standards defined under Medicare regulations in 42 CFR part 413, subpart E—Payments to Providers. This section of the regulations describes the relationship that facilities with provider-based status must have with a hospital in order to receive Medicare payments equivalent to those received by hospitals. Specifically, our intention is to ensure that a department of a hospital that meets the Medicare requirements for provider-based status and is reimbursed for Medicaid outpatient hospital services is treated the same as the main provider. In contrast, a provider-based entity that is not a department of the main provider would be treated as a separate, non-hospital, entity for this purpose (by definition, under 42 CFR 413.65(a)(2), provider-based entities provide health care services of a different type from those of the main provider).

We have considered other options and believe that the services recognized under Medicare regulations as outpatient hospital services represent an industry-accepted class of services. By including services reimbursed to outpatient hospitals under Medicare OPPS and outpatient services reimbursed through Medicare fee schedules within the Medicaid definition, we would provide greater consistency between the two federally funded programs. In addition, we are proposing to adopt Medicare's definition of a department of a provider meeting the requirements of provider-based status, into Medicaid regulation to assure that all providers that are reimbursed for outpatient hospital services have a legal relationship with a main provider that is defined under regulation. This is consistent with efficiency and economy as set forth in section 1902(a)(30)(A) of the Act.

The proposed rule also would exclude States from covering under the Medicaid outpatient hospital benefit services that are covered under another medical assistance service category under the State Plan. Our review of State Plan methodologies recently submitted to CMS finds that States may include non-facility and/or non-traditional hospital services (that is, school-based services and rehabilitation services) within the definition of covered outpatient hospital services. For example, States have proposed including school-based, adult day health and rehabilitative services in the outpatient hospital coverage section of the State Plan. In many cases, these services are already covered and paid for under another methodology under the plan. In at least one instance, a State reimburses non-traditional hospital services at the rate that community providers receive, as defined under the distinct payment methodology for those services under the State Plan, rather than the higher outpatient rate that should be paid for a covered outpatient service.

Such inconsistencies have the potential to enhance the UPL for outpatient services by increasing the scope of outpatient hospital services that might be included in the UPL calculation. We are proposing to exclude non-facility and/or non-traditional hospital services from the outpatient definition in this proposed rule to assure efficiency and economy within the scope of outpatient hospital services as outpatient service rates are generally higher than rates for other Medicaid non-facility services. An outpatient hospital service may not be covered and/or reimbursed under another Medical Assistance services category under the State Plan. However, States may continue to cover any service that is authorized under section 1905(a) of the Act within the State Plan under a coverage benefit that is distinct from outpatient hospital services.

Finally, the proposed rule would make a clear distinction between outpatient services billed by a recognized hospital facility in which services are furnished and those billed by physicians and other professionals. Under Medicaid, States generally pay a fee schedule rate for physician and other professional services and a separate rate to hospitals providing outpatient services. We are restricting the Medicaid outpatient hospital definition to facility services only to prevent duplicative payments for professional services that are reimbursed under a separate payment methodology, under a different benefit category under section 1905(a) of the Act.

E. Upper Payment Limits—Proposed Rule

We are proposing to revise § 447.321 to clarify the appropriate Medicare references that States may use to derive the reasonable estimate of what would be paid for Medicaid outpatient and clinic services furnished by the group of facilities under Medicare payment principles.

Outpatient Hospital Upper Payment Limit

The revisions to the outpatient UPL, as defined in the proposed rule, would limit the services that may be included in the outpatient hospital UPL for privately operated facilities to those with a Medicare equivalent as reported through the most recently filed Medicare cost report, for each outpatient hospital Medicaid service provider, or a State cost report for which the State can clearly demonstrate gathers data directly from the proposed standardized Medicare cost report references. The proposed rule would allow States to include within the UPL calculation only services that (1) may be covered under the Medicaid outpatient coverage definition; and (2) that show up on outpatient-specific Medicare hospital cost report worksheets. Thus, the scope of outpatient hospital services as defined by Medicaid would be the same services as those included in the outpatient hospital UPL. Though we recognize that Medicaid covers more services than Medicare, we believe that an economic and efficient UPL should include only services to which there exists a Medicare equivalent.

Restricting the permissible scope of Medicaid outpatient hospital services to Medicare's definition would allow us to define standard references that States may use to calculate the UPL. All Medicare-certified institutional providers, including hospitals, are required to submit annual cost reports to a fiscal intermediary. These cost reports include information such as facility characteristics, utilization data, cost and charges by cost center (in total and for Medicare), Medicare settlement data, and financial Statement data. The Medicare hospital cost report captures all of the services that are included in the proposed revised definition of Medicaid outpatient hospital services, and it is the most accurate reflection of what Medicare would pay for Medicaid equivalent services.

As previously stated, the Medicare hospital cost report includes line items that calculate a cost-to-charge ratio (ratio of the provider's actual costs vs. the amount the provider charges). The cost-to-charge ratio on the Medicare cost report captures the highest possible amount that Medicare would pay for an outpatient service. The proposed rule would allow States to use either the cost-to-charge ratio, as reported on the most recently filed Medicare hospital cost report, or a payment-to-charge ratio (the ratio of the amount that Medicare actually pays for outpatient hospital services through the fiscal intermediary vs. the amount of the hospital's charges for such services) to develop the foundation of a reasonable estimate of what Medicare would pay for Medicaid's outpatient hospital services. For either UPL methodology, the dates of service as reported to the Medicare hospital cost report for Medicare cost or payment must match the dates of service for Medicare charges as reported to the cost report.

We currently require that States demonstrate compliance with the UPL for outpatient hospital services using one of the methods described above when the State submits a Medicaid State plan amendment for outpatient services. The UPL demonstration must include a formula that clearly accounts for either the ratio of Medicare cost to Medicare charges multiplied by Medicaid outpatient charges, or the ratio of Medicare payments to Medicare charges multiplied by Medicaid outpatient charges. The State must cite all references from the most recently filed Medicare hospital cost report that are included in the Medicare cost-to-charge ratio or Medicare payment-to-charge ratio portion of the UPL formula. States utilizing a State-specific cost report must demonstrate a clear crosswalk between the proposed Medicare cost report references that may be included in a UPL demonstration and the State's reporting system.

For a cost-to-charge UPL demonstration, the link to Medicare is made through reference to ancillary and outpatient hospital services cost center cost-to-charge ratios as found on Worksheet C, Column 9, lines 37—68 or Worksheet D, Part V, Column 1.01, lines 37–68 of the CMS 2552–96. These ratios, which must be determined for each provider, include all cost regardless of payer for all ancillary and outpatient cost centers and charges made to all payers including Medicaid. CMS will not accept a UPL that is inflated by adjusting Medicare's allowed cost as reported on these worksheets.

The applicable outpatient hospital service payment references for a payment-to-charge UPL demonstration may be found on Worksheet E, Part B of the CMS 2552–96. While Worksheet E represents what Medicare pays for services within hospitals, States must make certain adjustments in order to reflect equivalent Medicaid outpatient hospital provider services that may be included in the UPL demonstration. For example, all lines that report payments associated with professional services must be removed from the numerator. Additionally, States must ensure that bad debts are not over-reported by including deductibles and coinsurance and reimbursable bad debt in Medicare payments. If deductible and coinsurance are added on to the Medicare payment, the State should remove reimbursable bad debts included in the Medicare payment. The resulting payments reported from Worksheet E should represent allowable Medicare payments for purposes of the UPL demonstration. The source of Medicare charge data, reflected in the ratio's denominator, must come from Worksheet D, Part V and Part VI of the Medicare cost report.

We note that a payment-to-charge ratio UPL methodology may not be inclusive of the full scope of outpatient hospital services because payments and charges on the Medicare cost report do not include payments and charges reimbursed on a fee-for-service basis through the Medicare Part B Carrier. For example, durable medical equipment payments and charges are not included on Worksheets E and D. We believe States should have the flexibility to determine the UPL through a comparison of Medicare payment.

We also note that the specific line references from the Medicare hospital cost report are subject to change as the Medicare cost report and reporting requirements are modified by CMS. However, only those costs, charges, and payments included in the above worksheets and lines on the CMS 2552–96 (the current standard Medicare hospital cost report form at the issuance of this proposed rule) may be included in the outpatient UPL demonstration for Medicaid services.

Depending on which UPL demonstration methodology the State utilizes, the Medicare cost-to-charge ratio or the Medicare payment-to-charge ratio for each provider, this ratio is multiplied by the Medicaid outpatient hospital charges associated with paid claims for each provider as reported to the Medicaid Management Information System (MMIS). We have considered other methods and believe that the use of adjudicated claims excludes outpatient services paid for by Medicare for patients dually eligible for Medicare and Medicaid and helps to assure that charges represent covered Medicaid services. The Medicaid charge data must exclude clinical diagnostic laboratory services, which are limited to a separate UPL under section 1903(i)(7) of the Act, and all professional services.

The resulting product is an estimate of the actual cost or payment associated with Medicaid outpatient hospital facility services. The total estimate of Medicaid cost or payment is compared to actual Medicaid paid claims to determine whether outpatient hospital payments exceed the UPL.

States may choose to trend the UPL data to the current rate year. Under the proposed rule, we are proposing that all data must be trended uniformly in successive years and use the Medicare Market Basket Index as the trending factor. The State must demonstrate to CMS the effect of the trended data for each successive year from the base year to the current rate year. In addition, the State must demonstrate its methodology for any proposed volume trending.

Clinic Upper Payment Limit

For privately operated clinics that are not providing outpatient hospital services under § 440.20 (those that would not be paid by Medicare in that setting under OPPS or under an alternative outpatient hospital service payment methodology) but instead are covered under the authority of § 440.90, the UPL is the reasonable estimate of what would be paid for clinic services furnished by the group of facilities under Medicare payment principles. In calculating the reasonable estimate of what Medicare would pay for Medicaid clinic services, we must consider Medicare's reimbursement methods for these services.

Medicare does not typically pay for clinic services on the basis of cost as reported by the facility. Rather, through the resource-based relative value (RBRVS) system, used to determine the fee-for-service rate, Medicare recognizes specific clinic costs eligible for reimbursement in a clinic setting. For clinic services, a reasonable estimate of what Medicare would pay for equivalent Medicaid services is the non-facility professional rate for those services.

We propose two options for States to demonstrate compliance with the proposed UPL rule for clinic services provided in privately operated facilities, which requires payment that does not exceed a reasonable estimate of what Medicare would pay for equivalent Medicaid services. A State may choose to limit clinic reimbursement to a percentage, not to exceed 100 percent, of what Medicare pays under the non-facility professional rate for equivalent Medicaid services.

This first option would require States to include language in the State Plan that specifies the percentage of the Medicare facility fee schedule that would be paid for services in clinic settings. If the State pays a percentage of what Medicare pays under a facility-specific fee schedule or the non-facility professional rate and wishes to make supplemental payments up to 100 percent of what Medicare pays, the State must demonstrate per CPT code what Medicare would pay for equivalent Medicaid services. The calculation may be conducted in the aggregate for clinic type or by specific facilities (end-stage renal disease (ESRD), ambulatory surgical center (ASC), etc.). If a State opts to pay 100 percent of what Medicare pays under a facility-specific fee schedule or the non-facility professional rate for equivalent Medicaid services, the State would not have the option of making supplemental payments. However, the State would not be required to submit documentation for a clinic UPL demonstration.

As a second option, a State may develop a fee schedule for Medicaid clinic services, which is not based on the Medicare professional fee schedule. Clinical diagnostic laboratory services may not be included in this demonstration because section 1903(i)(7) of the Act requires that these services not exceed the Medicare fee schedule. For all other clinic services, the State may pay through an encounter rate or a Medicaid specific fee schedule that is not based on Medicare payment principles. Under this option, a UPL demonstration is required to demonstrate that Medicaid clinic reimbursement would not exceed what Medicare would pay for equivalent services. This demonstration must show a comparison by CPT code of the amount paid by Medicare for equivalent Medicaid services. The calculation may be conducted in the aggregate for clinic type or by specific facilities (ESRD, ASC, etc.). Under the second option, a State may pay more than Medicare for some services or facilities, and less than Medicare for others, as long as the aggregate Medicaid payment is equal to or less than the amount that Medicare would pay in the aggregate.

We include a special provision for dental services provided in clinics for purposes of UPL calculations because we recognize that Medicare does not generally cover dental services. Since there is no Medicare payment for dental services in clinic settings, we allow the State to incorporate the Medicaid State Plan fee schedule rate as the reasonable estimate of what Medicare would pay for dental services. As a result, dental clinic providers are not excluded from the State's aggregate clinic UPL calculation.

III. Provisions of the Proposed Rule

A. Overview

Under our proposal, the outpatient hospital services covered under the Medicaid program would continue to be set forth in regulation under § 440.20. In addition, the UPL requirements for outpatient hospital services would continue to be defined under § 447.321. However, both current definitions would undergo significant revision to clarify the scope of outpatient hospital services recognized by the Medicaid program and to standardize Medicare cost and payment principles as the basis to accurately determine the reasonable estimate of what Medicare would pay for equivalent Medicaid services in a privately operated outpatient facility.

B. General Provisions

The revised definitions would begin with existing § 440.20 that describes outpatient hospital services and rural health clinic services. The definition of rural health clinic services would be revised to apply to all clinic settings. In addition, the existing § 447.321 that describes UPLs for Medicaid services provided in outpatient hospitals and clinics would be revised.

1. Outpatient Hospital Services and Rural Health Clinic Services (Proposed § 440.20)

Existing § 440.20 sets forth definitions for outpatient hospital services and rural health clinic services. We are proposing to change § 440.20(a) to specify the scope of facility services covered under the Medicaid program. We propose to substitute in § 440.20(a) the term "by an institution" for "in a facility." We believe this term better describes outpatient hospital settings where Medicaid services may be covered.

We proposed to modify the requirements for a participating facility to include those described in § 413.65. Though the current regulation requires that participating facilities meet the requirements for participation in Medicare as a hospital, we included the criteria for provider-based status as a department of an outpatient hospital facility, as described in § 413.65, to recognize all settings where Medicaid outpatient hospital services may be provided. In accordance with § 413.65, a department of a provider must furnish health care services of a same type as those of the main provider under the name, ownership, and administrative and financial control of the main provider.

We proposed to add to the current definition a comprehensive list of the scope of services that may be included under the Medicaid outpatient hospital services benefit. The modified definition allows States to cover outpatient services paid for under the Medicare OPPS and all other outpatient hospital facility services that Medicare pays under a fee schedule. These services are limited only to hospital facility services and exclude all professional services. Professional services may continue to be billed under a separate fee schedule rate. The Medicare provision for OPPS covered services may be found at § 419.2(b).

Finally, we excluded all services, other than outpatient hospital services, that are covered and paid under medical assistance under section 1905(a) of the Act. For example, services paid for under a fee schedule (for example, Federally Qualified Health Centers) or services that are typically covered under a different section of the State Plan (for example, rehabilitative services).

2. Outpatient Hospital and Clinic Services: Application of Upper Payment Limits (Proposed § 447.321)

We propose to modify the existing definition of UPLs for outpatient hospital and clinic services to provide States with clear and accurate guidance on the "reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter." The proposed rule would allow States to include within the UPL

calculation only services that may be covered under the Medicaid outpatient coverage definition and that appear on the Medicare hospital cost report.

All hospitals throughout the nation report cost and charge data through Medicare hospital cost reports. Since these reports reflect Medicare data for all outpatient hospital payments made by Medicare, we require States to reference the Medicare hospital cost reports, or a State cost report for which the State can clearly demonstrate gathers data directly from the proposed standardized Medicare cost report references, when calculating the Medicaid outpatient UPL for privately operated facilities. From the Medicare cost reports, States may use payment-to-charge ratios or cost-to-charge ratios and apply the ratios to Medicaid outpatient hospital charges from the MMIS to determine the outpatient UPL. We base the UPL calculation on Medicare hospital cost reports because we believe they provide the most accurate reflection of what Medicare would pay for equivalent Medicaid outpatient hospital services.

Medicare pays on a different basis for clinic services. These rates incorporate some of the facility costs and are higher than traditional fee schedule payments for professional services. States may continue to calculate the reasonable estimate of what Medicare would pay for equivalent Medicaid clinic services using these rates. However, States must demonstrate a clinic UPL by either specifying a percentage, not to exceed 100 percent, of the Medicare rate that is paid by Medicaid. Or a State can demonstrate that, in the aggregate, Medicaid-specific payment rates that are not directly related to Medicare rates are less than what Medicare would pay based on a comparison of what Medicaid pays by CMS Common Procedure Coding System (CPT) code to the amount paid by Medicare for equivalent Medicaid services.

In addition, Medicare generally does not reimburse for dental services. With this in mind, we added a provision allowing States to use the Medicaid fee schedule rate for dental services to calculate the UPL for such services. This provision would allow dental services to be included in the aggregate clinic UPL calculation, and, thus, allow dental providers to be eligible for supplemental payments. Since Medicare generally does not pay for dental services, we believe this is the best alternative for inclusion of dental services in the clinic UPL calculation.

IV. 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).

V. 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.

VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–04), and Executive Order 13132.

Due to a lack of available data, we cannot determine the fiscal impact of this proposed rule. The proposed rule defines the scope of services that may be reimbursed under the outpatient hospital benefit category covered in the Medicaid State plan. In addition, the rule clarifies the appropriate methods States may use to calculate the Medicaid upper payment limit for those services paid to private service providers. CMS does not intend to eliminate or limit the scope of Medicaid services that are defined under Title XIX of the Act.

We have reviewed the effects of the proposed rule and have determined that it would clarify current vague regulatory language but would not significantly alter current practices in most States. This proposed rule is a proactive attempt to clarify and clearly define regulatory language and prevent over calculation of the outpatient hospital upper payment limit. Therefore, we do not believe the proposed rule would have significant economic effects.

Over the past 4 years, CMS has approved outpatient hospital reimbursement methodologies submitted by 32 States. As part of our review process, we have determined that only one of the 32 States currently defines non-hospital services as part of the outpatient hospital Medicaid State plan service benefit.

Furthermore, with respect to the one State that CMS believes currently includes non-hospital services under the outpatient hospital benefit category, this rule would not impact the rates of payment for these services under the State plan. While the current regulation might permit payment at a higher outpatient hospital payment rate, that State currently pays for such services at the same rate that is paid for such services outside of the outpatient hospital benefit category.

The rule would have an undetermined effect on the aggregate upper payment limit for private outpatient hospital services within the State. As part of the upper payment limit calculation the State includes the non-hospital services. This effectively raises the limit that Medicaid may pay to hospitals. The rule would prevent the State from defining these services as outpatient hospital services and including them in the UPL calculation.

States calculate the UPL, the reasonable estimate of Medicare payment for equivalent Medicaid services, in the aggregate for all Medicaid services provided by all private providers. This total for all providers is reduced by actual Medicaid payments in a rate year to determine a pool of funding that may be distributed as supplemental payments to outpatient hospital providers. Supplemental payments for outpatient hospital services up to the UPL may be distributed to any hospital within the private category. States are not required to equitably distribute supplemental payments among providers or exhaust the available supplemental payment pool.

Considering the UPL is calculated in the aggregate for all outpatient hospital service for all private providers, it is impossible to isolate the exact fiscal impact of removing non-hospital services from the UPL calculation. Even if the payments for these services could be isolated in a particular year, the difference between the reasonable estimate of Medicare payment for a particular service and Medicaid payments for these services could vary drastically from year-to-year as payment amounts for services change within each program. Additionally, the UPL calculation considers the volume of a particular service rendered to Medicaid beneficiaries, which also varies between rate years. Therefore, we cannot determine the exact fiscal impact of removing non-hospital services from the private UPL calculation within this one State.

We believe the fiscal impact would be minimal because most States

historically have not made supplemental payments to private providers up to the upper payment limit. In fact, the State that we suspect could be affected by this rule has recently reported paying approximately $68 million under the outpatient hospital UPL to private facilities. We do not believe the services that would be removed by this proposed rule would cause such a significant impact on the UPL calculation. We invite public comment on the potential impact of the rule.

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 the 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). The rule proposes to clarify the definition of outpatient hospital services and the UPL for these services to provide additional guidance to States that interpret these definitions. Under the revised regulations, States would not be prevented from covering Medicaid services under the State Plan. Rather, a few States may need to move services that are not outpatient in nature, as defined by Medicare, to the appropriate coverage and payment methodology in the State Plan. With this in mind, the rule would not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for this RFA because we have determined that this rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 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 of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. The proposed rule would not prevent States from receiving FFP for Medicaid covered services. Therefore, the net change in appropriate FFP that can be received by States for Medicaid expenditures is economically insignificant. The proposed rule would not result in anticipated costs or benefits to the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because the proposed rule seeks to curb inappropriate Federal revenue maximization, the proposed rule would not impose any additional costs to States. Again, States may receive FFP for all appropriate Medicaid expenditures for covered services.

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 440

Grant programs—health, Medicaid.

42 CFR Part 447

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

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 440—SERVICES GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

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

2. Section 440.20 is amended by revising the section heading and paragraph (a) to read as follows:

§ 440.20 Outpatient clinic and hospital facility services and rural health clinic services.

(a) Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that—

(1) Are furnished to outpatients;

(2) Are furnished by or under the direction of a physician or dentist;

(3) Are furnished in a facility that—

(i) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting; and

(ii) Meets the requirements for participation in Medicare as a hospital;

(4) Are limited to the scope of facility services that—

(i) Would be included, in the setting delivered, in the Medicare outpatient prospective payment system (OPPS) as defined under § 419.2(b) of this chapter or are paid by Medicare as an outpatient hospital service under an alternate payment methodology;

(ii) Are furnished by an outpatient hospital facility, including an entity that meets the standards for provider-based status as a department of an outpatient hospital set forth in § 413.65 of this chapter;

(iii) Are not covered under the scope of another Medical Assistance service category under the State Plan; and

(5) May be limited by a Medicaid agency in the following manner: A Medicaid agency may exclude from the definition of "outpatient hospital services" those types of items and services that are not generally furnished by most hospitals in the State.

* * * * *

PART 447—PAYMENTS FOR SERVICES

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

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

4. Section 447.321 is amended by revising paragraphs (a) and (b) to read as follows:

§ 447.321 Outpatient hospital and clinic services: Application of upper payment limits.

(a) *Scope.* This section applies to rates set by the agency to pay for outpatient services furnished by hospitals and clinics within one of the following categories:

(1) State government operated facilities (that is, all facilities that are operated by the State) as defined at § 433.50(a) of this chapter.

(2) Non-State government operated facilities (that is, all governmentally operated facilities that are not operated by the State) as defined at § 433.50(a) of this chapter.

(3) Privately operated facilities that is, all facilities that are not operated by a unit of government as defined at § 433.50(a) of this chapter.

(b) *General rules.* (1) For privately operated facilities, upper Payment Limit (UPL) refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(i) *Private Outpatient Hospital Services.* Services included in the calculation of the private outpatient hospital UPL must meet all of the criteria for outpatient hospital services defined in § 440.20 of this chapter. A reasonable estimate of the amount that would be paid for outpatient hospital services under Medicare payment principles is determined through—

(A) Calculation of estimated Medicare payment for Medicaid equivalent outpatient services reimbursed under current Medicare payment systems, including—

(*1*) Outpatient hospital services paid under the Medicare outpatient prospective payment system as defined under § 419.2 of this chapter; and

(*2*) Outpatient hospital services or clinic services paid under a Medicare outpatient hospital or clinic fee schedule or alternate payment methodology.

(B) The estimated Medicare payment may be based on the Medicare cost report, or an accepted State cost report that reports the same data from the Medicare cost report references in paragraphs (b)(1)(i)(B)(1) through (b)(1)(i)(B)(2) of this section, as the source to determine either:

(*1*) The ratio of costs-to-charges for all services included in the outpatient hospital UPL calculation. The Medicare cost-to-charges ratios for outpatient hospital services are found on Worksheet C and Worksheet D, Part V of the Medicare cost report; or

(*2*) The ratio of payments-to-charges for all services included in the outpatient hospital UPL calculation. Medicare outpatient payments are found on Worksheet E, Part B and outpatient charges are found on Worksheet D, Part V of the Medicare cost report.

(*3*) The charge ratios in paragraphs (b)(1)(i)(B)(1) through (b)(1)(i)(B)(2) of this section for Medicare equivalent services are multiplied by Medicaid charges as reported to the Medicaid Management Information System (MMIS).

(ii) *Private Clinic Services.* For privately operated clinics that are not providing outpatient hospital services under § 440.20 (those that would not be paid by Medicare in that setting under OPPS or under an alternative outpatient hospital service payment methodology), the reasonable estimate of what Medicare would pay for equivalent Medicaid services may be determined through:

(A) A State Plan reimbursement methodology for covered services that is a defined percentage, not to exceed 100 percent, of what Medicare pays under the non-facility fee schedule; or

(B) For reimbursement methodologies based upon a Medicaid-specific fee schedule or encounter rate, a comparison by CPT code of the amount paid by Medicare for equivalent Medicaid services. The calculation may be conducted in the aggregate for clinic type or by specific facilities (ESRD, ASC, etc). Clinical diagnostic laboratory services or any other services for which the Act defines a separate upper limit for Medicaid reimbursement must be excluded from the clinic UPL.

(C) For dentists providing services in clinics, the clinic UPL calculation may include payment amounts at the amount that Medicaid would pay outside of the facility.

* * * * *

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

Dated: March 15, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 20, 2007.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on September 24, 2007.

[FR Doc. E7–19154 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070827484–7485–01]

RIN 0648–AV99

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder Fishery; Fishing Year 2008

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes coastwide summer flounder recreational management measures to administratively complete the rulemaking process initiated in March 2007. This action is necessary to propose appropriate coastwide management measures to be in place on January 1, 2008, following the expiration of the current state-by-state conservation equivalency management measures on December 31, 2007. The intent of these measures is to prevent overfishing of the summer flounder resource during the interim between the aforementioned expiration of the 2007 recreational measures and the implementation of measures for 2008.

DATES: Comments must be received by 5 p.m. local time, on October 15, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *0648–AV99@noaa.gov.* Include in the subject line the following identifier: "Comments on 2008 Summer Flounder Interim Recreational Measures."
- Federal e-rulemaking portal: *http://www.regulations.gov*
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2008 Summer Flounder Interim Recreational Measures."
- Fax: (978) 281–9135.

Copies of the Supplemental Environmental Assessment, as well as the original Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) completed for the 2007 recreational management measures are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room

2115, Federal Building, 300 South New Street, Dover, DE 19901–6790. The Supplemental Environmental Assessment is also accessible via the Internet at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael P. Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION: This proposed action is necessary to complete the final detail of the 2007 summer flounder recreational management measures rulemaking and should not be confused with upcoming process to develop the 2008 recreational management measures. The Mid-Atlantic Fishery Management Council (Council) will begin development of the 2008 recreational management measures, based on updated assessment information and 2007 fishery information, through its Monitoring Committee meeting in November 2007. The Council will consider the Monitoring Committee's recommendations for 2008 management measures during its December 2007 meeting in Secaucus, NJ. The following summarizes the details of several events that transpired before and during the initial recreational management measures rulemaking that brought about the need for this action.

2007 Recreational Management Measures Options

Under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), the Council may recommend and NMFS may approve one of two approaches for managing the summer flounder recreational fishery: State-by-state conservation equivalency with a precautionary default backstop approved by the Atlantic States Marine Fisheries Commission (Commission), which cooperatively manages summer flounder in state waters, and NMFS; or coastwide management measures. The FMP requires that the Council review updated assessment and fishery information on an annual basis and recommend to NMFS both a Total Allowable Landings (TAL) and recreational management measures. Under conservation equivalency, any state that fails to provide measures for Commission and NMFS review, or whose measures are found not to be sufficient to achieve the required reduction in recreational landings, is bound to the precautionary default measures. The precautionary default is set at or below the level of reduction needed for the state with the highest reduction level. Coastwide measures are designed to achieve the necessary reduction in landings for the entire coast.

Council's Proposed 2007 Measures

The Council indicated, during its December 2006 meeting, that its preferred alternative for 2007 summer flounder recreational fishery management was conservation equivalency. Under this approach, states craft measures that produce the required state-by-state reduction in recreational landings to constrain landings within their respective targets. NMFS implemented conservation equivalency to manage the 2007 recreational summer flounder fishery, consistent with the Council's recommendation, on June 1, 2007 (72 FR 30492). The precautionary default measures were not required for any state, as both the Commission and NMFS approved and implemented the individual states' measures for equivalent reductions. Detailed information on the 2007 conservation equivalent and precautionary default measures are found in the June 1, 2007, final rule and is not repeated here.

The Council proposed, as the non-preferred alternative for the 2007 summer flounder recreational fishery management, coastwide measures of a 19–inch (48.26–cm) minimum fish size, a 1–fish possession limit, and a year-round season. In a year when conservation equivalency is implemented, the coastwide measures are not in effect during the fishing year but become the regulatory default measures in place on January 1 in the year after conservation equivalency has expired. These measures remain effective until superseded by new measures, implemented by NMFS as part of the annual management measures review conducted by the Council, as required by the FMP.

Events that Transpired Before and During Rulemaking Requiring Change to Proposed Coastwide Measures

The 2007 summer flounder TAL was increased by NMFS from 12.983 million lb (5,889 mt), as published in the **Federal Register** on December 14, 2006 (71 FR 75134), to 17.112 million lb (7,762 mt) on January 19, 2007 (72 FR 2458). The increase in TAL was the result of the Secretary of Commerce's determination that the rebuilding time line for summer flounder could be extended for 3 years, consistent with authority granted in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Reauthorized Magnuson-Stevens Act). The rationale for the respective TALs, including the justifications for increasing the summer flounder rebuilding time line and increasing the 2007 TAL, are included within the individual rules and are not repeated here.

The development of the 2007 summer flounder recreational management measures occurred concurrently with the passage of the Reauthorized Magnuson-Stevens Act by Congress, analysis of recreational management measures alternatives by Council and NMFS staff, the December 2006 Council meeting, and the aforementioned increase in TAL following the Secretarial determination to extend the summer flounder rebuilding time line. Because of this succession of overlapping events from December 2006 through January 2007, during the development of recreational management measures, insufficient time was available for the development of coastwide management alternatives based on the higher TAL and subsequently higher recreational harvest limit before NMFS published the proposed 2007 recreational management measures (72 FR 12158, March 15, 2007).

Individual states do not begin to develop conservation equivalency measures until after the Council and Commission's Summer Flounder Management Board (Board) have identified conservation equivalency as the preferred management system for the upcoming year. The Council and the Board identified conservation equivalency as their preferred alternative for 2007 management during the December 2006 Council meeting. NMFS's emergency action to increase the 2007 TAL occurred in mid-January 2007. As a result, states were able to craft their 2007 conservation equivalency proposals consistent with the level of reduction necessary to constrain recreational landings to the targets resulting from the increased 17.112–million-lb (7,762–mt) TAL. However, the analysis had already been conducted for the coastwide measures alternative based on the recreational harvest limit associated with the lower 12.983–million-lb (5,889–mt) TAL and was not revised prior to the publication of the recreational management measures proposed rule (72 FR 12158, March 15, 2007). In response to the proposed rule, members of the public commented that the proposed coastwide measures of a 19–inch (48.26–cm) minimum fish size, 1–fish possession limit, and year-round season would be unduly restrictive if implemented, as it would constrain landings to approximately 55 percent of the recreational harvest limit under the

increased 17.112–million-lb (7,762–mt) TAL.

This issue was rendered moot for 2007 as conservation equivalency was implemented by NMFS instead of the coastwide measures (72 FR 30492, June 1, 2007). However, on January 1, 2008, after conservation equivalency has expired for the 2007 fishing year, the coastwide measures will become the interim default measures and remain in place until new recreational management measures are developed and implemented as part of the annual recreational management measures review in late spring/early summer 2008. NMFS indicated in the 2007 recreational management measures final rule (72 FR 30492, June 1, 2007) that a separate notice and comment rulemaking, to propose and implement an coastwide measure that is based on the increased TAL to serve as the interim 2008 management measures after conservation equivalency has expired, would be undertaken. This proposed rule is the initiation of that action, which is largely administrative and designed to complete the normal recreational management measures rulemaking process that had been constrained by the options available for consideration during the initial rulemaking that resulted in conservation equivalency for 2007.

Proposed Interim Coastwide Measure

The Commission's Technical Committee (TC) conducted analysis on coastwide measure alternatives after the implementation of the increased TAL. Several options considered by the TC were designed to constrain landings to or below the increased 2007 recreational harvest limit of 2,421,460 fish. The TC provided analysis that indicated an 18.5–inch (46.99–cm) minimum fish size with a 4–fish possession limit and a year-round season would constrain landings to 90 percent of the harvest limit (2,181,735 fish). NMFS proposes to now implement these measures as the 2007 coastwide measures. As a result, these measures, if adopted, would complete the normal regulatory process that occurs when conservation equivalency is utilized to manage the summer flounder recreational fishery, as was the case for 2007. These measures, if adopted, will replace the existing coastwide measures regulatory language of a 17–inch (43.18–cm) minimum fish size, a 4–fish possession limit, and no closed season, and serve as the default management measures in place on January 1, 2008, after conservation equivalent measures have expired.

The 2008 TAL and the resulting recreational harvest limit will not be finalized and the Council will not recommend recreational harvest measures until December 2007. It is not certain, at this time, if the coastwide measure will require revision as part of the updated 2008 recreational management measures, as the annual development of those measures will not begin until later this year.

These measures, if implemented, should be sufficiently risk averse as interim measures until new measures, based on the updated 2007 stock assessment, are developed and implemented. Summer flounder are typically found offshore during colder winter months and only limited recreational fisheries occur in the southern range of the stock during spring. Marine Recreational Fisheries Statistical Survey (MRFSS) data from 1994–1998 show that less than 0.9–percent of the annual harvest occurs in the first two MRFSS data collection periods (called waves) of the year (January-April). Approximately 28 percent of the coastwide summer flounder harvest occurs in Wave 3 (May-June). The difference in implementation time between conservation equivalency and coastwide measures is the time it takes states to develop, and get approved, individual measures under conservation equivalency, should that management method be utilized in 2008.

Based on recent years' development and rulemaking schedule when conservation equivalency has been utilized for summer flounder recreational management measures, it is expected that updated measures, based on 2007 recreational landings and adjusted for any quota overages, would be in place before Wave 4 (July-August) and the bulk of summer flounder recreational fisheries begin in 2008. If different coastwide measures are recommended by the Council and Commission and implemented by NMFS for 2008 management, it is expected that those measures would be in place during Wave 2 (March-April 2008).

Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

An IRFA was prepared for the 2007 recreational management measures rulemaking process, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered (i.e., what problem it addresses), and the legal basis for this action are contained in the initial recreational management measures proposed rule (72 FR 12158, March 15, 2007) and at the beginning of that rule's preamble and in the **SUMMARY** section of this proposed rule's preamble. A detailed summary of the analysis conducted is included in the initial recreational management measures proposed rule (72 FR 12158, March 15, 2007). An additional summary follows. A copy of the complete IRFA is available from the Council (see **ADDRESSES**).

The proposed action could affect any recreational angler who fishes for summer flounder, in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder. However, the IRFA focuses upon the impacts on party/charter vessels issued a Federal permit for summer flounder because these vessels are considered small business entities for the purposes of the Regulatory Flexibility Act, i.e., businesses with gross revenues of up to $6,5 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although individual recreational anglers are likely to be impacted, they are not considered small entities under the RFA. Also, there is no permit requirement to participate in these fisheries; thus, it would be difficult to quantify any impacts on recreational anglers in general.

The proposed measures could affect any of the 1,006 vessels possessing a Federal charter/party permit for summer flounder in 2005, the most recent year for which complete permit data are available. However, only 66 of these vessels reported active participation in the recreational summer flounder fishery in 2005.

In the IRFA, the no-action alternative (i.e., Alternative 1, maintenance of the regulations as codified) is defined as continuation of the following measures for summer flounder: Coastwide measures of a 17–inch (43.18–cm) minimum fish size; a 4–fish possession limit; and no closed season (i.e., season of January 1 through December 31). In consideration of the recreational harvest limits established for the 2007 fishing

year and necessary for the beginning of the 2008 fishing year, taking no action in the summer flounder fishery would be inconsistent with the goals and objectives of the FMP and its implementing regulations because the no-action alternative would not have been expected to prevent the 2007 summer flounder recreational harvest limits from being exceeded. In addition, it is unlikely that these measures would serve as adequate interim regulatory measures for 2008 until appropriate measures, either conservation equivalency or different coastwide measures, are implemented to constrain harvest within the yet to be established 2008 recreational harvest limit.

The impacts of the Council's originally proposed summer flounder coastwide alternative (i.e., Alternative 2) for a 19–inch (48.26–cm) minimum fish size, a 1–fish possession limit, and no closed season, were evaluated using the quantitative methods of the IRFA as summarized in the initial proposed rule (72 FR 12158, March 15, 2007). Impacted trips were defined under Alternative 2 as individual angler trips taken aboard party/charter vessels in 2006 that landed at least one summer flounder smaller than 19 inches (48.26 cm), or that landed more than one summer flounder. The analysis concluded that the measures would affect 4.13 percent of the party/charter vessel trips in the NE, including those trips where no summer flounder were caught.

However, the Alternative 2 measures were designed to constrain recreational landings to the original recreational harvest limit resulting from the pre-extended rebuilding time frame TAL of 12.983 million lb (5,889 mt). Under the increased TAL implemented on January, 19, 2007, following the Secretarial determination that the rebuilding time frame could be extended and the 2007 TAL increased, further analysis indicated that the Alternative 2 measures would constrain recreational landings to 55 percent of the larger recreational harvest limit resulting from increasing the TAL. While this would satisfy both the objectives of the FMP and the Magnuson-Stevens Act, the public submitted comments in response to the 2007 recreational management measures proposed rule (72 FR 12158, March 15, 2007) that the Alternative 2 measures were unduly restrictive. NMFS agreed and indicated at that time that other alternatives would be evaluated for their effectiveness in allowing a higher percentage of the recreational harvest limit under the increased TAL to be attained while constraining landings to the 2007 limit and still ensuring compliance with the FMP and Magnuson-Stevens Act.

The measures detailed in this proposed rule (i.e., Alternative 3) for an 18.5–inch (46.99–cm) minimum fish size with a 4–fish possession limit and a year-round season, would constrain landings to 90 percent of the harvest limit (2,181,735 fish). Again, the IRFA contained analysis on the impact of the Alternative 3 size limit for 2007. Under Alternative 3, impacted trips are defined as trips taken in 2006 that landed at least one summer flounder smaller than 18.5 inches (46.99 cm) or landed more than one summer flounder. The analysis concluded that implementation of the Alternative 3 measures could affect 4.06 percent of the party/charter vessel trips in the NE, including those trips were no summer flounder were caught. While the percent of potentially affected trips is only slightly different, the Alternative 3 measures would afford additional fish to be kept by anglers (i.e., 4 fish as compared to 1 fish) and would allow a greater number of fish to be landed under the increased recreational harvest limit and thereby is the alternative with the least economic impact on small entities while still achieving the required objectives of the FMP and the Magnuson-Stevens Act.

Compared to the measures implement through conservation equivalency for 2007, the Alternative 3 measures would provide less restrictive minimum fish sizes for Rhode Island and New York, while maintaining the same size limit for Virginia. All other states' measures for 2007 were smaller than the Alternative 3 minimum fish size of 18.5 inches (46.99 cm). A 4–fish possession limit would maintain the same limits in place for New York, Delaware, and Maryland; all other states' possession limits were higher than 4–fish under conservation equivalency. The year-round season would be equal to or longer than the 2007 state measures implemented under conservation equivalency.

Under the Council's proposed coastwide measures (i.e., Alternative 2: A19–inch (48.26–cm) minimum fish size, a 1–fish possession limit, and no closed season), each state's conservation equivalency measures were smaller than 19 inches (48.26 cm) except New York. Each state had possession limits higher than one fish, and four states (Rhode Island, Connecticut, New Jersey, and Virginia) had seasons that were less shorter January 1–December 31; all other states had year-long seasons.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries and Fishing.

Dated: September 21, 2007.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18.5 inches (46.99 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

3. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

* * * * *

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. * * *

* * * * *

[FR Doc. E7–19133 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070907502–7503–01]

RIN 0648–XB01

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2007, through June 30, 2008. This HG has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Comments must be received by October 29, 2007.

ADDRESSES: You may submit comments on this proposed rule, identified by 0648–XB01 by any of the following methods:

- E-mail: *0648–XB01.SWR@noaa.gov*. Include the identifier "0648–XB01" in the subject line of the message.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Following the instructions for submitting comments.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.
- Fax: (562) 980–4047.

Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2007–2008 Fishing Year* may be obtained from the Southwest Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team), the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) and the CPS Subcommitee of the Scientific and Statistical Committee (SSC). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NOAA's National Marine Fisheries Service (NMFS). The annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season. The Pacific mackerel season begins on July 1 and ends on June 30 of each year.

A full assessment for Pacific mackerel was conducted this year and reviewed by a Stock Assessment Review (STAR) Panel in La Jolla, CA, May 1–4. Public meetings of the Team and Subpanel were then held May 8–10 in Long Beach, CA. During these meetings the STAR Panel report and current stock assessment for Pacific mackerel, which included a preliminary biomass estimate and ABC, were presented and reviewed in accordance with the procedures of the FMP. Based on a total stock biomass estimate of 359,290 metric tons (mt), the ABC for U.S. fisheries for the 2007/2008 management season is 71,629 mt. The estimated stock biomass for the 2006/2007 season was 112,700 mt, resulting in an ABC of 19,845 mt. The increase in ABC this management season is the result of changes to the modeling parameters recommended by the STAR Panel during their review of the current stock assessment for Pacific mackerel; adjusting stock recruitment variability to be more consistent with the biology of the species and an improvement in the catch-per-unit-effort in the commercial passenger fishing vessel time series.

In June, the Council held a public meeting in Foster City, CA, during which time they reviewed the current stock assessment, biomass numbers and ABC and heard statements from the SSC, Team and Subpanel (72 FR 29130). The SSC endorsed the assessment as the best available science for use in management. Both the Team and Subpanel recommended setting the 2007/2008 HG below ABC and no higher than 40,000 mt. This HG recommendation is still roughly double the HG adopted by the Council for the 2006/2007 fishing year (19,845 mt) and much greater than the average U.S. harvest since the year 2000 (5,700 mt). Setting the harvest guideline substantially below the ABC was recommended as a precautionary measure in response to uncertainty associated with changes to assessment modeling parameters and the reference in the FMP that the domestic fishery appears to be market limited to roughly 40,000 mt.

Following the SSC, Team and Subpanel reports the Council adopted an HG of 40,000 mt for the 2007–2008 fishing year. The Council also adopted the Subpanel recommendation that in the event that the 40,000 mt is attained by the fishery, that Pacific mackerel fishing be closed to directed harvest and only incidental harvest be allowed. The proposed incidental fishery would be constrained to a 45 percent by weight incidental catch rate when Pacific mackerel are landed with other CPS, except that up to one metric ton of Pacific mackerel could be landed without landing any other CPS.

The Council may schedule an inseason review of the Pacific mackerel fishery for the March or April 2008 Council meeting, in order to consider either releasing a portion of the incidental allotment to the directed fishery or further constraining incidental landings to ensure total harvest remains below the ABC.

The size of the Pacific mackerel population was estimated using the Age-Structured-Assessment-Program (ASAP) stock assessment model. ASAP was recommended as the most appropriate framework for conducting the Pacific mackerel assessment for the 2007/2008 management year by the STAR panel which met in May of 2007 at the Southwest Fisheries Science Center in La Jolla, California. Information on the fishery and the stock assessment are found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2007–08 Fishing Season* (see **ADDRESSES**).

The harvest control rule formula in the FMP uses the following factors to determine the ABC:

1. *Biomass.* The estimated stock biomass of Pacific mackerel age one and above for the 2007/2008 management season is 359,290 metric tons (mt).

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Distribution.* The portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established this at 30 percent.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of this proposed rule is to implement the 2007/2008 harvest guideline for Pacific mackerel in the EEZ off the U.S. West Coast. The CPS FMP and its implementing regulations require NMFS to set an annual harvest guideline for the Pacific mackerel fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the ABC, from which the harvest guideline is then derived.

Pacific mackerel harvest is a component of the CPS fisheries off the U.S. West Coast which includes the fisheries for Pacific sardine, Northern anchovy, Jack mackerel, and Market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 N. latitude; Point Arena, California) of the fishery. Sixty-one vessels are currently permitted in the Federal CPS limited entry fishery off California. These vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of $4.0 million. This proposed rule has an equal effect on all of these small entities and therefore will impact a substantial number of these small entities in the same manner. There would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2006/2007 fishing year, the harvest guideline was set at 19,845 mt with an estimated ex-vessel value of approximately $2.7 million. Around 8,000 mt of this harvest guideline was actually harvested during the 2006/2007 fishing season valued at an estimated $1 million.

The proposed harvest guideline for the 2007/2008 Pacific mackerel fishing season (July 1, 2007 through June 30, 2008) is 40,000 metric tons (mt). This HG recommendation is roughly double the HG adopted by the Council for the 2006/2007 fishing year (19,845 mt) and much greater than the average U.S. harvest since the year 2000 (5,700 mt). If the fleet were to take the entire 2007/2008 harvest guideline, and assuming no change in the coastwide average ex-vessel price per mt of $132, the potential revenue to the fleet would be approximately $5.3 million. However, the potential lack of availability of the resource to the fishing fleet could cause a reduction in the amount of Pacific mackerel harvested, in which case the total revenue to the fleet would be reduced. Additionally, if there is no change in market conditions (i.e., a lack in demand for Pacific mackerel product), it is not likely that the full harvest guideline will be taken during the 2007–2008 fishing year, in which case profits will be lower.

NMFS does not anticipate a drop in profitability based on this rule due to the fact that it allows fishermen to harvest more than last year. Based on the disproportionality and profitability analysis above, this rule if adopted, will not have a significant economic impact on a substantial number of these small entities.

As a result, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

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

Dated: September 24, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E7–19252 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 188
Friday, September 28, 2007

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Annual Report of State Revenue Matching

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public to comment on the proposed information collection in the Annual Report of State Revenue Matching. The State agencies use this form to report State revenues used specifically by State agencies for school nutrition program purposes. The proposed collection is an extension of a collection currently approved for the Form FNS–13, Annual Report of State Revenue Matching.

DATES: Written comments on this notice must be received by November 27, 2007.

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

Comments may be sent to Melissa Rothstein, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302. Comments may also be submitted via fax to the attention of Melissa Rothstein at (703) 305–2879 or via e-mail to *melissa.rothstein@fns.usda.gov*.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Melissa Rothstein at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Annual Report of State Revenue Matching.

OMB Numbers: 0584–0075.

Expiration Date: November 30, 2007.

Type of Request: Extention of a currently approved information collection.

Abstract: The National School Lunch Program is authorized by the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751, *et seq.*, and the Child Nutrition Act of 1966, 42 U.S.C. 1771, *et seq.* Program implementing regulations are contained in 7 CFR Part 210. In accordance with § 210.17 (g), State agencies must submit an annual report of State expenditures on school nutrition programs in order to receive Federal reimbursement for meals served to eligible participants.

Affected Public: State agencies that administer the National School Lunch Program.

Estimated Number of Respondents: 57.

Estimated Number of Responses per Respondent: The number of responses is estimated to be one submission per State agency per school year.

Estimate Time per Response: Public reporting burden for this collection of information is estimated to average 80 hours per respondent per submission.

Estimated Total Annual Burden: 4,560 hours.

Dated: September 20, 2007.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E7–19257 Filed 9–27–07; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: Agricultural Research Service, National Agricultural Library, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Agricultural Library's intent to request approval for a new information collection to obtain an evaluation of user satisfaction with NAL Internet sites.

DATES: The agency must receive comments on or before November 6, 2007.

ADDRESSES: Address all comments concerning this notice to John Gladstone, Project Manager, 10301 Baltimore Ave., Room 013; Beltsville, MD 20705. Submit electronic comments to *jgladsto@nal.usda.gov*.

FOR FURTHER INFORMATION CONTACT: John Gladstone, Phone: 301–504–5462; Fax: (301) 504–7473.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of User Satisfaction with NAL Internet Sites.

OMB Number: 0518–0040.

Expiration Date: N/A.

Type of Request: Approval for new data collection.

Abstract: This is a request, made by the National Agricultural Library (NAL) Office of the Director (OD), Office of the Associate Director of Information Services, the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, a three year generic clearance for the NAL to conduct user satisfaction research around its Internet sites. This effort is made according to Executive Order 12862 which directs federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of

services they want and their level of satisfaction with existing services.

The National Agricultural Library Internet sites are a vast collection of Web pages created and maintained by component organizations of the NAL. On average, 3.4 million people visit the NAL internet sites per month. All seven of the NAL Information Centers and a dozen special interest collections have established a Web presence with a home page and links to sub-pages that provide information to their respective audiences.

Description of Surveys

The online surveys will be no more than 15 Semantic Differential Scale or multiple choice questions, and no more than 4 open-ended response questions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per survey.

Respondents: The agricultural community, USDA personnel and their cooperators, and including public and private users or providers of agricultural information.

Estimated Number of Respondents: 1200 per year.

Estimated Total Annual Burden on Respondents: 100 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the 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 respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble.

Dated: September 13, 2007.

Edward B. Knipling,

Administrator, ARS.

[FR Doc. E7–19213 Filed 9–27–07; 8:45 am]

BILLING CODE 3410–03–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

Comments Must Be Received On or Before: October 28, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail: *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Hydration System, MOLLE, Universal Camouflage
NSN: 8465–01–525–5531.
NPA: The Lighthouse for the Blind, Inc., Seattle, WA.
Coverage: C-List—for the requirements of the Defense Supply Center Philadelphia, Philadelphia, PA.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA

Services

Service Type/Location: Base Supply Center, Fort Belvoir, Fort Belvoir, VA.
NPA: Virginia Industries for the Blind, Charlottesville, VA.
Contracting Activity: Department of Army, Capital District Contracting Center (CDCC), Fort Belvoir, VA.

Service Type/Location: Document Destruction, Social Security Administration, 1301 Young Street, Dallas, TX.
NPA: Expanco, Inc., Fort Worth, TX.
Contracting Activity: Social Security Administration, Dallas, TX.

Service Type/Location: Custodial Services, U.S. Army Reserve Center, Camp Bullis, Building 6143, San Antonio, TX.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Army Contracting Agency, Southern Region, Fort Sam Houston, TX.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the 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 service proposed for deletion from 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 service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, Social Security Building, 350 Donmoor, Baton Rouge, LA.
NPA: Louisiana Industries for the Disabled, Inc., Baton Rouge, LA.
Contracting Activity: General Services Administration, Facility Support Center, New Orleans, LA.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–19223 Filed 9–27–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 28, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail: *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: On July 27 and August 3, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 41289; 43230) 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 services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

A comment was received from a clock manufacturer who objected to this proposed addition to the Procurement List, stating that this proposed addition, and previous actions by the Committee, has seriously impacted its company's clock sales. The commenter claimed to have previously been advised that "only 50% of the Government clocks would be set-aside" and the proposed nonprofit agency "would not be involved in the commercial market." Finally, the commenter said that the proposed nonprofit's financial condition was such that further "protection" by the Committee was unnecessary.

The commenter did not provide revenue data as requested by original notice. In addition, the commenter's claims about ceilings being established for the nonprofit agency's market share could not be confirmed. The Committee's purpose in this proposed addition to the Procurement List is to create jobs for people who are blind, not to bolster the proposed nonprofit's financial condition. Consequently, the Committee determines that there is no significant impact from including this proposed addition on the Procurement List.

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 product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Clocks, SelfSet & SelfSet (LOGO)
NSN: 6645–00–NIB–0108—12-in diameter, Black.
NSN: 6645–00–NIB–0112—12-in diameter, Bronze.
NSN: 6645–00–NIB–0114—8-in diameter, Black.
NSN: 6645–00–NIB–0118—8-in diameter, Bronze.
NSN: 6645–00–NIB–0123—16-in diameter, Mahogany.
NSN: 6645–00–NIB–0127—Octagonal, 8.5-in diameter, Mahogany.
Coverage: A-List for the total Government requirement as specified by the General Services Administration.
NSN: 6645–00–NIB–0109—12-in diameter, Black, with Logo.
NSN: 6645–00–NIB–0113—12-in diameter, Bronze, with Logo.
NSN: 6645–00–NIB–0115—8-in diameter, Black, with Logo.
NSN: 6645–00–NIB–0119—8-in diameter, Bronze, with Logo.
NSN: 6645–00–NIB–0124—16-in diameter, Mahogany, with Logo.
NSN: 6645–00–NIB–0128—Octagonal, 8.5-in diameter, Mahogany, with Logo.
Coverage: B-List—for the broad Government requirement as specified by the General Services Administration.
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Services

Service Type/Location: Custodial Services, U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Plant Protection Quarantine (PPQ), Professional Development Center (PDC), 67 Thomas Johnson Drive, Suite A2, Bldg 2, 69 Thomas Johnson Drive, Suite 100, Bldg 1, Frederick, MD.
NPA: NW Works, Inc., Winchester, VA.
Contracting Activity: U.S. Department of Agriculture, Animal & Plant Health Inspection Service, MRP, Minneapolis, MN.
Service Type/Location: Grounds Maintenance, U.S. Department of Agriculture, Agricultural Research Service, 3127 Ligon Street, Raleigh, NC.
NPA: OE Enterprises, Inc., Hillsborough, NC.
Contracting Activity: U.S. Department of Agriculture, Agriculture Research Service–SAA, Raleigh, Raleigh, NC.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–19224 Filed 9–27–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No: 070921532–7533–01]

Membership of the Economic Development Administration Performance Review Board

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of Membership on the Economic Development Administration's Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announces the appointment of those individuals who

have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Sandra R. Walters, Economic Development Administration, Office of Management Services, Department of Commerce, Room 7217, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–5892.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), EDA announces the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months beginning on September 28, 2007. The name, position title, and type of appointment of each member of EDA's Performance Review Board are set forth below by organization:

Department of Commerce, Office of the Secretary

Lisa Casias, Deputy CFO and Director for Financial Management (Chairperson).

Deborah Jefferson, Director, Office of Human Resources Management.

Barbara Retzlaff, Director, Office of Budget.

Department of Commerce, Economic Development Administration

Otto Barry Bird, Chief Counsel.

Matthew Crow, Deputy Assistant Secretary for External Affairs and Communication.

Dated: September 24, 2007.

Sandra R. Walters,

Deputy Chief Financial Officer and Director, Administrative and Support Services Division.

[FR Doc. E7–19218 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on October 11, 2007, 9 a.m., Room 6087B, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Public Session

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Report on 2007 September Wassenaar Meeting.
4. MPETAC Future Activities—Discussion of MPETAC 2008 Proposals.
5. Report on proposed changes to the Export Administration Regulations.
6. Other Business.

Closed Session

7. 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 serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than October 3, 2007.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the 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 September 5, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2 §§ (10)(d)), that the portion of 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: September 25, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–4777 Filed 9–20–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on October 11, 2007, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening Remarks and Introduction.
2. Presentation on Nanostructures and Discussion.
3. Composite Working Group Update on Proposals.
4. Export Control Classification Number Review Working Group Co-chairs Comments.
5. Regulatory Changes from Australia Group Plenary.
6. Export Control Classification Number Review Evaluation, Follow up, and Assignments.
7. **Federal Register** Notice for Comments on the Commerce Control List, Open Until November 1, 2007.
8. Comments from Teleconferences.

Closed Session

9. 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 serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than October 3, 2007.

A limited number of seats will be available during the public session of the meeting. Reservations are not acceptable. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 5, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: September 25, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–4776 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Stapie Fiber from Korea: Notice of Extension of Time Limit for the Finai Results of the 2005–2006 Antidumping Duty Administrative Review

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

EFFECTIVE DATE: September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1174 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2007, the Department published the preliminary results of the 2005–2006 administrative review of the antidumping duty order on certain polyester staple fiber ("PSF") from Korea. *See Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind*, 72 FR 31279 (June 6, 2007). This review covers two manufacturers/exporters of the subject merchandise to the United States, Huvis Corporation ("Huvis") and Dongwoo Industry Company ("Dongwoo"). In the preliminary results, we stated that we would issue our final results for the antidumping duty administrative review no later than 120 days after the date of publication of the preliminary results (*i.e.*, October 4, 2007).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act") requires the Department to issue the final results in an administrative review within 120 days of the publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days.

The Department has determined that completion of the final results of this review within the original time period is not practicable due to the complex legal and factual issues that have arisen since the issuance of our preliminary results of review. Specifically, the Department requires additional time to review interested parties' comments on information provided by U.S. Customs and Border Protection with respect to Dongwoo. Thus, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by an additional 60 days, until December 3, 2007.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: September 20, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–19239 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Postponement of Finai Determination of Antidumping Duty investigation: Sodium Hexametaphosphate from the Peopie's Republic of China

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

EFFECTIVE DATE: September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Kristina Horgan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–8173, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Final Determination

On February 28, 2007, the Department of Commerce ("Department") initiated the antidumping duty investigation of sodium hexametaphosphate from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China*, 72 FR 9926 (March 6, 2007) ("*Initiation Notice*"); *see also Notice of Correction of Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 11325 (March 13, 2007). On September 14, 2007, the Department published the *Preliminary Determination* in the antidumping duty investigation of sodium hexametaphosphate ("SHMP") from the People's Republic of China. *See Preliminary Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 52544 (September 14, 2007) ("*Preliminary Determination*"). The *Preliminary Determination* stated that the Department would make its final determination for this antidumping duty investigation no later than 75 days after the date of publication of the preliminary determination (*i.e.*, November 20, 2007).

Section 735(a)(2) of the Tariff Act of 1930 ("the Act") provides that a final

determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. In addition, the Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. *See* 19 CFR 351.210(e)(2).

On September 11, 2007, Hubei Xingfa Chemicals Group Co., Ltd., the sole active mandatory respondent, requested a 60-day extension of the final determination and extension of the provisional measures. Thus, because our preliminary determination is affirmative, and the respondent requesting an extension of the final determination and an extension of the provisional measures, accounts for a significant proportion of exports of the subject merchandise, and no compelling reasons for denial exist, we are extending the due date for the final determination by 60 days. For the reasons identified above, we are postponing the final determination until January 22, 2008.[1]

This notice is issued and published pursuant to sections 777(i) and 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: September 21, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–19221 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] The sixty-day extension would result in the signature day falling on January 19, 2008, which is a Saturday. Therefore, the signature day will roll over to the next business day, January 22, 2008, in accordance with our practice, as January 21, 2008, the following Monday, is a holiday. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas (TRQ) on the Import of Certain Cotton Shirting Fabrics for Calendar Year 2007

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2007 cotton shirting fabrics tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for Calendar Year 2007 of imports of certain cotton shirting fabrics under tariff rate quotas established by Section 406(b)(1) of the Tax Relief and Health Care Act of 2006 (Public Law No. 109-432). The reduction in duty is applicable to fabric entered or withdrawn from warehouse for consumption under a license during calendar year 2007. Claims for reduction in duty can be made retroactively to U.S. Customs and Border Protection for qualifying fabrics under the license as long as the fabrics were entered or withdrawn from warehouse during calendar year 2007. The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2006, President Bush signed into law the Tax Relief and Health Care Act of 2006 ("the Act"). Section 406(b)(1) of the Act requires the Secretary of Commerce to fairly allocate tariff rate quotas ("TRQ") on the import of certain cotton woven fabrics through December 31, 2009. Section 406 (b)(1) authorizes the Secretary of Commerce to issue licenses to eligible manufacturers under headings 9902.52.08 through 9902.52.19 of the Harmonized Tariff Schedule of the United States, specifying the restrictions under each such license on the quantity of cotton woven fabrics that may be entered each year on behalf of the manufacturer. The Act created an annual tariff rate quota providing for temporary reductions through December 31, 2009 in the import duties of cotton woven fabrics suitable for making cotton shirts (new Harmonized Tariff Schedule of the United States (HTS) headings 9902.52.08, 9902.52.09, 9902.52.10, 9902.52.11, 9902.52.12, 9902.52.13, 9902.52.14, 9902.52.15, 9902.52.16, 9902.52.17, 9902.52.18, and 9902.52.19). The reduction in duty is limited to 85 percent of the total square meter equivalents of all imported woven fabrics of cotton containing 85 percent or more by weight of cotton used by manufacturers in cutting and sewing men's and boy's cotton shirts in the United States and purchased by such manufacturer during calendar year 2000.

The Act requires that the tariff rate quotas be allocated to persons (including firms, corporations, or other legal entities) who, during calendar year 2000, were manufacturers cutting and sewing men's and boy's cotton shirts in the United States from imported woven fabrics of cotton containing 85 percent or more by weight of cotton of the kind described in HTS 9902.52.08 through 9902.5219 purchased by such manufacturer during calendar year 2000. On July 24, 2007, the Department published regulations establishing procedures for allocating the TRQ. 72 FR 40235, 15 CFR 336. On August 2, 2007 the Department published a notice in the **Federal Register** (72 FR 42400) soliciting applications for an allocation of the 2007 tariff rate quotas with a closing date of September 4, 2007.

Companies Receiving Allocation:

Retail Brand Alliance Inc. - Sunnyside, NY
The Hancock Company - Ashland, PA
Individualized Shirt Company - Perth Amboy, NJ
Kenneth Gordon/IAG Inc. - New Orleans, LA
The Pickett Company - Lafayette, TN

Dated: September 24, 2007.

Janet E. Heinzen,

Acting Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc. E7–19157 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric

September 24, 2007.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New 12-Month Cap on Duty and Quota Free Benefits

EFFECTIVE DATE: October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 3103 of the Trade Act of 2002, P.L. 107-210; Title VII of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), P.L. 109-432; H.R. 1830, 110th Cong. (2007) (H.R. 1830); Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

The TRHCA of 2006 extended the expiration of the ATPA to June 30, 2007. See section 7002(a) of the TRHCA 2006. H.R. 1830 further extended the expiration of the ATPA to February 29, 2008. See section 1 of H.R. 1830.

For the period beginning on October 1, 2007 and extending through February 29, 2008, preferential tariff treatment is limited under the regional fabric provision to imports of qualifying apparel articles in an amount not to exceed 5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period that ended July 31, 2007. In Presidential Proclamation 7616, (published in the **Federal Register** on November 5, 2002, 67 FR 67283), the President directed CITA to publish in the **Federal Register** the aggregate quantity of imports allowed during each period.

For the period beginning on October 1, 2007 and extending through February 29, 2008, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,247,713,244 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–19158 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries from Regional and Third-Country Fabric

September 24, 2007.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New 12-Month Cap on Duty- and Quota-Free Benefits.

EFFECTIVE DATE: October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000, P.L. 106-200, as amended by section 3108 of the Trade Act of 2002, P.L. 107-210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, P.L. 108-274; Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006). P.L. 109-432; Presidential Proclamation 7350 of October 4, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459).

Title I of the Trade and Development Act of 2000 (TDA 2000) provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Title VI of the TRHCA 2006 extended this special rule for lesser-developed countries through September 30, 2012.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2007 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. See Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. See Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a) of TRHCA 2006. Presidential Proclamation 7350 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2007, and extending through September 30, 2008, the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,746,798,542 square meters equivalent. Of this amount, 873,399,271 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter

equivalents used by the United States in implementing the ATC.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–19156 Filed 9–27–07; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0107]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 27, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to ATTN: DFAS–HGA/CL, Rodney Winn, Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service—Cleveland, P.O. Box 998002, Cleveland, OH 44199–8002, or call Mr. Rodney Winn at (216) 522–5118.

Title, Associated Form, and OMB Number: Application for Former Spouse Payments From Retired Pay; DD Form 2293; OMB Number 0730–0008.

Needs and Uses: Under 10 U.S.C. 1408 state courts may divide military retired pay as property or order alimony and child support payment from that retired pay. The former spouse may apply to the Defense Finance and Accounting Service for direct payment of these monies by using DD Form 2293. This information collection is needed to provide the Defense Finance and Accounting Service the basic data needed to process the request.

Affected Public: Individuals and households.

Annual Burden Hours: 5130 hours.

Number of Respondents: 20,520.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The respondents of this information collection are spouses or former spouses of military members. The applicant submits a DD Form 2293 to the Defense Finance and Accounting Service. The information from the DD Form 2293 is used by the Defense Finance and Accounting Service in processing the applicant's request as authorized under 10 U.S.C. 1408. The DD Form 2293 was devised to standardize applications for payment under the Act. Information on the form is also used to determine the applicant's current status and contains statutory required certification the applicant/former spouse must make when applying for payments.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4785 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0108]

Proposed Collection; Comment Request

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Deputy Under Secretary of Defense (Installations and Environment), Office of Economic Adjustment announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 27, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal, please write to the Director, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704,

or call the Director, Office of Economic Adjustment at (703) 604–6020.

Title and OMB Number: Revitalizing Base Closure Communities, Economic Development Conveyance Annual Financial Statement; OMB Number 0790–0004.

Needs and Uses: The information collection requirement is necessary to verify that Local Redevelopment Authority (LRA) recipients of no-cost Economic Development Conveyances (EDCs) are in compliance with the requirement that the LRA reinvest proceeds from the use of EDC property for seven years.

Affected Public: State, local or tribal governments; not-for-profit institutions.

Annual Burden Hours: 3,160.

Number of Respondents: 79.

Responses per Respondent: 1.

Average Burden per Response: 40 hours.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are LRAs that have executed no-cost EDC agreements with a Military Department that transferred property from a closed military installation. As provided by section 2821(a)(3)(B)(i) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65), such agreements require that the LRA reinvest the proceeds from any sale, lease or equivalent use of EDC property (or any portion thereof) during at least the first seven years after the date of the initial transfer of the property to support the economic redevelopment of, or related to, the installation. The Secretary of Defense may recoup from the LRA such portion of these proceeds not used to support the economic redevelopment of, or related to, the installation. LRA's are subject to this same seven-year reinvestment requirement if their EDC agreement is modified to reduce the debt owed to the Federal Government. Military Departments monitor LRA compliance with this provision by requiring an annual financial statement certified by an independent Certified Public Accountant. No specific form is required.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4787 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–024]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 29, 2007.

Title and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Control Number 0704–0403.

Types of Request: Extension.

Number of Respondents: 19,300.

Responses per Respondent: 1.

Annual Responses: 19,300.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 965.

Needs and Uses: The information collection requirement is necessary to assess the level of service the Defense Technical Information Center (DTIC) provides to its current customers. The surveys will provide information on the level of overall customer satisfaction, and on customer satisfaction with several attributes of service that impact the level of overall satisfaction. These customer satisfaction surveys are required to implement Executive Order 12862, "Setting Customer Service Standards." Responsents are DTIC registered users who are components of the Department of Defense, military services, other Federal Government Agencies, U.S. Government contractors, universities involved in federally funded research, and participants. The information obtained by these surveys will be used to assist agency senior management in determining agency business policies and processes that should be selected for examination, modification, and reengineering from the customer's perspective. These surveys will also provide statistical and demographic basis for the design of follow-on surveys. Future surveys will be used to assist monitoring of changes in the level of customer satisfaction over time.

Affected Public: Business or other for-profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Deck Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for the **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–21233.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4790 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[NO. DOD–2007–DARS–0105]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 29, 2007.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, and the associated clauses at DFARS 252.237; DD Form 2063, Record of Preparation and Disposition of Remains; OMB Control Number 0704–0231.

Type of Request: Extension.

Number of Respondents: 810.

Responses per Respondent: 1.

Annual Responses: 810.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 405.

Needs and Uses: This requirement provides for the collection of necessary information from contractors regarding the results of the embalming process under contracts for mortuary services. The information is used to ensure proper preparation of the body for shipment and burial. In addition, this requirement provides for the collection of information to enable a contracting officer to verify that the apparently successful offeror, in response to a solicitation for audit services, has the appropriate license for operation of its professional practice.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4791 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–DARS–0106]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 29, 2007.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 205, Publicizing Contract Actions and DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders; OMB Control Number 0704–0286.

Type of Request: Extension.

Number of Respondents: 6,588.

Responses per Respondent: 1.

Annual Responses: 6,588.

Average Burden per Response: 1.1 hours.

Annual Burden Hours: 7,247.

Needs and Uses: This information collection requires DoD contractors to provide information to cooperative agreement holders regarding employees or offices that are responsible for entering into subcontracts under DoD contracts. Cooperative agreement holders furnish procurement technical assistance to business entities within specified geographic areas. This policy implements 10 U.S.C. 2416.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4792 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0062]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 29, 2007.

Title, Associated Form, and OMB Number: Dependency Statements; Parent (DD Form 137–3), Child Born Out of Wedlock (DD Form 137–4), Incapacitated Child Over Age 21 (DD Form 137–5), Full Time Student 21–22 Years of Age (DD Form 137–6), and Ward of the Court (DD Form 137–7); OMB Number 0730–0014.

Type of Request: Extension.

Number of Respondents: 19,440.

Responses per Respondent: 1.

Annual Responses: 19,440.

Average Burden per Response: 1.25 hours.

Annual Burden Hours: 24,300.

Needs and Uses: This information collection is used to certify dependency or obtain information to determine entitlement to basic allowance for housing (BAH) with dependent rate, travel allowance, or Uniformed Services Identification and Privilege Card. Information regarding a parent, a child born out-of-wedlock, an incapacitated child over age 21, a student age 21–22, or a ward of a court is provided by the military member or by another

individual who may be a member of the public. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide more than one half of the claimed dependent's monthly expenses. DoD Financial Management Regulation 7000.14–R, Vol. 7A, defines dependency and directs that dependency be proven. Dependency claim examiners use the information from these forms to determine the degree of benefits. The requirement to provide the information decreases the possibility of monetary allowances being approved on behalf of ineligible dependents.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRuling Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4793 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD–2007–HA–0021]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 29, 2007.

Title, Associated Form and OMB Number: Health Insurance Claim Form, CMS–1500; OMB Control Number 0720–0001.

Type of Request: Extension.

Number of Respondents: 24,000,000.

Responses per Respondent: 1.

Annual Responses: 24,000,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 6,000,000.

Needs and Uses: This information collection requirement is used by TRICARE to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues TRICARE commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4794 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–HA–0073]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 29, 2007.

Title and OMB Number: Public Perceptions of Military Health Care; OMB Control Number 0720–TBD.

Type of Request: New.

Number of Respondents: 2,400.

Responses per Respondent: 1.

Annual Responses: 2,400.

Average Burden per Response: 8 minutes.

Annual Burden Hours: 319.

Needs and Uses: The purpose of this survey effort is to determine the public's perceptions of Military Health Care and compare and contrast that with their perceptions of U.S. Health Care.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Draemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer

for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at OHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 11, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4795 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 255. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 255 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATES: October 1, 2007.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 254. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: September 24, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 255 ARE UPDATES TO THE RATES FOR BAYAMON, CAROLINA, LUIS MUNOZ IAP, FT BUCHANAN, SABANA SECA AND SAN JUAN, PUERTO RICO.				
ALASKA				
ADAK	120	79	199	07/01/2003
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	181	97	278	04/01/2007
09/16 - 04/30	99	89	188	04/01/2007
BARROW	159	95	254	05/01/2002
BETHEL	135	82	217	06/01/2007
BETTLES	135	62	197	10/01/2004
CLEAR AB	90	82	172	10/01/2006
COLD BAY	90	73	163	05/01/2002
COLDFOOT	165	70	235	10/01/2006
COPPER CENTER				
05/01 - 09/30	129	80	209	07/01/2007
10/01 - 04/30	89	76	165	07/01/2007
CORDOVA				
05/01 - 09/30	95	78	173	06/01/2007
10/01 - 04/30	85	77	162	06/01/2007
CRAIG	140	79	219	04/01/2007
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	90	77	167	02/01/2007
DENALI NATIONAL PARK				
06/01 - 08/31	117	73	190	04/01/2007
09/01 - 05/31	75	69	144	04/01/2007
DILLINGHAM	114	69	183	06/01/2004
DUTCH HARBOR-UNALASKA	121	84	205	04/01/2006
EARECKSON AIR STATION	90	77	167	06/01/2007
EIELSON AFB				
05/01 - 09/15	169	95	264	02/01/2007
09/16 - 04/30	75	86	161	02/01/2007
ELMENDORF AFB				
05/01 - 09/15	181	97	278	04/01/2007
09/16 - 04/30	99	89	188	04/01/2007
FAIRBANKS				
05/01 - 09/15	169	95	264	02/01/2007
09/16 - 04/30	75	86	161	02/01/2007
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	90	77	167	02/01/2007
FT. RICHARDSON				
05/01 - 09/15	181	97	278	04/01/2007
09/16 - 04/30	99	89	188	04/01/2007
FT. WAINWRIGHT				
05/01 - 09/15	169	95	264	02/01/2007
09/16 - 04/30	75	86	161	02/01/2007
GLENNALLEN				
05/01 - 09/30	129	80	209	07/01/2007
10/01 - 04/30	89	76	165	07/01/2007
HAINES				
04/01 - 09/30	109	75	184	06/01/2007
10/01 - 03/31	89	73	162	06/01/2007

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
HEALY				
06/01 - 08/31	117	73	190	04/01/2007
09/01 - 05/31	75	69	144	04/01/2007
HOMER				
05/15 - 09/15	131	84	215	07/01/2007
09/16 - 05/14	79	78	157	07/01/2007
JUNEAU				
05/01 - 09/30	129	89	218	04/01/2006
10/01 - 04/30	79	84	163	04/01/2006
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
05/01 - 08/31	129	92	221	04/01/2006
09/01 - 04/30	79	87	166	04/01/2006
KENNICOTT	249	110	359	04/01/2007
KETCHIKAN				
05/01 - 09/30	135	85	220	06/01/2007
10/01 - 04/30	98	81	179	06/01/2007
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	140	79	219	04/01/2007
KODIAK				
05/01 - 09/30	123	91	214	04/01/2006
10/01 - 04/30	99	88	187	04/01/2006
KOTZEBUE				
05/15 - 09/30	179	90	269	06/01/2007
10/01 - 05/14	139	89	228	06/01/2007
KULIS AGS				
05/01 - 09/15	181	97	278	04/01/2007
09/16 - 04/30	99	89	188	04/01/2007
MCCARTHY	249	110	359	04/01/2007
MCGRATH	165	69	234	10/01/2006
MURPHY DOME				
05/01 - 09/15	169	95	264	02/01/2007
09/16 - 04/30	75	86	161	02/01/2007
NOME	130	86	216	06/01/2007
NUIQSUT	180	53	233	05/01/2002
PETERSBURG	95	69	164	06/01/2007
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SELDOVIA				
05/15 - 09/15	131	84	215	07/01/2007
09/16 - 05/14	79	78	157	07/01/2007
SEWARD				
05/01 - 09/30	199	85	284	06/01/2007
10/01 - 04/30	69	72	141	06/01/2007
SITKA-MT. EDGECUMBE				
05/01 - 09/30	119	83	202	02/01/2007
10/01 - 04/30	99	81	180	02/01/2007
SKAGWAY				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 09/30	135	85	220	06/01/2007
10/01 - 04/30	98	81	179	06/01/2007
SLANA				
05/01 - 09/30	139	55	194	02/01/2005
10/01 - 04/30	99	55	154	02/01/2005
SPRUCE CAPE				
05/01 - 09/30	123	91	214	04/01/2006
10/01 - 04/30	99	88	187	04/01/2006
ST. GEORGE	129	55	184	06/01/2004
TALKEETNA	100	89	189	07/01/2002
TANANA	130	86	216	06/01/2007
TOGIAK	100	39	139	07/01/2002
TOK				
05/01 - 09/30	109	69	178	02/01/2007
10/01 - 04/30	90	67	157	02/01/2007
UMIAT	350	35	385	10/01/2006
VALDEZ				
05/01 - 10/01	149	87	236	04/01/2007
10/02 - 04/30	79	80	159	04/01/2007
WASILLA				
05/01 - 09/30	144	88	232	06/01/2007
10/01 - 04/30	86	83	169	06/01/2007
WRANGELL				
05/01 - 09/30	135	85	220	06/01/2007
10/01 - 04/30	98	81	179	06/01/2007
YAKUTAT	100	71	171	06/01/2007
[OTHER]	90	77	167	02/01/2007
AMERICAN SAMOA				
AMERICAN SAMOA	122	73	195	12/01/2005
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	94	229	06/01/2007
HAWAII				
CAMP H M SMITH	177	112	289	06/01/2007
EASTPAC NAVAL COMP TELE AREA	177	112	289	06/01/2007
FT. DERUSSEY	177	112	289	06/01/2007
FT. SHAFTER	177	112	289	06/01/2007
HICKAM AFB	177	112	289	06/01/2007
HONOLULU	177	112	289	06/01/2007
ISLE OF HAWAII: HILO	112	104	216	06/01/2007
ISLE OF HAWAII: OTHER	180	104	284	06/01/2007
ISLE OF KAUAI	198	109	307	06/01/2007
ISLE OF MAUI	159	101	260	06/01/2007
ISLE OF OAHU	177	112	289	06/01/2007
KEKAHA PACIFIC MISSILE RANGE FAC	198	109	307	06/01/2007
KILAUEA MILITARY CAMP	112	104	216	06/01/2007
LANAI	295	139	434	06/01/2007
LUALUALEI NAVAL MAGAZINE	177	112	289	06/01/2007
MCB HAWAII	177	112	289	06/01/2007
MOLOKAI	178	99	277	06/01/2007
NAS BARBERS POINT	177	112	289	06/01/2007
PEARL HARBOR	177	112	289	06/01/2007
SCHOFIELD BARRACKS	177	112	289	06/01/2007
WHEELER ARMY AIRFIELD	177	112	289	06/01/2007

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	112	93	205	12/01/2006
MIDWAY ISLANDS				
MIDWAY ISLANDS INCL ALL MILITARY	100	45	145	06/01/2006
NORTHERN MARIANA ISLANDS				
ROTA	129	91	220	05/01/2006
SAIPAN	121	98	219	06/01/2007
TINIAN	85	69	154	06/01/2007
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
AGUADILLA	87	70	157	07/01/2006
BAYAMON	195	82	277	10/01/2007
CAROLINA	195	82	277	10/01/2007
CEIBA				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
FAJARDO [INCL ROOSEVELT RDS NAVS				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
FT. BUCHANAN [INCL GSA SVC CTR	195	82	277	10/01/2007
HUMACAO				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
LUIS MUNOZ MARIN IAP AGS	195	82	277	10/01/2007
LUQUILLO				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
MAYAGUEZ	109	73	182	07/01/2006
PONCE				
01/01 - 05/31	139	73	212	07/01/2006
06/01 - 07/31	230	82	312	07/01/2006
08/01 - 11/30	139	73	212	07/01/2006
12/01 - 12/31	230	82	312	07/01/2006
SABANA SECA [INCL ALL MILITARY]	195	82	277	10/01/2007
SAN JUAN & NAV RES STA	195	82	277	10/01/2007
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	135	92	227	05/01/2006
12/15 - 04/14	187	97	284	05/01/2006
ST. JOHN				
04/15 - 12/14	163	98	261	05/01/2006
12/15 - 04/14	220	104	324	05/01/2006
ST. THOMAS				
04/15 - 12/14	240	105	345	05/01/2006
12/15 - 04/14	299	111	410	05/01/2006
WAKE ISLAND				
WAKE ISLAND	152	15	167	06/01/2006

[FR Doc. 07–4782 Filed 9–27–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.
ACTION: Notice of open 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, the following meeting notice is announced:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: November 8 and 9, 2007.

Place of Meeting: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, 17013.

Time of Meeting: 8 a.m.–5 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandment and staff and faculty; table and examine online College issues: assess resident and distance education programs, self-study techniques, assemble a working group for the concentrated review of institutional policies and a working group to address committee membership and charter issues; propose strategies and recommendations that will continue the momentum of federal accreditation success and guarantee compliance with regional accreditation standards.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Colonel Dennis D. Tewksbury, DSN 242–3907 or via e-mail: *Dennis.Tewksbury@us.army.mil.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Interested persons may submit a written statement for consideration by the U.S. Army War College Subcommittee. Written statements should be no longer than two type-written pages and must address: 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 submitting a written statement must submit their statement to the Designated Federal Officer at U.S. Army War College, ATWC–AA (BOV), 122 Forbes Avenue, Carlisle, PA 17013–5237, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the U.S. Army War College Subcommittee until its next open meeting.

The Designated Federal Officer will review all timely submissions with the U.S. Army War College Subcommittee Chairperson, and ensure they are provided to members of the U.S. Army War College Subcommittee before the meeting that is the subject of 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 U.S. Army War College Subcommittee 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 U.S. Army War College subcommittee.

Dennis D. Tewksbury,

U.S. Army, Colonel, Designated Federal Official.

[FR Doc. 07–4779 Filed 9–27–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0075]

Proposed Collection; Comment Request

AGENCY: Defense Information Systems Agency (DISA), Department of Defense.
ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Information Systems Agency announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 27, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Information Systems Agency (DISA), P.O. Box 4502, Arlington, VA 22204–4502, ATTN: Rex Ridenhower or Mr. Robert Hons; call (703) 607–6265 or (703) 681–2069. Fax number is (703) 681–2782.

Title and OMB Number: Defense Information Systems Agency (DISA) Customer Satisfaction Surveys; OMB Control Number 0704–TBD.

Needs and Uses: The DISA Customer Satisfaction Surveys are tools used to measure satisfaction levels and obtain external customer feedback. The purpose of the surveys is to assess the level of service DISA provides to its current customers.

Affected Public: Business or other for-profit.

Annual Burden Hours: 60.

Number of Respondents: 600.

Responses per Respondent: 2.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DISA provides computing services, telecommunications services, and acquisition services and operates and maintains crucial joint warfighting and related mission support, command, control, and communications systems.

DISA products and services support the White House, President and Vice President, Office of the Secretary of Defense, Joint Staffs, military services, military commands, Defense and other Federal Government Agencies.

Dated: July 27, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4786 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: November 2, 2007.

Location: Holiday Inn—Quincy, 201 S. Third Street, Quincy, IL 62301, (217) 222–2666.

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 1 p.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund, and be provided updates of various inland waterways projects.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, Headquarters, U.S. Army Corps of Engineers, CECW–IP, 441 G Street, NW., Washington, DC 20314–1000; Ph: (202) 761–4258.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–4778 Filed 9–27–07; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

[No. USN–2007–0048]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995* the Naval Health Research Center (NHRC), Department of the Navy, announces a new proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 27, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Dr. Jerry Larson, Ph.D.; Head, Behavioral Science and Epidemiology Program, Naval Health Research Center; P.O. Box 85122 San Diego, CA 92186–5122; telephone 619–553–8402 (this is not a toll-free number) or fax: 619553–8459.

Title and OMB Number: Mental Health Issues Among Deployed Personnel: Longitudinal Assessment of the Resilience of Deployed Sailors and Marines—Follow-up; OMB Number 0703–TBD.

Needs and Uses: The proposed study builds on an existing study assessing the prevalence of mental health outcomes among Sailors and Marines transitioning from the Service, and identifying predictors of and changes in mental health and resilience over time. DoD regulations stipulate that all military personnel must receive pre-separation counseling no less than 90 days before leaving active duty. Enlisted Sailors and Marines attending Transition Assistance Program (TAP) workshops were invited to participate in the current research. As part of the baseline component, TAP enrollees were surveyed at 12 installations (8 Navy and 4 Marine Corps) during the Summer—Fall 2007 time frame until the target sample size (N = 6000; 3000 in each Service) was obtained. Those respondents with high combat exposure will be assessed through a follow-on survey 6 months after separation from Military service, when participants have transitioned into civilian life.

Affected Public: Navy and Marine Corps personnel who have separated from the Military in the six-month period following the baseline survey.

Annual Burden Hours: 1800.

Number of Respondents: 1800.

Responses per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This study population is unique because there is a need for longitudinal mental health research in the Military that spans both Active Duty and the period of reintegration into civilian life after combat exposure. Through the study's longitudinal tracking of subjects after their return to civilian life, this will also be the first research effort to examine the prospective value of the recently implemented Post-Deployment Health Reassessment (PDHRA). Furthermore, with our access to the Career History Archival Medical and Personnel System (CHAMPS) database for personnel and medical records, it is possible to compare both confidential PDHRA responses obtained for research purposes with PDHRA responses obtained for official purposes to determine the degree of underreporting in this official screening effort. Findings will be used to better inform transition,

screening, and Combat Stress Control programs about the mental health needs of Active-Duty personnel, Reservists, and Veterans.

The baseline questionnaire includes a Combat Exposure Scale used to estimate high combat exposure and to inform participants who exceed a predetermined score that they are eligible for the second phase of study and request their participation in the follow-up interviews. NHRC proposes tracking over time these respondents for the longitudinal portion of the study. Furthermore, the subsequent mental well-being of this high-risk cohort will be assessed through these new data collected 6 months after the participants of the baseline survey have transitioned to civilian life. Data from extant historical personnel and medical data will also be combined with survey data to develop models that demonstrate the influence of combat, and a variety of covariates on mental health symptoms, resilience, and substance abuse. We estimate that approximately 1,800 of the 6,000 baseline participants will be eligible for and consent to participate in the 6 month follow-up survey. In order to ensure that we can locate these respondents, the questionnaire will include name, relocation plans, names and contact information for two friends or relatives who always know where the respondent is living, and the respondent's date of birth and social security number. The follow-up surveys will be sent to respondents through the mail. Respondents will also have the option of completing this survey via the Web, which will closely simulate the hardcopy version of the instrument.

Approximately 15% of Military personnel are women. Therefore, it is estimated that 15% will be the proportion of women completing the survey; the remaining 85% will be male respondents.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4784 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket No. USN–2007–0028]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 29, 2007.

Title, Form, and OMB Number: United States Naval Academy Sponsor Application; OMB Number 0703–TBD.

Type of Request: New.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Annual Burden Hours: 800.

Needs and Uses: This collection of information is necessary to determine the eligibility and overall compatibility between sponsor applicants and Fourth Class Midshipmen at the United States Naval Academy. An analysis of the information collection is made by the Sponsor Program Director during the process in order to best match sponsors with Midshipmen.

Affected Public: Individuals or households; Federal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4788 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[No. USN–2007–0034]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 29, 2007.

Title, Form, and OMB Number: Naval Sea Systems Command and Field Activity. Visitor Access Request; NAVSEA 5530/5; OMB Control Number 0703–TBD.

Type of Request: New.

Number of Respondents: 5,200.

Responses per Respondent: 1.

Annual Responses: 5,200.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 1,300.

Needs and Uses: This collection of information provides Naval Sea Systems Command and Naval Sea Systems Command Field Activity's contractors, military and government civilians with a requirement that provides for the collection of information to ensure that only visitors with an appropriate clearance level and need-to-know are granted access to classified information. Respondents are Navy business personnel, support contractors and individuals from other agencies visiting the Command and Field Activities to discuss Navy matters.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make

these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 21, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4789 Filed 9–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Reading First Advisory Committee

AGENCY: Department of Education, Office of Elementary and Secondary Education.

ACTION: Notice of Open Meeting.

SUMMARY: This notice describes an open meeting of the Reading First Advisory Committee. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

Dates and Times: October 15, 2007, 9 a.m. until 5 p.m., Eastern Standard Time; and October 16, 2007, 9 a.m. until noon, Eastern Standard Time.

ADDRESSES: Hilton Crystal City at 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Deborah Spitz, Reading First Team Leader, Reading First Advisory Committee; 400 Maryland Avenue, SW., Washington, DC 20202; telephone: (202) 260–3793; fax: (202) 260–8969; e-mail: *Deborah.Spitz@ed.gov.*

SUPPLEMENTARY INFORMATION: The Reading First Advisory Committee is authorized by Sections 1203(c)(2)(a) and 1202(e)(2) of the Elementary and Secondary Education Act (ESEA) of 1965, as amended. The Committee is established within the Department of Education to evaluate Reading First applications submitted by States, to review the progress reports that States submit after the third year of the grant period, to advise on the awarding of Targeted Assistance Grants, and to advise the Secretary on other issues that the Secretary deems appropriate.

At the open meeting on August 20, the Committee considered the performance data collected from all states and discussed how that data should be reviewed. The Committee created a subcommittee to begin looking at the data and determined that the full Committee would discuss analysis of the data at a public meeting on October 15 and 16.

During this meeting, staff from the Department's offices of Policy and Program Studies Service and Institute of Education Sciences will brief the Committee on their current evaluations of the Reading First program. The meeting will be attended by one or more statisticians who will work with the Committee to answer questions about the data. The Committee expects to establish topics that can be researched further using the data that is currently available, as well as a timeline for completing the review of the third-year progress reports. The Committee may also discuss longer-term research topics and ways to improve data collected in the future.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistance listening devices, or materials in alternative format) should notify Deborah Spitz at (202) 260–3793, no later than ten (10) days before the scheduled date of the meeting. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Request for Written Comments: Written comments should be submitted via e-mail at least five (5) days prior to the scheduled date of the meeting to Deborah Spitz at *Deborah.Spitz@ed.gov.* These comments will be shared with the members of the Committee.

Records are kept of all Committee proceedings and are available for public inspection at 400 Maryland Ave. SW., Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Amanda Farris,

Deputy Assistant Secretary, The Office of Elementary and Secondary Education.

[FR Doc. E7–19167 Filed 9–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from April 1, 2007 through June 30, 2007.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Under section 607(f) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from April 1, 2007 through June 30, 2007. Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy

interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Reallocation of Funds

○ Letter dated June 14, 2007 to Louisiana Division of Educational Improvement and Assistance Director Dr. Susan A. Aysenne, confirming that the Louisiana Department of Education has the authority to reallocate funds that are not needed by one local educational agency (LEA) to provide a free appropriate public education to children with disabilities to a single LEA or multiple LEAs in the State.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

○ Letter dated June 14, 2007 to individual (personally identifiable information redacted), clarifying that the same requirements in Part B of IDEA governing personnel qualifications and access to instructional materials that apply to special education and related services provided pursuant to a student's individualized education program (IEP) in a regular school program apply to special education and related services provided pursuant to a student's IEP as compensatory services.

Topic Addressed: Methods of Ensuring Services

○ Office of Special Education (OSEP) Memorandum 07–10 dated May 3, 2007 to State Directors of Special Education, clarifying requirements for obtaining parental consent when a public agency seeks access to a child's public benefits or public insurance to pay for required special education and related services for Medicaid-eligible children and explaining that the LEA does not have to obtain a separate parental consent if parental consent is given directly to another agency, such as a State's Medicaid Agency.

Topic Addressed: Disproportionality

○ OSEP Memorandum 07–09 dated April 24, 2007 to State Directors of Special Education, clarifying the requirements governing overidentification and disproportionality under section 612(a)(24) of IDEA and the requirements governing significant disproportionality under section 618(d) of IDEA.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations and Reevaluations

○ Letter dated May 10, 2007 to U.S. Representative Doris O. Matsui, regarding how determinations are made about a child's eligibility for special education and related services under Part B of IDEA, including whether factors such as family history of substance abuse and other medical information can be considered as part of the eligibility determination.

Section 615—Procedural Safeguards

Topic Addressed: Maintenance Of Current Educational Placement

○ Letter dated April 12, 2007 to North Carolina Exceptional Children Division Director Mary D. Watson, clarifying that the requirements of Part B of IDEA for annual review of a child's IEP remain fully applicable while administrative or judicial proceedings regarding a complaint are pending.

○ Letter dated April 12, 2007 to Community Alliance for Special Education Service Coordinator Paul S. Foreman, regarding the child's status during the pendency of administrative or judicial proceedings when a child who is no longer eligible for services under Part C of IDEA seeks initial services under Part B of IDEA.

Section 674—Technology Development, Demonstration, and Utilization; Media Services; and Instructional Materials

Topic Addressed: National Instructional Materials Access Center

○ Letter dated May 7, 2007 to American Printing House for the Blind, Inc. President Dr. Tuck Tinsley, explaining the Department's interpretation of section 674(e)(5) of the IDEA and clarifying the extent to which that section provides any protection for the National Instructional Materials Access Center from lawsuits contesting its grant activities.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: September 24, 2007.

William W. Knudsen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–19264 Filed 9–27–07; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting (amended).

DATE & TIME: Thursday, October 4, 2007, 10 a.m.–1 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005, (Metro Stop: Metro Center).

AGENDA: Commissioners will receive the following presentations: Commissioners will receive updates on the next iteration of the Voluntary Voting System Guidelines (VVSG) and a report on a recommendation from the National Voluntary Laboratory Accreditation Program (NVLAP); Commissioners will consider an internal policy for handling State requests to change State-specific instructions to the National Voter Registration Form; Commissioners have granted a request from Secretary of State of Arizona to make a statement before the Commission; Commissioners will discuss other administrative matters.

This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, *Telephone:* (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commision.

[FR Doc. 07–4834 Filed 9–26–07; 2:44 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), DOE

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form for $30, or without charge at the following Internet address: *http://www.bpa.gov/corporate/business/bpi*. Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form for $15 each, or available without charge at the following Internet address: *http://www.bpa.gov/corporate/business/bfai*.

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing GK–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Manager, Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 839 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21 Cost Principles for Educational Institutions.

A–87 Cost Principles for State, Local and Indian Tribal Governments.

A–102 Grants and Cooperative Agreements with State and Local Governments.

A–110 Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

A–122 Cost Principles for Non-Profit Organizations.

A–133 Audits of States, Local Governments and Non-Profit Organizations.

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 13, 2007.

Damian J. Kelly,

Manager, Supply Chain Policy and Governance.

[FR Doc. E7–19195 Filed 9–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Electric Power Program to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

DATES: Comments must be filed by October 29, 2007. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Nathan_J._Frey@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–7345. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 586–6264.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component; (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–411, 860, 860M, 861 and 923, "Electric Power Program."

2. Energy Information Administration.

3. OMB Number 1905–0129.

4. Three-year extension.

5. Mandatory.

6. The Electric Power Surveys collect electric power information including capacity, generation, fuel consumption, fuel receipts, fuel stocks, and prices, along with financial information. Respondents include both regulated and unregulated entities that comprise the U.S. electric power industry. Electric power data collected are used by the Department of Energy for analysis and forecasting. Data are published in various EIA reports.

7. Business or other for profit, Federal Government, state, local or tribal government.

8. Total burden of 98,722 hours.

The information collections submitted for OMB approval have some changes

from the proposed information collections made available for the public comment. The materials submitted to OMB are available for your review as noted previously.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

Issued in Washington, DC, September 21, 2007.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E7–19256 Filed 9–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 2101–084 (California); Project No. 2155–024 (California)

Sacramento Municipal Utility District; Pacific Gas & Electric Company; Notice of Availability of the Draft Environmental Impact Statement for the Upper American River Project and the Chili Bar Project

September 21, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the applications for relicense for the Upper American River Project (FERC No. 2101) and the Chili Bar Project (FERC No. 2155), located on the South Fork of the American River near Placerville, California, and has prepared a Draft Environmental Impact Statement (draft EIS) for the projects.

The existing 688-megawatt (MW) Upper American River Project occupies 6,375 acres of federal land administered by the U.S. Department of Agriculture, Forest Service (Forest Service), in Eldorado National Forest and 42.3 acres of federal land administered by the U.S. Department of the Interior, Bureau of Land Management (BLM). The Forest Service is reviewing an application for a special use permit for constructing the Iowa Hill development on National Forest System lands. The Forest Service is also a cooperating agency in preparing this draft EIS for the Upper American River Project.

Pacific Gas & Electric Company's 7–MW Chili Bar Project is located on the South Fork of the American River immediately downstream of the Upper American River Project. The project occupies 47.81 acres of federal land administered by the BLM.

In the draft EIS, staff evaluates the applicant's proposal and alternatives for relicensing the projects. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

Comments should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. All comments must be filed within 45 days of the notice in the **Federal Register**, and should reference either Project No. 2101–084 (Upper American River Project) or Project No. 2155–024 (Chili Bar Project). Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You may also file your request to intervene electronically. You do not need intervenor status to have the Commission consider your comments.

Copies of the draft EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The draft EIS also may be viewed on the Internet at *http://www.ferc.gov* under the eLibrary link. Enter the docket number (either P–2101or P–2155) to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

CD versions of the draft EIS have been mailed to everone on the mailing list for the projects. Copies of the CD, as well as a limited number of paper copies, are available from the Public Reference Room identified above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

For further information, contact James Fargo at (202) 502–6095 or at *james.fargo@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–19188 Filed 9–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–459–000]

Transwestern Pipeline Company, LLC; Notice of Availability of the Final Environmental Impact Statement and Final General Conformity Determination for the Proposed Phoenix Expansion Project

September 21, 2007.

The environmental staffs of the Federal Energy Regulatory Commission (Commission or FERC); the U.S. Department of the Interior, Bureau of Land Management (BLM); the U.S. Department of Agriculture, Forest Service (FS); the U.S. Department of Transportation, Office of Pipeline Safety (OPS); the U.S. Department of the Interior, Bureau of Indian Affairs (BIA); and the Navajo Nation, collectively referred to as the Agency Staffs, have prepared the final environmental impact statement (EIS) to address Transwestern Pipeline Company, LLC's (Transwestern) proposed expansion of its natural gas pipeline system. A Final General Conformity Determination was also prepared by the FERC to assess the potential air quality impacts associated with construction and operation of the proposed Phoenix Expansion Project and is included as Appendix Q of the final EIS.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The Agency Staffs have concluded that if the project is constructed and operated in accordance with applicable laws and regulations, Transwestern's proposed mitigation, and the Agency Staffs' additional mitigation measures, it would have limited adverse environmental impact.

The FERC is the lead federal agency and will use the final EIS to consider the environmental impacts that could result if it issues Transwestern a Certificate of Public Convenience and

Necessity under section 7 of the Natural Gas Act.

The BLM and the FS are federal land management agencies affected by Transwestern's proposal and have elected to act as cooperating agencies in preparing the final EIS. The BLM will use the document to meet its NEPA responsibilities in considering Transwestern's application for a Right-of-Way Grant and obtain Temporary Use Permits for the portion of the project on federal lands under section 185(f) of the Mineral Leasing Act of 1920. The BLM would issue the Right-of-Way Grant and Temporary Use Permits for the crossing of BLM-managed lands and the Kaibab and Prescott National Forests, which are managed by the FS, and for crossing lands managed by the U.S. Department of the Interior, Bureau of Reclamation (BOR). The BLM would consider the concurrence or non-concurrence of the FS and BOR, as well as FERC approval or denial, in making its decision whether to issue the Right-of-Way Grant and Temporary Use Permits. The BLM's decision would be documented in a Record of Decision.

The OPS is participating as a cooperating agency in preparing the final EIS because it is responsible for ensuring the safe, reliable, and environmentally sound operation of the nation's transportation system and for providing oversight for oil and natural gas pipelines. The OPS' authority is found under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 *et seq.*) and the Hazardous Liquids Pipeline Safety Act of 1979 (49 U.S.C. 2001 et seq.).

The BIA and the Navajo Nation have also elected to act as cooperating agencies in preparing the final EIS because the proposed project would be near tribal lands in Arizona and would cross two classes of Navajo Nation lands in New Mexico: Tribal lands and allotted lands. Tribal lands are owned in fee by the Navajo Nation, and access to these lands would be acquired through direct negotiation between Transwestern and officials of the Navajo Nation Tribal Headquarters in Window Rock, Arizona. Allotted lands are held in trust by the United States government and managed by the BIA for the benefit of individual allottees.

The Phoenix Expansion Project is designed to transport up to 500 million cubic feet per day of natural gas to the Phoenix area, which is one of the fastest-growing regions in the United States. The project would not only help to satisfy the increasing demand for electricity and natural gas, but would also increase competition in the regional energy market, thereby working to stabilize costs to the consumer.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities proposed by Transwestern:

- 24.6 miles of new 36-inch-diameter pipeline loop [1] (the San Juan Lateral Loops A and B) extending along the existing San Juan Lateral in San Juan and McKinley Counties, New Mexico;
- 259.3 miles of new 42- and 36-inch-diameter lateral [2] pipeline (the Phoenix Lateral), consisting of 95.7 miles of 42-inch-diameter pipeline extending from milepost (MP) 0.0 in Yavapai County, Arizona to MP 95.2 in Maricopa County, Arizona, and 163.6 miles of 36-inch-diameter pipeline extending from MP 95.2 in Maricopa County, Arizona to MP 255.1 in Pinal County, Arizona;
- 1.4 miles of new 24-, 20-, 16-, and 6-inch-diameter lateral pipeline (the customer laterals) connecting the Phoenix Lateral to meter stations that are not located immediately adjacent to the Phoenix Lateral right-of-way;
- Minor piping and pressure control modifications at the existing Bloomfield Compressor Station in San Juan County, New Mexico and at the existing Seligman Compressor Station No. 1 in Mohave County, Arizona;
- Installation of the Ash Fork Facility at MP 0.0 of the Phoenix Lateral in Yavapai County, Arizona including 2 filter separators, odorant injection facilities, and telecommunications equipment; and
- Installation of 4 taps, 31 valves, 11 meter stations, 6 pig [3] launchers, and 3 pig receivers.

Transwestern would also acquire an undivided interest in the existing East Valley Lateral consisting of 36.7 miles of 24-inch-diameter lateral pipeline in Pinal and Maricopa Counties, Arizona.

The final EIS, including the Final General Conformity Determination, has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Regulatory Energy Commission, Public Reference Room, 888 First St., NE., Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the FERC's Public Reference Room identified above. These copies may be requested in hard copy or as .pdf files on a CD that can be read by a computer with a CD–ROM drive. The final EIS, including the Final General Conformity Determination, is also available for viewing on the FERC Internet Web site at *http://www.ferc.gov*. In addition, copies of the document have been mailed to federal, state, and local government agencies; elected officials; Native American tribes; affected landowners; local libraries and newspapers; intervenors to the FERC's proceeding; and other interested parties. Hard copies of the final EIS, including the Final General Conformity Determination, can be viewed at the following libraries in the project area:

Ash Fork Public Library, 518 Lewis Avenue, Ash Fork, AZ 86320
Avondale-Goodyear Public Library, 328 West Western Avenue, Avondale, AZ 85323
Black Canyon City Community Library, 34701 South Old Black Canyon Hwy, Black Canyon, AZ 85324
Buckeye Public Library, 310 North 6th Street, Buckeye, AZ 85032
Casa Grande Public Library, 449 North Dry Lake, Casa Grande, AZ 85222
Chino Valley Public Library, 1020 West Palomino Road, Chino Valley, AZ 86323
Coolidge Public Library, 160 West Central Avenue, Coolidge, AZ 85228
Flagstaff Public Library, 300 West Aspen, Flagstaff, AZ 86001
Fredonia Public Library, 118 North Main Street, Fredonia, AZ 86022
Mayer Public Library, 10004 Wicks Street, Mayer, AZ 86333
Arizona State Library, 1700 West Washington Street, Phoenix, AZ 85007
North Central Regional Library, 17811 North 32nd Street, Phoenix, AZ 85032
Yavapai County Library District, 172 East Merritt Street, Suite E, Prescott, AZ 86301
Prescott Public Library, 215 East Goodwin, Prescott, AZ 86303
Prescott Valley Public Library, 7501 East Civic Circle, Prescott Valley, AZ 86314
Williams Public Library, 113 South First Street, Williams, AZ 86046
Bloomfield Public Library, 333 South First Street, Bloomfield, NM 87413
Farmington Public Library, 2101 Farmington Avenue, Farmington, NM 87401–6420
Octavia Fellin Public Library, 115 West Hill, Gallup, NM 87301

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC

[1] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] A lateral pipeline typically takes gas from the main system to deliver it to a customer, local distribution system, or another interstate transmission system.

[3] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site.

Information concerning the involvement of the cooperating agencies in the EIS process may be obtained from:

U.S. Department of the Interior, Bureau of Land Management
Mark Mackiewicz, (435) 636–3616
U.S. Department of Agriculture, Forest Service
Prescott National Forest, Vicki Clay, (928) 443–8013
Kaibab National Forest, Tom Mutz, (928) 635–5661
U.S. Department of Transportation, Office of Pipeline Safety
Ross Reineke, (720) 963–3182
U.S. Department of the Interior, Bureau of Indian Affairs
Navajo Area Office, Harrilene Yazzi, (505) 863–8286
Phoenix Area Office, Amy Heuslein, (602) 379–6750
Navajo Nation
Ron Maldonado, (928) 871–7139

Kimberly D. Bose,

Secretary.

[FR Doc. E7–19189 Filed 9–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

September 21, 2007.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket number	Date received	Presenter or requester
1. CP07–8–000	8–30–07	Pat Vaughan.
2 CP07–44–000, *et al.*	9–11–07	Hon. David Vitter.
3 CP07–414–000	9–12–07	David Hanobic.[1]
4. ER05–6–000	9–5–07	Hon. Alan R. Schriber, PhD.
5. Project No. 1971–000	9–5–07	Hon. Harry Reid.
6 Project No. 2100–000	8–23–07	Hon. Wally Herger.
7. Project No. 12796–000	8–24–07	David A. Taylor.[2]

[1] Memorandum to file re: phone call.
[2] One of four letters from City of Amherst, Ohio and the Villages of Menden, Monroeville and Sycamore, Ohio.

Kimberly D. Bose,
Secretary.
[FR Doc. E7–19187 Filed 9–27–07; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2007–0278; FRL–8474–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Continuous Release Reporting Regulations (CRRR) Under CERCLA 1980 (Renewal); EPA ICR No. 1445.07, OMB Control No. 2050–0086

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on February 29, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 27, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2007–0278, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *superfund.docket@epa.gov.*
- Fax: (202) 566–9744.
- Mail: Superfund Docket, Environmental Protection Agency, Mailcode: [2822T], 1200 Pennsylvania Ave., NW., Washington, DC 20460].
- Hand Delivery: EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2007–0278. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Lynn M. Beasley, Regulation and Policy Development Division, Office of Emergency Management, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1965; fax number: (202) 564–2625; e-mail address: *Beasley.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2007–0278, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply To?

Affected entities: Entities potentially affected by this action are not defined. The usage and release of hazardous substances are pervasive throughout industry. EPA expects a number of different industrial categories to report hazardous substance releases under the provisions of the CRRR. No one industry sector or group of sectors is disproportionately affected by the information collection burden.

Title: Continuous Release Reporting Regulations (CRRR) under CERCLA 1980 (Renewal).

ICR numbers: EPA ICR No. [1445.06], OMB Control No. 2050–0086.

ICR status: This ICR is currently scheduled to expire on February 29, 2008. 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, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a vessel or facility to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ). The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 103(f)(2) of CERCLA provides facilities relief from this per-occurrence notification requirement if the hazardous substance release at or above the RQ is continuous and stable in quantity and rate. Under the Continuous Release Reporting Requirements (CRRR), to report such a release as a continuous release you must make an initial telephone call to the NRC, an initial written report to the EPA Region, and, if the source and chemical composition of the continuous release does not change and the level of the continuous release does not significantly increase, a follow-up written report to the EPA Region one year after submission of the initial written report. If the source or chemical composition of the previously reported continuous release changes, notifying the NRC and EPA Region of a change in the source or composition of the release is required. Further, a significant increase in the level of the previously reported continuous release must be reported immediately to the NRC according to section 103(a) of CERCLA. Finally, any change in information submitted in support of a continuous release notification must be reported to the EPA Region.

The reporting of a hazardous substance release that is equal to or above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. The continuous release of hazardous substance information collected under CERCLA section 103(f)(2) is also available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. State and local government authorities and facilities subject to the CRRR use release information for purposes of local emergency response planning. Members of the public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10.5 hours per response. 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 which have subsequently changed; 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 3,587.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 8.

Estimated total annual burden hours: 301,508 hours.

Estimated total annual costs: $128,000. This includes an estimated burden cost of $128,000 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 17,154 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's use of data on the actual number of continuous release reports from several regions and applying a growth rate consistent with prior years reporting. The average annual percent increase in facilities in the previous ICR was approximately 7.5%. The same percent increase was assumed for this ICR. The unit burden hours per respondent information collection activity remains the same as the previous ICR.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as

appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 20, 2007.

Deborah Y. Dietrich,

Director, Office of Emergency Management.

[FR Doc. E7–19211 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8474–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sierra Club ("Plaintiff") in the United States District Court for the District of Columbia: *Sierra Club* v. *Johnson*, No. 1:07–cv–01040 (ESH) (D. D.C.). Plaintiff filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit proposed by the Wisconsin Department of Natural Resources for the Weston Generating Station in Marathon County, Wisconsin. Under the terms of the proposed consent decree, EPA has agreed to respond to Plaintiff's petition by December 19, 2007. If EPA fulfills its obligation, Plaintiff has agreed to dismiss this suit with prejudice. In addition, EPA has agreed to pay Plaintiff a specified amount in settlement for attorneys' fees in this matter.

DATES: Written comments on the proposed consent decree must be received by October 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–0918, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Howard J. Hoffman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5582; fax number (202) 564–5603; e-mail address: *hoffman.howard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking a response to an administrative petition to object to a CAA Title V permit proposed by the Wisconsin Department of Natural Resources for the Weston Generating Station in Marathon County, Wisconsin. Under the proposed consent decree, EPA has agreed to respond to the Plaintiff's petition by December 19, 2007 and to pay a specified amount in settlement of the Plaintiff's claims for attorneys' fees. The consent decree becomes an order of the Court upon entry, and, consistent with the terms of the consent decree, the case shall be dismissed with prejudice after EPA takes final action on Plaintiffs' petition and pays the specified amount in the consent decree in settlement of the Plaintiff's claims for attorneys' fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2007–0918) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the

close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 21, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–19225 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6691–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (92 FR 17156).

Draft EISs

EIS No. 20070213, ERP No. D–DOE–A09834–00, FutureGen Project, Planning, Design, Construction and Operation of a Coal Fueled Electric Power and Hydrogen Gas Production Plant, Four Alternative Sites: Mattoon, IL, Tuscola, IL, Jewett, TX, and Odessa, TX.

Summary: EPA expressed environmental concerns about impacts to wetlands and the cumulative impacts of water use, and recommended that the DEIS provide more details on how many wetlands may be impacted at each alternative site and that a cumulative impacts evaluation be conducted for at least the 50-year operational life of the project.

Rating EC2.

EIS No. 20070231, ERP No. D–UAF–A11078–00, Common Battlefield Airmen Training (CBAT) Program, Proposes to Implement the CBAT Program at One of Three Installations: Moody Air Force Base (AFB), near Valosta, GA; Barkdale AFB in Bossier City, LA; and Arnold AFB near Manchester, TN.

Summary: EPA does not object to the proposed project..

Rating LO.

EIS No. 20070312, ERP No. D–USN–K11119–HI, Hawaii Range Complex (HRC) Project, To Support and Maintain Navy Pacific Fleet Training, and Research, Development, Test, and Evaluation (RDT&E) Operations, Kauai, Honolulu, Maui and Hawaii Counties, HI.

Summary: EPA expressed environmental concern about impacts to marine resources from mid-frequency active sonar use and recommended analysis of additional alternatives.

Rating EC2.

EIS No. 20070316, ERP No. D–FHW–E40815–00, Northern Corridor Interstate 73 Project, Proposes Construct from I–95 to Future Interstate 74, Marlboro and Dillion Counties, SC and Richmond County, NC.

Summary: EPA expressed environmental concerns about wetland, stream, prime farmland, and noise impacts, and requested additional information on these issues be provided and that mitigation measures be developed.

Rating EC1.

EIS No. 20070326, ERP No. D–FTA–G59002–TX, University Corridor Fixed Guideway Project, To Implement Transit Improvements from Hillcroft Transit Center to the Vicinity of the University of Houston (UH)—Central Campus or the Eastwood Transit Center, City of Houston, Harris County, TX.

Summary: While EPA had no objections to the proposed action, we requested clarification of some air quality issues.

Rating LO.

Final EISs

EIS No. 20070347, ERP No. F–FRC–G03032–TX, Calhoun Point Comfort Liquefied Natural Gas (LNG) Project, (Docket Nos. CP05–91–000 and CP06–380–00) Construction of New Pipeline on 73 acres, Port of Port Lavaca, Calhoun and Jackson Counties, TX.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070348, ERP No. F–NPS–G65103–NM, Bandelier National Monument, Ecological Restoration Plan, Reestablish Healthy, Sustainable Vegetative Conditions within the Pinon-Juniper Woodland, Los Alamos and Sandoval Counties, NM.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070355, ERP No. F–FRC–G03035–00, Southeast Supply Header Project, Construction and Operation of Natural Gas Pipeline Facilities, Located in various Counties and Parishes in LA, MS and AL.

Summary: While EPA's previous issues have been resolved, we requested clarification of some EJ and wetlands issues.

EIS No. 20070371, ERP No. F–BLM–J65473–WY, Eagle Butte West Coal Lease Application, Issuance of Lease for a Tract of Federal Coal, Wyoming Powder River Basin, Campbell County, WY.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070328, ERP No. FS–BLM–J67026–MT, Golden Sunlight Mine Pit Reclamation Alternatives, Preferred Alternative Selected is the Underground Sump Alternative, Operating Permit No. 00065 and Plan-of-Operation #MTM 82855, Whitehall, Jefferson County, MT.

Summary: EPA continues to have environmental concerns about the long-term environmental impacts to water quality.

Dated: September 25, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–19229 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6691–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 09/17/2007 through 09/21/2007.

Pursuant to 40 CFR 1506.9.

EIS No. 20070396, Draft EIS, AFS, ID, Cherry Dinner Project, Management of Vegetation, Hazardous Fuels, and Access Plus Watershed Improvements, Amendment to the Forest Plan, Palouse Ranger District, Clearwater National Forest, Latah County, ID, *Comment Period Ends:* 11/13/2007. *Contact:* Kara Chadwick 208–875–1131.

EIS No. 20070397, Final EIS, AFS, WA, Tripod Fire Salvage Project, Proposal to Salvage Harvest Dead Trees and Fire-Injured Trees Expected to Die Within One Year, Methow Valley and Tonasket Ranger Districts, Okanogan and Wenatchee National Forests, Okanogan County, WA, *Wait Period Ends:* 10/29/2007. *Contact:* Robert Stoehr 509–548–6977.

EIS No. 20070398, Final EIS, BLM, AK, Kobuk-Seward Peninsula Resource Management Plan, from Point Lay to the North Sound and from the Bering and Chukchi Seas East to the Kobuk River, AK , *Wait Period Ends:* 10/29/2007. *Contact:* Jeanie Cole 907–474–2340.

EIS No. 20070399, Draft EIS, FTA, FL, Tier 1 Programmatic—Jacksonville Rapid Transit System (RTS), Improvement to Transportation in Four Primary Transit Corridors Radiating from Downtown Jacksonville, Duval County, FL. *Comment Period Ends:* 11/13/2007. *Contact:* Tajsha LaShore 404–562–3507.

EIS No. 20070400, Draft EIS, FRC, CA, Upper American River Hydroelectric FERC NO. 2101–084, El Dorado and Sacramento Counties, CA and Chili Bar Hydroelectric FERC No. 2155–024, El Dorado County, CA, Issuance of a New License for the Existing and Proposed Hydropower Projects. *Comment Period Ends:* 11/13/2007. *Contact:* Andy Black 1–866–208–3372.

EIS No. 20070401, Draft EIS, GSA, DC, Department of Homeland Security Headquarters at the St. Elizabeths West Campus, To Consolidate Federal Office Space on a Secure Site, Washington, DC. *Comment Period Ends:* 11/13/2007. *Contact:* Denise Decker 202–538–5643.

EIS No. 20070402, Final EIS, FRC, NM, Phoenix Expansion Project, Construction and Operation of Existing Natural Gas Transmission Pipeline, Right-of-Way Grant and Temporary Use Permit, San Juan and McKinley Counties, NM and Pinal and Maricopa Counties, AZ. *Wait Period Ends:* 10/29/2007. *Contact:* Andy Black 1–866–208–3372.

Amended Notices

EIS No. 20070218, Draft EIS, FHW, CA, Interstate 405 (San Diego Freeway) Sepulveda Pass Widening Project, From Interstate 10 to US–101 in the City of Los Angeles, Los Angeles County, CA. *Comment Period Ends:* 10/01/2007. *Contact:* Steve Healow 916–498–5849. *Revision of FR Notice Published on 06/01/2007:* Extending Comment Period from 7/16/2007 to 10/01/2007.

Dated: September 25, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–19234 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0609; FRL–8474–6]

Board of Scientific Counselors, Endocrine Disrupting Chemicals (EDC) Research Program Mid-Cycle Review Meetings—Summer/Fall 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of two meetings of the Board of Scientific Counselors (BOSC) EDC Mid-Cycle Subcommittee.

DATES: The first meeting (a teleconference call) will be held on Wednesday, October 17, 2007, from 3 p.m. to 5 p.m. The second meeting (a teleconference call) will be held on Tuesday, November 6, 2007, from 1 p.m. to 3 p.m. All times noted are eastern time. The meetings may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meetings will be accepted up to 1 business day before each meeting.

ADDRESSES: Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the calls from Heather Drumm, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0609, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2007–0609.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0609.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Endocrine Disrupting Chemicals (EDC) Mid-Cycle Subcommittee Meeting—Summer/Fall 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0609.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. *Attention:* Docket ID No. EPA–HQ–ORD–2007–0609.

Note: This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0609. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *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 Board of Scientific Counselors, Endocrine Disrupting Chemicals (EDC) Mid-Cycle Subcommittee Meeting—Summer/Fall 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Heather Drumm, Mail Drop 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1300 Pennsylvania Ave., NW., Washington, DC 20460; via phone/voice mail at: (202) 564–8239; via fax at: (202) 565–2911; or via e-mail at: *drumm.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at either meeting may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meetings include, but are not limited to finalizing the subcommittee's draft report and discussing the rating component for the EDC research program. The meetings are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov*. To request accommodation of a disability, please contact Heather Drumm, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 24, 2007.

Eric Weber,

Acting Director, Office of Science Policy.

[FR Doc. E7–19220 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0834; FRL–8150–2]

Busan 77 Risk Assessment; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment, and related documents for the pesticide Busan 77 and opens a public comment period on these documents (Phase 3 of 4–Phase Process). The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for Busan 77 through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before November 27, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0834, by one of the following methods:

•*Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

•*Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

•*Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0834. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced

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

FOR FURTHER INFORMATION CONTACT: ShaRon Carlisle, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-6427; fax number: (703) 308-6467; e-mail address: *carlisle.sharon@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessment and related documents for Busan 77 and soliciting public comment on risk management ideas or proposals. Busan 77 is currently registered as an antimicrobial agent for use in the manufacture of a variety of products used in swimming pools, metal working fluids, cooling water towers, paper mill process water, ornamental ponds and various sorts of fabrics. EPA developed the risk assessment and risk characterization for Busan 77 through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

This active ingredient is found in products that can be used in swimming pools, spas whirlpools, hot tubs, metalworking fluids, fire water protection systems, cooling water towers, petroleum secondary recovery systems, paper mill process water, air washer water systems, ornamental ponds and aquariums. In addition, various fibers can be preserved with Busan 77.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment(s) for Busan 77. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as an acute freshwater and marine invertebrate studies, and a textile residue study to evaluate the amount of Busan 77 remaining in textiles after treatment. This information could refine the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for Busan 77. There are risks of concern associated with the use of Busan 77 in *residential settings from treating aquatic areas (dermal and inhalation)*; occupational exposure for machinist using biocide treated metalworking fluids; and ecological risk to freshwater fish, freshwater invertebrates and marine invertebrates because of the once-through cooling water use. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to Busan 77 compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation

Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For Busan 77 a modified, 4–Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for Busan 77. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 20, 2007.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E7–19236 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006-0936; FRL–8147–1]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 29, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest, by one of the following methods:

•*Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

•*Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

•*Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail.The regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of

this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 5E4491	EPA–HQ–OPP–2007–0894
PP 7E7247	EPA–HQ–OPP–2007–0894
PP 7E7232	EPA–HQ–OPP–2007–0893
PP 7E7244	EPA–HQ–OPP–2007–0872
PP 6F7092	EPA–HQ–OPP–2006-0781
PP 6F7106	EPA–HQ–OPP–2007–0416
PP 7F7242	EPA–HQ–OPP–2007–0219
PP 7F7243	EPA–HQ–OPP–2007–0871
PP 7F7251	EPA–HQ–OPP–2007–0880
PP 8E5012	EPA–HQ–OPP–2005-0119
PP 7F7198	EPA–HQ–OPP–2007–0416
PP 7F7225	EPA–HQ–OPP–2007–0810

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

New Tolerances

1. *PP 5E4491* and *PP 7E7247.* (EPA–HQ–OPP–2007–0894). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, proposes to establish a tolerance for residues of the insecticide and nematicide ethoprop in or on food commodities *PP 5E4491*: Mint, hay and *PP 7E7247*: Hop, dried cone at 0.02 parts per million (ppm). Adequate methods for purposes of enforcement of ethoprop tolerances in plant commodities, ruminant tissues and milk are available. Contact: Susan Stanton, telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov.*

2. *PP 7E7232.* (EPA–HQ–OPP–2007–0893). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, proposes to establish a tolerance for residues of the herbicide sethoxydim (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio) propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on food commodities cuphea, seed at 35.0 ppm; echium. seed at 35.0 ppm; gold of pleasure, seed at 35.0 ppm; gold of pleasure, meal at 40.0 ppm; hare's ear mustard, seed at 35.0 ppm; lesquerella, seed at 35.0 ppm; lunaria, seed at 35.0 ppm; meadowfoam, seed at 35.0 ppm; milkweed, seed at 35.0 ppm; mustard, seed at 35.0 ppm; oil radish, seed at 35.0 ppm; poppy, seed at 35.0 ppm; sesame, seed at 35.0 ppm; sweet rocket, seed at 35.0 ppm; crambe, seed at 35.0 ppm; crambe, meal at 40.0 ppm. Analytical methods for detecting levels of sethoxydim and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the level in these tolerances were submitted to EPA. The proposed analytical method involves extraction, partition, and cleanup. Samples are then analyzed by gas chromatography with sulfur-specific flame photometric detection. The limit of quantitation (LOQ) is 0.05 ppm. Contact: Barbara Madden, telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov.*

3. *PP 7E7244.* (EPA–HQ–OPP–2007–0872). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ, 08540, proposes to establish a tolerance for residues of the fungicide cyazofamid, 4-chloro-2-cyano-N,N-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide and its metabolite CCIM (4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile) in or on food commodity carrot, roots at 0.06 ppm. Residues of cyazofamid and CCIM were extracted from 20 grams of carrot with acetonitrile. After filtration, the extract was transferred to a separatory funnel, washed with hexane, cleaned up on a Nexus SPE column, and the eluate was concentrated by using a TurboVap LV workstation. After reconstitution in 50:50 acetonitrile: water, quantitation was achieved by liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS). Contact: Susan Stanton, telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov.*

4. *PP 6F7092.* (EPA–HQ–OPP–2006–0781). Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596, proposes to establish a tolerance for residues of the herbicide

flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione in or on food commodities alfalfa, forage at 1.0 ppm and alfalfa, hay at 2.0 ppm. Practical analytical methods for detecting and measuring levels of flumioxazin have been developed and validated in or on all appropriate agricultural commodities and respective processing fractions. The level of quantitation (LOQ) of flumioxazin in the methods is 0.02 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances. Contact: James M. Stone, telephone number: (703) 305–7391; e-mail address: *stone.james@epa.gov*.

5. *PP 6F7106*. (EPA–HQ–OPP–2007–0416). Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409, proposes to establish a tolerance for residues of the fungicide azoxystrobin, [methyl (E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate] and the Z isomer of azoxystrobin, [methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate] in or on food commodities *PP 6F7106*: Barley, forage at 30 ppm; non-grass animal feeds, forage at 35 ppm; non-grass animal feeds, hay at 100 ppm; sorghum, forage at 25 ppm; sorghum, grain at 9 ppm; sorghum, stover at 40 ppm; wheat, forage at 30 ppm. Syngenta Crop Protection also proposes to establish a tolerance for residues of the fungicide azoxystrobin, [methyl (E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate] in or on food commodities *PP 6F7106*: Cattle, fat at 0.13 ppm; cattle, kidney at 1.00 ppm; cattle, liver at 5.10 ppm; cattle, meat at 0.07 ppm; cattle, meat byproducts (except liver and kidney) at 0.07 ppm; goat, fat at 0.13 ppm; goat, kidney at 1.00 ppm; goat, liver at 5.10 ppm; goat, meat at 0.07 ppm; goat, meat byproducts (except liver and kidney) at 0.07 ppm; egg white at 0.01 ppm; egg, yolk at 0.15 ppm; hog, fat at 1.10 ppm; hog, kidney at 0.03 ppm; hog, liver at 0.23 ppm; hog, meat byproducts (except liver and kidney) at 0.01 ppm; horse, kidney at 1.00 ppm; horse, liver at 5.10 ppm; horse, meat at 0.07 ppm; milk at 0.05 ppm; poultry, fat at 0.01 ppm; poultry, liver at 0.12 ppm; poultry, meat at 0.02 ppm; sheep, fat at 0.13 ppm; sheep, kidney at 1.00 ppm; sheep, liver at 5.10 ppm; sheep, meat at 0.07 ppm; sheep, meat byproducts (except liver and kidney) at 0.07 ppm. An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The Analytical Chemistry section of the EPA concluded that the method(s) are adequate for enforcement. Analytical methods are also available for analyzing meat, milk, poultry and eggs which also underwent successful independent laboratory validations. Contact: John Bazuin, telephone number: (703) 305–7381; e-mail address: *bazuin.john@epa.gov*.

6. *PP 7F7242*. (EPA–HQ–OPP–2007–0219). E. I. DuPont de Nemours and Company, DuPont Crop Protection, P.O. Box 30, Newark, DE 19714–0030, proposes to establish a tolerance for the sum of the residues of the insecticide oxamyl (methyl N-N-dimethyl-N-[(methylcarbamyl)-oxy]-1-thiooxamimidate) and its oxime metabolite methyl N,N-dimethyl-N-hydroxy-1-thiooxaminimidate in or on food commodities wheat forage, wheat hay, and wheat straw at 0.20 ppm. Adequate methods are available for data collection and tolerance enforcement for plant and animal commodities. The limit of quantitation is approximately 0.02 ppm. The Pesticide Analytical Manual (PAM) Vol. II, lists a gas liquid chromatography (GLC) method with flame photometric detection (sulfur mode), Method I, for the enforcement of tolerances for plant and animal commodities. This method involves alkaline hydrolysis to convert oxamyl to the oxime metabolite; therefore, the method determines combined residues of oxamyl and its oxime metabolite. Methods used for data collection are essentially the same as the PAM Vol. II method. The FDA PESTDATA database dated 1/94 (PAM Volume I, Appendix I) indicates that oxamyl is completely recovered (>80%) by multi-residue methods section 302 (Luke Method; Protocol D) and section 401. Contact: Thomas C. Harris, telephone number: (703) 308-9423; e-mail address: *harris.thomas@epa.gov*.

7. *PP 7F7243*. (EPA–HQ–OPP–2007–0871). Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596, proposes to establish a tolerance for residues of the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione in or on food commodities corn, field grain at 0.02 ppm; corn, field forage at 0.02 ppm; and corn, field stover at 0.02 ppm. Practical analytical methods for detecting and measuring levels of flumioxazin have been developed and validated in or on all appropriate agricultural commodities and respective processing fractions. The level of quantitation (LOQ) of flumioxazin in the methods is 0.02 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances. Contact: James M. Stone, telephone number: (703) 305–7391; e-mail address: *stone.james@epa.gov*.

8. *PP 7F7251*. (EPA–HQ–OPP–2007–0880). McLaughlin Gormley King Company (MGK), 8810 Tenth Avenue North, Minneapolis, MN 55427, proposes to establish a tolerance for residues of the insecticide D-phenothrin in or on all food commodities at 0.01 ppm after wide-area mosquito adulticide treatments. Golden Pacific Laboratories developed and validated a liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) analytical method with a limit of quantitation (LOQ) of 10 ppb of Sumithrin and a limit of detection (LOD) of 2 ppb as requested by EPA (see MRID # 46770001, "Magnitude of the Residue of Multicide Mosquito Adulticiding Concentrate 2705 in Grass, Alfalfa, and Leaf Lettuce, Raw Agricultural Commodities Following Mosquito Control Overhead Treatment"). This method was used to analyze a total of 332 field samples, 24 control samples, and 48 lab-fortified samples for Sumithrin after aerial application of an end use concentrate containing 10% Sumithrin (D-phenothrin) and 10% of the synergist piperonyl butoxide. Contact: Ann Sibold, telephone number: (703) 305–6502; e-mail address: *sibold.ann@epa.gov*.

Amendment to Existing Tolerances

1. *PP 8E5012*. (EPA–HQ–OPP–2005–0119). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to amend the tolerances in 40 CFR 180.532 by extending the expiration date for the existing time-limited tolerances established under the pesticide petition *PP 8E5012*, for an additional 2–year period from December 31, 2007 to December 31, 2009 for residues of the fungicide cyprodinil: 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine in or on the food commodities onion, dry bulb at 0.60 ppm; onion, green at 4.0 ppm; and strawberry at 5.0 ppm. Syngenta Crop Protection has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG–631B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for cyprodinil. An extensive database of

method validation data using this method on various crop commodities is available. Contact: Barbara Madden, telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov.*

2. *PP 6F7106* and *PP 7F7198.* (EPA–HQ–OPP–2007–0416). Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409, proposes to amend the tolerances in 40 CFR 180.507 for residues of the fungicide azoxystrobin, (methyl (E)-2-(2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl)-3-methoxyacrylate) and the Z isomer of azoxystrobin, (methyl (Z)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl)-3-methoxyacrylate) in or on the food commodities *PP 6F7106*: Aspirated grain fractions at 112 ppm; and *PP 7F7198*: Cotton, gin byproducts at 35 ppm; cotton, undelinted seed at 0.7 ppm; and rice, wild at 5.0 ppm. An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The Analytical Chemistry section of the EPA concluded that the method(s) are adequate for enforcement. Analytical methods are also available for analyzing meat, milk, poultry and eggs which also underwent successful independent laboratory validations. Contact: John Bazuin, telephone number: (703) 305–7381; e-mail address: *bazuin.john@epa.gov.*

New Exemption from Tolerance

PP 7F7225. (EPA–HQ–OPP–2007–0810). Cutting Edge Formulations, Inc., 5106 Bristol Industrial Way, Suite 400, Buford, GA 30518, proposes to establish an exemption from the requirement of a tolerance for residues of d-Limonene in or on food commodities tree, vine and berry crops, vegetable crops, alfalfa, rice, cotton, herbs and spices. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Erik Kraft, telephone number: (703) 308–9358; e-mail address: *kraft.erik@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 19, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–19235 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8474–5; Docket ID No. EPA–HQ–ORD–2006–0260]

Draft Integrated Science Assessment for Sulfur Oxides Health Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period on Draft Integrated Science Assessment for Sulfur Oxides Health Criteria.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the public comment period for the draft document titled, "Integrated Science Assessment for Sulfur Oxides Health Criteria; First External Review Draft" (EPA/600/R–07/108). The draft document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development as part of the Agency's review of the air quality criteria for sulfur oxides and the primary (health-based) national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2).

EPA is releasing this draft document solely for the purpose of seeking comment from the public and the Clean Air Scientific Advisory Committee (CASAC). It does not represent and should not be construed to represent any Agency policy, viewpoint, or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The public comment period begins on or about September 28, 2007. Comments must be received on or before November 30, 2007.

ADDRESSES: The draft "Integrated Science Assessment for Sulfur Oxides Health Criteria; First External Review Draft" is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Jee Young Kim by phone: 919–541–4157, fax 919–541–1818, or e-mail (*kim.jee-young@epa.gov*) to request either of these, and please provide your name, your mailing address, and the draft document title, "Integrated Science Assessment for Sulfur Oxides Health Criteria; First External Review Draft" (EPA/600/R–07/108) to facilitate processing of your request. Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Jee Young Kim, NCEA; telephone: 919–541–4157, facsimile: 919–541–1818, or e-mail: *kim.jee-young@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which "may reasonably be anticipated to endanger public health and welfare" and to issue air quality criteria for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. * * *." Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Sulfur oxides are one of six principal (or "criteria") pollutants for which EPA has established air quality criteria and NAAQS. EPA periodically reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of a current NAAQS and the appropriateness of new or revised standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee established pursuant to section 109 of the Clean Air Act and part of the EPA's Science Advisory Board (SAB), provides independent scientific advice on NAAQS matters, including advice on EPA's draft ISAs.

On May 16, 2006 (71 FR 28023), EPA formally initiated its current review of the criteria for Sulfur Oxides, requesting the submission of recent scientific information on specified topics. A draft of EPA's "Integrated Plan for Review of the Primary National Ambient Air Quality Standard for Sulfur Dioxide" was made available in February 2007 for public comment and was discussed by the Clean Air Science Advisory Committee (CASAC) via a publicly accessible teleconference consultation on May 11, 2007 (72 FR 20336). The Plan is being finalized and will be made available on EPA's Web site (*http://www.epa.gov/ttn/naaqs/standards/so2/s_so2_cr_pd.html*). In February 2007 (72 FR 6238), a workshop was held to discuss, with invited scientific experts, initial draft materials prepared in the development of the ISA and supplementary annexes for sulfur oxides.

The draft "Integrated Science Assessment for Sulfur Oxides Health Criteria; First External Review Draft" will be discussed by CASAC at a future public meeting; public comments that have been received prior to the public meeting will be provided to the CASAC review panel. A future **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting.

II. How To Submit Information to the Docket

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0260 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0260. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *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 OEI Docket in the EPA Headquarters Docket Center.

Dated: September 21, 2007.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E7–19146 Filed 9–27–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–55—FCC 07–168]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By this Public Notice, the Federal Communications Commission (Commission) announces supplemental procedures and provides guidance for completion of 800 MHz rebanding by National Public Safety Planning Advisory Committee (NPSPAC) licensees. As part of the rebanding process, NPSPAC licensees are being relocated to new frequencies in the 800 MHz band, with all rebanding costs to be paid by Sprint Corporation (Sprint). The Commission's orders provide for the rebanding process to be completed by June 26, 2008.

DATES: Effective September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418–1428 or *Roberto.Mussenden@fcc.gov*; John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418–0848 or *John Evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document summarizes the Public Notice in WT Docket No. 02–55, released on September 12, 2007. The full text of this document is available for public inspection on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Background

1. In the 800 MHz Report and Order, 69 FR 67823 (November 22, 2004), the

Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. In that order, the Commission required Sprint Nextel Corporation (Sprint) to pay for relocation of all affected 800 MHz licensee systems to their new channel assignments, including the expense of retuning or replacing the licensee's equipment as required. Sprint must provide each relocating licensee with "comparable facilities" on the new channel(s), and must provide for a seamless transition to enable licensee operations to continue without interruption during the relocation process. In a Public Notice released on September 12, 2007, the Federal Communications Commission (Commission) announced supplemental procedures and provided guidance for completion of 800 MHz rebanding by National Public Safety Planning Advisory Committee (NPSPAC) licensees.

3. The following procedures and guidelines are intended to expedite: (1) Rebanding planning activities undertaken by NPSPAC licensees; (2) negotiation of Frequency Reconfiguration Agreements (FRAs) with Sprint; and (3) physical implementation of rebanding. This Public Notice also provides guidance to Sprint and the 800 MHz Transition Administrator (TA) to help expedite cost review and approval, and ultimately to ensure that rebanding is accomplished in a reasonable, prudent, and timely manner.

Completion of Planning

4. The following time limits shall apply to planning activities for NPSPAC licensees that have negotiated a Planning Funding Agreement (PFA) with Sprint or are engaged in planning without a PFA: [1]

○ All NPSPAC licensees must complete planning (either with or without a PFA) and submit a cost estimate to Sprint in accordance with the following timelines:

■ NPSPAC licensees with systems of up to 5,000 subscriber units must complete planning and submit a cost estimate within 90 days of TA approval of the PFA.[2]

■ PSPAC licensees with more than 5,000 units must complete planning and submit a cost estimate as follows:

• 5,001–10,000 units: 100 days.

• Over 10,000 units: 110 days.[3]

○ NPSPAC licensees in Waves 1–3 that are already engaged in planning on the release date of this Public Notice must complete planning and submit a cost estimate to Sprint as follows: [4]

■ Wave 1—by October 15, 2007.

■ Wave 2—by November 15, 2007.

■ Wave 3—by December 15, 2007.

○ Sprint shall cooperate with and fully support NPSPAC licensee planning efforts in accordance with these time limits. The Commission discourages licensees from requesting extensions of time for planning that assert arguments on behalf of Sprint. Requests for extension based on delay caused by Sprint will not be routinely granted.

○ To facilitate completion of planning within these time limits, the Commission advises NPSPAC licensees to provide in their contracts with equipment vendors and consultants that such vendors and consultants will make sufficient resources available to support licensee planning efforts. Licensee requests for extension of planning time based on claimed unavailability of vendor or consultant resources will not be routinely granted.

○ Subject to the above limitations, a NPSPAC licensee may request that the Public Safety and Homeland Security Bureau (PSHSB) allow additional time for planning, but any such request must explain why more time is necessary as well as demonstrate that the licensee has exercised diligence in the time already allotted. Factors that will be considered in evaluating a request include system size and complexity, degree of interoperability with other systems, and level of effort required to prepare a reasonable cost estimate.

○ During planning, NPSPAC licensees shall provide the TA with biweekly updates regarding the status of their planning activities in such form as the TA may request. The licensee's cost of preparing such updates shall be a recoverable cost from Sprint.

Frequency Reconfiguration Agreement Negotiations

5. The following time limits shall apply to FRA negotiations between NPSPAC licensees and Sprint:

○ Following completion of planning and submission of a cost estimate to Sprint by the licensee, parties have 30 days to negotiate a FRA. Licensees shall complete their cost estimate in accordance with the Cost Estimate guidance provided by the TA.[5] Negotiations shall be subject to monitoring by the TA mediator, who shall confirm the date on which a cost estimate was submitted to Sprint, but the mediator is not required to participate in negotiations.

○ If the parties are unable to negotiate an FRA within 30 days, the parties shall participate in mediation for 20 days. The TA shall refer any remaining disputed issues to PSHSB within 10 days of the close of the mediation period, during which time the parties will complete the briefing of such issues. In referring such disputes, the TA mediator shall provide a record summary to PSHSB, and shall provide a Recommended Resolution unless the Bureau notifies the mediator that a mediator recommendation is not required.

Change Notice Process

6. The Change Notice process is designed to address unanticipated changes in cost, scope, or schedule that occur during implementation or in the case of an emergency.[6] Some NPSPAC licensees have expressed concern that uncertainty regarding the Change Notice process has prolonged initial planning and FRA negotiations. The Commission therefore offers the following guidance with respect to the Change Notice process:

○ The Change Notice process is subject to the Commission's Rebanding Cost Clarification Order.[7] Accordingly, the negotiation and approval of Change Notice requests should take into account the overall goals of this proceeding, not just the issue of minimum cost.[8]

○ Licensees may not use the Change Notice process to recover costs that were reasonably foreseeable during planning or FRA negotiations but were not raised in negotiations, or that were considered

[1] These planning timelines also apply to licensees who are reconfiguring Expansion Band frequencies in Stage 2.

[2] For licensees who conduct planning without a PFA, the TA shall designate an equivalent starting date for the planning period.

[3] Wave 4 licensees that are subject to deferred mediation due to pending international border issues will receive updated timelines once the revised band plans are available. Wave 4, Stage 2 licensees in mediation are subject to the timelines in this Public Notice.

[4] In instances where these deadlines would result in a licensee having less than 90, 100, or 110 total days to complete planning (based on the size of its system) in accordance with this Public Notice, the 90, 100, and 110-day planning timelines established above will control. For example, a Wave 1 licensee with 1000 units that began planning on August 1, 2007 would have 90 days from that date, *i.e.*, until October 30, 2007, to complete planning.

[5] *See http://www.800ta.org/content/documents/cost_estimate.asp.*

[6] *See http://www.800ta.org/content/documents/change_notice.asp* for TA procedures and recommended Change Notice forms.

[7] *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket 02–55, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

[8] *Id.* at 9821 ¶ 8.

and rejected. However, licensees that comply with the planning and FRA time limits discussed above may seek to recover costs incurred that could not reasonably be anticipated within such time limits.

○ Licensees should submit Change Notice requests concurrently to Sprint and the TA.[9] To facilitate Change Notice review and approval, both Sprint and the TA should have requests reviewed by personnel that are already familiar with the licensee's FRA and rebanding requirements wherever possible.

○ Sprint shall respond to all Change Notices requests within 10 working days of receipt. If negotiations are unsuccessful, either party may request mediation from the TA and parties shall participate in mediation for 15 working days, with any remaining disputes referred to PSHSB at that time. If parties agree to an amendment to their FRA, the TA shall review all such amendments within 10 working days from the date submitted by the parties for approval.

Rebanding Implementation

7. Rebanding implementation consists of: (1) Replacement and retuning of subscriber equipment; (2) retuning of base stations to the licensee's new channel assignments and commencement of system operations on the new channels (sometimes referred to as the system "cutover"); and (3) additional post-cutover system modifications (*e.g.*, disposal of temporary or legacy equipment, removal of pre-rebanding channels from subscriber units). NPSPAC licensees should initiate specific tasks and activities associated with these implementation steps as early in the rebanding process as possible. Some of these tasks can be initiated prior to the conclusion of FRA negotiations, and licensees should be prepared to proceed rapidly with implementation once the FRA is finalized. The Commission encourages NPSPAC licensees to take the following steps:

○ Use the resources offered by the TA to prepare for and expedite system reconfiguration. Guidance on key processes and procedures is available on the TA's Web site at *http://www.800TA.org/org/reconfig_phase/reconfig1.asp.*

○ Provide for early replacement/retuning of equipment.[10] Engage vendors and consultants in reconfiguration implementation and begin to replace or retune equipment as early as possible.

○ Finalize contracts with vendors and consultants to ensure that equipment will be delivered and implementation work completed in accordance with the FRA rebanding schedule and FCC requirements.

○ Create and distribute lists of key licensee personnel and contacts, as well as contacts for vendors, consultants, Sprint, and the TA. Designate an internal or vendor contact who will respond to requests from the TA for status updates regarding the implementation schedule and progress.

○ Maintain an inventory of all subscriber and infrastructure equipment affected by rebanding, and verify the receipt of all loaner and replacement equipment.

○ Notify Sprint when channels in the new NPSPAC band need to be made available to allow system testing or operation on the licensee's new channel assignments. Coordinate with Sprint regarding filing license modifications needed to add the new frequencies to the licensee's authorizations.

○ For systems that use mutual aid channels, have a plan in place to maintain mutual aid operations during reconfiguration. Coordinate efforts to ensure continuity of mutual aid interoperability arrangements with neighboring licensees.

○ Notify the TA if an issue affecting implementation is identified that vendors, consultants, or Sprint cannot quickly resolve, or that materially affects the implementation schedule.

Regional Implementation Planning

8. NPSPAC licensees and Sprint are encouraged to define implementation schedules, including the clearing of necessary frequencies for licensee reconfiguration and filing of license modifications, in the FRA wherever feasible. For licensees in areas with few, if any, other NPSPAC licensees; or licensees without significant interoperability dependencies, this should be a specific goal of the FRA negotiation. This will help reduce the amount of additional planning and planning resources required from all parties for subsequent efforts.[11]

9. As part of implementation preparation in certain (but not all) areas, the TA is conducting a series of NPSPAC rebanding implementation planning sessions for NPSPAC licensees on a regional or state-wide basis. NPSPAC licensees in such areas are expected to participate in these sessions, regardless of whether they have executed an FRA with Sprint. The purpose of the sessions is to develop a comprehensive implementation schedule, including proper identification of issues, risks, dependencies and next steps. The Commission provides the following guidance to NPSPAC licensees attending planning sessions:

○ Licensees should be prepared to discuss their overall timelines and implementation plans for reconfiguration, as well as interoperability, vendor commitments, and other dependencies, key assumptions, and open issues.

○ Licensees are encouraged to proceed with all possible reconfiguration implementation activities for their own systems while the regional planning process is under way.

○ Licensees that have executed an FRA without an implementation schedule that can reconfigure their infrastructure in advance of the regional planning process and independently of other systems (such as a statewide mutual aid network) should notify both Sprint and the TA concurrently of the date by which channels in the new NPSPAC band need to be made available. Sprint shall respond to all such requests with a schedule for making new NPSPAC channels available to the licensee within 15 working days.

○ Multiple licensees that propose to reconfigure as a coordinated group may present a single timeline and plan (even if they have separate FRAs).

○ For licensees in mediation with Sprint, discussions at regional planning sessions will not be treated as part of the official mediation record.

Wave 4 Border Area Planning

10. As addressed in prior public notices, the negotiation periods for border area licensees in Wave 4 have been extended pending resolution of ongoing international discussions on US-Canada and US-Mexico border issues.[12]

[9] Requests should be submitted using the TA's Change Notice Process Fact Sheet, available at: *http://www.800ta.org/content/PDF/forms/Change_Notice_Process_Fact_Sheet.pdf.*

[10] Under the TA's Subscriber Early Deployment (SED) program. licensees may begin retuning/replacement of equipment prior to finalization of the FRA. Alternatively, licensees should initiate retuning/replacement as early as possible after the FRA is finalized.

[11] Licensees in Stage 2 reconfiguring only Expansion Band channels are expected to have implementation timelines included in their FRAs and will only be affected by Regional Implementation Planning if they participate extensively in an interoperability network.

[12] *See* Public Safety and Homeland Security Bureau Announces Extension of Negotiation Period between Sprint Nextel and Border Area NPSPAC Licensees in Wave 4, Stage 2 of 800 MHz Band Reconfiguration, WT Docket No. 02–55, DA 07–3468 (PSHSB July 31, 2007); Public Safety and Homeland Security Bureau Extends Negotiation Period between Sprint Nextel and Border Area Non-

○ During this extended period, Wave 4 border area licensees are not required to engage in planning or negotiation prior to receipt of frequency designations from the TA.

○ However, the Commission encourages licensees to engage in such activities to the extent that they are not frequency-dependent and would not result in unnecessary duplication of costs. For example, border area licensees may conduct system inventories and develop plans for replacement and retuning of equipment.

○ If licensees choose to engage in such activities, Sprint shall pay licensees' reasonable costs in accordance with the requirements of the Commission's orders in this proceeding.[13]

Public Safety Licensee Requests for Extension of 36-Month Deadline

11. Some public safety licensees have expressed concern that they will be unable to complete their system rebanding by the June 26, 2008 deadline established by the Commission. The Commission offers the following guidance for public safety licensees who anticipate that they may need to file requests to extend the deadline:

○ In general, the Commission discourages public safety licensees from filing extension requests at this time. Requests that are filed may be held in abeyance pending further review of progress in rebanding implementation.

○ Requests for extension will be subject to a high level of scrutiny. Licensees will be expected to demonstrate that they have worked diligently and in good faith to complete rebanding expeditiously, and that the amount of additional time requested is no more than is reasonably necessary to complete the rebanding process.

○ Factors that will be considered in evaluating requests will include system size and complexity, degree of interoperability with other systems, and level of effort required to complete rebanding implementation.

○ The Commission clarifies that public safety licensees do not need to file extension requests in order to be assured of continued funding by Sprint in the event that their rebanding activities extend past the 36-month deadline. Sprint is required to pay all licensee rebanding expenses that are reasonable, prudent, and necessary regardless of when such costs are incurred.[14] The Commission directs the TA to approve FRAs that provide for recovery of rebanding costs incurred after June 26, 2008, provided such costs are otherwise recoverable under the TA's standards.

Ordering Clauses

12. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19210 Filed 9–27–07; 8:45 am]

BILLING CODE 6712–01–P

NPSPAC Licensees in Wave 4, Stage 1 of 800 MHz Band Reconfiguration, WT Docket No. 02–55, *Public Notice*, 22 FCC Rcd 11658 (PSHSB 2007).

[13] The Commission clarifies that this requires Sprint to pay all costs incurred by licensees in reasonable anticipation of rebanding. There is a remote possibility that the Commission's final rebanding plan for the border areas could result in some border licensees not needing to reband. However, given the likelihood that most if not all licensees will reband, allowing all licensees to proceed with rebanding planning prior to this contingency being resolved is likely to speed the transition, and therefore is a reasonable cost under the Commission's *Rebanding Cost Clarification Order*. *See Rebanding Cost Clarification Order*, 22 FCC Rcd at 9822 ¶ 9 (rebanding may proceed more efficiently "if rebanding tasks are initiated early in the process and carried on in stages throughout the process, even though this may be more costly than performing all of the rebanding work at once at a later date").

[14] This does not preclude the Bureau or Commission from requiring a licensee to pay its own rebanding costs based on a determination that the licensee has caused unjustified delay or has otherwise failed to meet its obligation to implement rebanding in good faith.

FEDERAL TRADE COMMISSION

[File No. 062 3190]

Ingenix, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 17, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Ingenix, File No. 062 3190," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://.www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC 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.htm*.

FOR FURTHER INFORMATION CONTACT: Rebecca E. Kuehn, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (201) 326-2252.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 17, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Ingenix, Inc. ("respondent" or "Ingenix").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Ingenix markets MedPoint, a data aggregation service that provides individual medical profiles to health and life insurance companies. Insurance companies use MedPoint for underwriting or claims review purposes. The medical profile generated by MedPoint analyzes the individual's prescription drug history, and provides, based on that analysis, potential medical conditions that may be present and predictive scores for the individual.

The Commission's complaint alleges that the medical profile generated for the MedPoint service is a consumer report and that respondent is a consumer reporting agency, as those terms are defined in Sections 603(d) and (f) of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a(d) and (f). The complaint alleges that the respondent's failure to provide the "Notice To Users of Consumer Reports: Obligations of Users Under the FCRA" ("Notice to Users"), the required content of which is found in 16 CFR 698, Appendix H, is a violation of Section 607(d) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(d).

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent to provide the Notice To Users to any user or prospective user of any medical profile generated by MedPoint that constitutes a consumer report, or of any other consumer report.

Part II.A. of the proposed order requires respondent to maintain or continue to maintain reasonable procedures to limit the furnishing of consumer reports to those with a permissible purpose, as required by Section 607(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(a).

Part II.B. of the proposed order requires respondent to follow or continue to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individuals about whom the reports relates, as required by Section 607(b) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b).

Part II.C. of the proposed order requires respondent to maintain or continue to maintain reasonable procedures to ensure compliance with Section 611 of the Fair Credit Reporting Act, 15 U.S.C. § 1681i, "Procedure in case of disputed accuracy."

Part II.D. of the proposed order requires respondent to conduct or continue to conduct a reasonable reinvestigation in cases of disputed accuracy, as required by Section 611 of the Fair Credit Reporting Act, 15 U.S.C. § 1681i.

Part II.E. of the proposed order requires respondent to comply or continue to comply with the Disposal of Consumer Report Information and Records Rule, 16 C.F.R. Part 682.

Part III of the proposed order contains a document retention requirement. It requires respondent to maintain and upon request make available to the Commission for inspection and copying documents demonstrating compliance with the requirements of Parts I and II of the proposed order.

Part IV of the proposed order requires respondent to distribute copies of the order to various principals, officers, directors, and managers, employees, agents, and representatives having decision-making responsibilities with respect to MedPoint or any other consumer report.

Part V of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VI of the proposed order requires respondent to file with the Commission one or more reports detailing its compliance with the order.

Part VII of the proposed order is a "sunset" provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–19152 Filed 9–27–07; 8:45 am]

[Billing Code: 6750–01–S]

FEDERAL TRADE COMMISSION

[File No. 062 3189]

Milliman, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 17, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Milliman, File No. 062 3189," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c).

16 CFR 4.9(c) (2005). [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at*http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC 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.htm.*

FOR FURTHER INFORMATION CONTACT: Rebecca E. Kuehn, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (201) 326-2252.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 17, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580; either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Milliman, Inc. ("respondent" or "Milliman").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Milliman markets IntelliScript, a data aggregation service that provides individual medical profiles, including but not limited to prescription drug purchase histories of insurance applicants, to health and life insurance companies. Insurance companies use IntelliScript for underwriting or claims review purposes. The medical profile generated by IntelliScript analyzes the individual's prescription drug history, and provides a 'map' of the risk levels associated with each drug, based on information provided by the insurer.

The Commission's complaint alleges that the medical profile generated for the IntelliScript service is a consumer report and that respondent is a consumer reporting agency, as those terms are defined in Sections 603(d) and (f) of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a(d) and (f). The complaint alleges that the respondent's failure to provide the "Notice To Users of Consumer Reports: Obligations of Users Under the FCRA" ("Notice To Users"),the required content of which is found in 16 CFR 698, Appendix H, is a violation of Section 607(d) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(d).

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent to provide the Notice To Users to any user or prospective user of any medical profile generated by IntelliScript that constitutes a consumer report or of any other consumer report.

Part II.A. of the proposed order requires respondent to maintain or continue to maintain reasonable procedures to limit the furnishing of consumer reports to those with a permissible purpose, as required by Section 607(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(a).

Part II.B. of the proposed order requires respondent to follow or continue to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individuals about whom the reports relates, as required by Section 607(b) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b).

Part II.C. of the proposed order requires respondent to maintain or continue to maintain reasonable procedures to ensure compliance with Section 611 of the Fair Credit Reporting Act, 15 U.S.C. § 1681i, "Procedure in case of disputed accuracy."

Part II.D. of the proposed order requires respondent to conduct or continue to conduct a reasonable reinvestigation in cases of disputed accuracy, as required by Section 611 of the Fair Credit Reporting Act, 15 U.S.C. § 1681i.

Part II.E. of the proposed order requires respondent to comply or continue to comply with the Disposal of Consumer Report Information and Records Rule, 16 C.F.R. Part 682.

Part III of the proposed order contains a document retention requirement. It requires respondent to maintain and upon request make available to the Commission for inspection and copying documents demonstrating compliance with the requirements of Parts I and II of the proposed order.

Part IV of the proposed order requires respondent to distribute copies of the order to various officers, directors, and managers, employees, agents, and representatives having decision-making responsibilities with respect to IntelliScript or any other consumer report.

Part V of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VI of the proposed order requires respondent to file with the Commission one or more reports detailing its compliance with the order.

Part VII of the proposed order is a "sunset" provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–19159 Filed 9–27–07: 8:45 am]

Billing Code: 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Ames Laboratory, Ames, Iowa, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On September 12, 2007, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Sheet metal workers, physical plant maintenance and associated support staff (including all maintenance shop personnel), and supervisory staff who were monitored or should have been monitored for potential internal radiation exposures associated with the maintenance and renovation activities of the thorium production areas in Wilhelm Hall (a.k.a. the Metallurgy Building or "Old" Metallurgy Building) at the Ames Laboratory from January 1, 1955, through December 31, 1970, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on October 12, 2007, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: September 24, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–19297 Filed 9–27–07; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Hanford Engineer Works, Richland, Washington, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On September 12, 2007, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors who were monitored or should have been monitored for internal radiological exposures while working at the Hanford Engineer Works in: the 300 Area fuel fabrication and research facilities from October 1, 1943 through August 31, 1946; the 200 Area plutonium separation facilities from November 1, 1944 through August 31, 1946; or the 100 B, D, and F reactor areas from September 1, 1944 through August 31, 1946; for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on October 12, 2007, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: September 24, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–19243 Filed 9–27–07; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

AHRQ Health Care Innovations Exchange

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Submission of Innovations.

SUMMARY: To support its objective of accelerating the diffusion and adoption of innovative health care delivery changes, the Agency for Healthcare Research and Quality (AHRQ) recently launched version 1.0 of the AHRQ Health Care Innovations Exchange (HCIE) Web site, *http://www.innovations.ahrq.gov*. The HCIE is a new initiative designed to support health care professionals in sharing and adopting innovations that improve health care quality. Version 1.0 of the Web site is focused on stimulating creativity and innovation and will serve as a virtual place to which innovators will be encouraged to submit their innovations and experiences from which potential adopters can begin learning about the nuances of implementation.

In Spring 2008, AHRQ will deploy version 2.0 of its Health Care Innovations Exchange site making hundreds of profiles of health care service innovations of varying degrees of novelty and scientific rigor accessible to the public. Version 2.0 will also offer expert commentary; stories; tools; lessons learned; "change packages"—sets of innovations implemented simultaneously; expanded content on implementation; and opportunities to learn and network.

To build the database of innovations profiles, AHRQ invites submissions of

health service innovations to its Health Care Innovations Exchange. The AHRQ Health Care Innovations Exchange database will cover the broad spectrum of health care settings, systems, and providers. Public health priority diseases/conditions, priority populations, and efforts to reduce disparities in quality will be highlighted.

The AHRQ Health Care Innovations Exchange is seeking a broad range of novel health care strategies, activities, and tools. AHRQ invites participation in its Health Care Innovations Exchange by submitting descriptions of innovative efforts to improve the delivery of health care services.

DATES: There is no deadline for submission. It is a continuous submission and review process.

Special Incentive To Submit

AHRQ will provide early submitters (those who submit by January 15, 2008) and opportunity to preview and comment on version 2.0 of the Health Care Innovations Exchange Web site via a secure mechanism. In this preview, an opportunity will be given to browse and search the innovations profiled up to that point.

ADDRESSES: Submit to *info@innovations.ahrq.gov.*

How To Submit

To submit a health care innovation for possible posting, send a description of the innovation that would include the health care setting and patient population it is our could be used for and any results that have been documented, to the Health Care Innovations Exchange at *info@innovations.ahrq.gov.* Please use the words "Innovation Submission" in the subject line. If you prefer, you can fax information about your innovation to 301–610–4950. You may also mail information to Mary Nix, Agency for Healthcare Research and Quality, Center for Outcomes and Evidence, 540 Gaither Road, Rockville, MD 20850. Detailed information on submitting can be obtained from the AHRQ Health Care Innovations Exchange Web page titled "Share Your Innovations", *http://www.innovations.ahrq.gov/share/share.aspx.*

Supporting documents may be sent with the submission. Once AHRQ has reviewed your submission and identified it as a priority item for posting, AHRQ will contact the submitter to discuss the details regarding what will be included in standardized postings. Copyright or other intellectual property issues, if any, will be addressed at that time.

If the innovation is accepted for inclusion, AHRQ will develop a detailed profile and send it to the submitter to review for accuracy and completeness. The innovation will then be ready for publication in Version 2.0 of the Health Care Innovations Exchange scheduled for public release in Spring 2008.

FOR FURTHER INFORMATION CONTACT: Explore: *http://www.innovations.ahrq.gov*; And/Or Contact: Mary P. Nix, MS, MT(ASCP)SBB, Health Scientist Administrator, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, phone: 301–427–1624, e-mail: *Mary.Nix@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Inclusion Criteria

To be considered for inclusion, health are innovations have to meet six criteria with respect to the nature of the activity, the level of documentation, and the participation of the innovator. These are minimum requirements. The ultimate decision to publish a detailed profile of an innovation (an Innovation Profile) will depend on several factors, including an evaluation by AHRQ, AHRQ's priorities (see below), and the number of similar ideas in the Health Care Innovations Exchange. Innovations that do not qualify for an Innovation Profile may qualify as Innovation Briefs (short descriptions of intriguing activities that either do not meet the minimum requirements or are not regarded as high priority) or Innovation Attempts (descriptions of projects that did not succeed as planned). Criteria to be considered are:

The innovation is a patient care services activity

The innovation does not have to involve direct patient care or direct contact with health care consumers. However, it must have important implications for the delivery of patient care—whether preventative, emergent, chronic, acute, rehabilitative, long-term, or end-of-life. Innovations that are devices, tools, technology, software, curricula, policies, procedures, and changes to the physical environment will generally be excluded unless they are tied to a specific and associated change in the health care delivery process when implemented.

The innovation intends to improve one or more domains of health care quality

The innovation must be designed to address one or more specific measurable indicators of quality in one or more of the following domains: effectiveness, efficiency, equity, patient-centeredness, safety, and timeliness. The measurable quality indicators do not have to come from an established measure set, but they must be clearly defined and relevant to the quality issue the innovation addresses. In addition, the innovation must not contradict established standards of evidence-based care.

There is reason to believe that the innovation will be effective

Evidence that the innovation is likely to achieve its goals must be provided. Ideally, quantitative or qualitative support for a link between the innovation and improved performance on the defined quality indicator should be offered. However, if data are unavailable, limited, or lacking methodological rigor, the design or theoretical foundation of the innovative activity may serve as sufficient support.

The activity is truly innovative in a given context

For the purposes of the Health Care Innovation Exchange, innovations are activities that are generally perceived as new in a particular context or setting relative to the usual care processes. In addition to brand new ideas, this includes activities adapted from other industries to health care, transferred from one health care setting or market segment to another, drawn from settings in other countries, or applied to a new or different patient population. A description of how the innovation differs from what was regarded as standard practice in the setting in which it was implemented must be supplied.

Information about the innovation is publicly available

Innovators must be willing to make enough information freely available to enable a user of the Health Care Innovations Exchange to understand the elements of the innovation and, if desired, adopt the innovation. This requirement does not exclude innovations that incorporate commercial products or other materials for which there may be a fee or licensing requirements. It is not necessary for all information about the innovation to be publicly available, but AHRQ will need access to information with sufficient detail to produce a full profile.

The innovator (or a representative) is willing and able to participate in the Health Care Innovations Exchange

A knowledgeable contact person must be available as a resource for potential adopters of the innovation for at least one year. To minimize the burden on innovators, the Health Care Innovations

Exchange staff will facilitate communication among users and developers of innovations. However, the participation of the innovator is essential to the ability of the Health Care Innovations Exchange to foster and promote the diffusion of innovations through social learning, a central goal of this program. The level of participation can vary according to innovator interest and schedules. Innovators will be expected to respond to occasional inquiries and to join a Health Care Innovations Exchange community of practice related to the innovator's particular innovation, so that ideas can be shared in an organized instructional fashion or setting.

AHRQ's Priorities

- *Specific populations.* AHRQ is interested in identifying innovations that will help to reduce disparities in health care and health status. Populations of interest to AHRQ are low-income groups, minority groups, women, children, the elderly, and individuals with special health care needs.
- *Potential for high impact.* The Health Care Innovations Exchange will give publication or dissemination priority to innovations that are likely to have a significant effect on the overall value of health care. Impact may be defined in different ways, e.g., the innovation may affect a broad population, address a critical health issue, or demonstrate large cost savings.
- *Innovator interest in participating.* All else being equal, AHRQ will give priority to innovators who express a strong interest in becoming involved in other activities of the Health Care Innovations Exchange, such as participating in learning networks and providing commentaries.
- *AHRQ-funded innovations.* The Health Care Innovations Exchange will aim to include effective innovations that are or were funded by the Agency.

Dated: September 18, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–4771 Filed 9–27–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Availability of Draft Public Health Service (PHS) Clinical Practice Guideline Update on Treating Tobacco Use and Dependence

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice for pre-publication review and comment.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces the availability of a draft Public Health Service clinical practice guideline Update on Treating Tobacco Use and Dependence for pre-publication review. This PHS guideline update is being produced by a multidisciplinary private-sector panel of experts convened by the agencies of the Public Health Service. The expert panel will not respond to individual comments but will consider all comments in determining revisions to the guideline.

DATES: Comments must be postmarked by October 26, 2007.

Request for Draft PHS Guideline Update

To receive a copy of the draft guideline update, requests must include: Requester's name; Affiliation (business or organization); Address (including zip code); Telephone and Fax numbers. This is a draft document. Since changes are likely to be made to the draft guideline update during the review process this draft document should not be used as a clinical practice guideline until final publication. It is anticipated that the final guideline update will be made available to the public in the spring of 2008.

You will be mailed a printed DRAFT copy of the draft guideline update and sent by e-mail: (1) An electronic form to submit any comments and (2) a short conflict of interest form to be completed by those submitting comments.

ADDRESSES: Written requests, including your e-mail address, should be mailed to: David Fraser, Assistant Director for Research Administration, University of Wisconsin-Center for Tobacco Research and Intervention, 1930 Monroe Street, Suite 200, Madison, WI 53711–2027.

Automated Review Process

A computerized guideline review process enables comments to be entered on a special form designed for typed entry, documentation and consideration of all comments. The form will be sent by e-mail, with instructions, to those requesting the draft guideline update. To facilitate the review process, it is strongly recommended that reviewers use the computer form to record their comments. For technical assistance or questions regarding this input process, please follow the directions in the materials you receive.

FOR FURTHER INFORMATION CONTACT: For information on the PHS Treating Tobacco Use and Dependence Clinical Practice Guideline Update, please contact: CAPT Ernestine Murray, Project Officer, Agency for Healthcare Research and Quality (AHRQ), Center for Outcomes and Evidence, 540 Gaither Road, Room 6337, Rockville, MD 20850, Telephone: 301–427–1630, E-mail Address: *ernestine.murray@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: In July 2006 a private-sector panel of experts was convened by the Agencies of the Public Health Service to update the PHS Treating Tobacco Use and Dependence Clinical Practice Guideline to improve the effectiveness of smoking cessation activities. A public meeting was also held in June 2007 for the panel to receive comments and information relevant to the update of the PHS guideline. The panel also reviewed and synthesized the literature on the topic and drafted a set of conclusions and recommendations based on the best available scientific data and expert judgments. A draft of these conclusions and recommendations is now undergoing peer review by a substantial number of individuals and groups who are knowledgeable about clinical treatment of tobacco dependence.

With this notice, the panel and the PHS are also making the draft guideline available to other individuals who wish to provide written review comments. After review and evaluation of the comments received, the panel will make appropriate revisions to the current draft PHS guideline update and prepare the clinical practice guideline update on Treating Tobacco Use and Dependence. Potential reviewers should note that the PHS may disclose the names of the guideline reviewers at the same time the guideline is published. The PHS may also release review comments after the guideline is published. Generally, comments will not be attributed to specific reviewers. However, attribution may be necessary or useful to indicate the validity or reliability of particularly important comments.

Dated: September 21, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–4770 Filed 9–27–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–0636]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

State-based Evaluation of the Alert Notification Component of CDC's Epidemic Information Exchange (Epi-X) Secure Public Health Communications Network (OMB No. 0920–0636)—Extension—National Center for Health Marketing (NCHM), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

A central component of the CDC's mission is to strengthen the nation's public health infrastructure by coordinating public health surveillance at CDC and providing domestic and international support through scientific communications and terrorism preparedness and emergency response. The Epidemic Information Exchange (Epi-X) provides CDC and its state and local partners and collaborators with a secure public health communications network intended for routine and emergent information exchange in a secure environment.

Great attention has been focused on improving secure public health communications networks for the dissemination of critical disease outbreak and/or bioterrorism-related events, which may have multi-jurisdictional involvement and cause disease and death within a short time-frame.

The purpose of the information gathered during this notification proficiency testing exercise is to evaluate the extent to which new registrants and currently authorized users of the Epidemic Information Exchange (Epi-X) are able to utilize alert notification functionality to minimize or prevent unnecessary injury or disease-related morbidity and mortality through the use of secure communications and rapid notification systems. In this case, notification alerts would be sent to targeted public health professionals through a 'barrage' of office cell phone, home telephone, and pager calls to rapidly inform key health authorities from multidisciplinary backgrounds and multiple jurisdictions of evolving and critical public health information, and assist with the decision making process. Presently, the necessity of this evaluation process is timely because of ongoing terrorism threats and acts perpetrated worldwide.

The survey information will be gathered through an online questionnaire format, and help evaluate user comprehension and facility solely with the targeted notification and rapid alerting functionalities of Epi-X. The questionnaire will consist of both closed- and open-ended items, and will be administered through Zoomerang, an online questionnaire program, or as a last resort, by telephone. Approximately 2,000 Epi-X users from every state of the union will be asked to volunteer input (in a 5–10 question format) about their experiences using the alert notification functionalities of the Epi-X communications system.

There will be no cost to respondents, whose participation will be strictly voluntary. The total estimated burden hours are 167.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public Health Professionals	1,000	1	10/60

Dated: September 24, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–19198 Filed 9–27–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07BR]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Survey of Residential Care Facilities (NSRCF) 2008–2010—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The National Survey of Residential Care Facilities (NSRCF) is a new collection. It is designed to complement data collected by other federal surveys and to fill a significant data gap about a major portion of the long-term care population. Data from the NSRCF will provide a database on residential care facilities that researchers and policymakers can use to address a wide array of research and policy questions. The survey will utilize a computer-assisted personal interviewing (CAPI) system to collect information about facility and resident characteristics. This computerized system speeds the flow of data making it possible to release information on a more timely basis and makes it easier for respondents to participate in the survey.

A stratified random sample of residential care facilities across four strata (small, medium, large and extra large) will be selected to participate in the NSRCF. Within each facility a random sample of residents will be selected. To be eligible a facility must have four or more beds, be licensed, certified, or registered and provide or arrange for 24 hour supervision and personal care services for residents.

The facility questionnaire will collect data about facility characteristics (size, age, types of rooms), services offered, characteristics of the resident population, facility policies and services, costs of services, and background of the administrator. The Resident Questionnaire collects information on resident demographics, current living arrangements within the facility, involvement in activities, use of services, charges for care, health status, and cognitive and physical functioning.

In the pretest, 25 facility administrators, and 25 facility staff serving as respondents will be interviewed on an annualized basis. Residents themselves will not be interviewed. For the national survey, approximately 2,250 facilities will be surveyed for an annual average of 750. Information on 5 residents each will be collected from an annual average of 750 facility staff. Users of NSRCF data include, but are not limited to the CDC; the Congressional Research Office; the Bureau of Health Professions, Health Resources and Services Administration; the Office of the Assistant Secretary for Planning and Evaluation (ASPE); the Agency for Healthcare Research and Quality; the American Association of Homes and Services for the Aging; the National Hospice and Palliative Care Organization; American Health Care Association, Centers for Medicare and Medicaid Services (CMS), Bureau of the Census; and AARP. Other users of these data include universities, contract research organizations, many in the private sector, foundations, and a variety of users in the print media. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Facility Administrator (pretest)	25	1	1	25
Facility Staff (pretest)	25	5	30/60	63
Facility Administrator	750	1	1	750
Facility Staff	750	5	30/60	1,875
Total				2,713

Dated: September 24, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–19200 Filed 9–27–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–312]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conflict of Interest and Ownership and Control Information; *Use:* The Conflict of Interest and Ownership and Control Information Statement (COI Statement) is sent to all Medicare Fiscal Intermediaries (FIs) and Carriers to collect full and complete information on any entity's or individual's ownership interest (defined as a 5 per centum or more) in an organization that may present a potential conflict of interest in their role as a Medicare FI or Carrier.

The information gathered in the survey is used to ensure that all potential, apparent and actual conflicts of interest involving Medicare contractors are appropriately mitigated and that employees of the contractors, including officers, directors, trustees and members of their immediate families, do not utilize their positions with the contractor for their own private business interest to the detriment of the Medicare program. Information is also requested on potential organizational

conflicts of interest involving Medicare contractors' ownership of other entities in the health care industry. If a response has indicated that a potential conflict of interest exists, the contractor is contacted and asked to address how the conflict can be avoided or mitigated. *Form Number:* CMS–R–312 (OMB#: 0938–0795); *Frequency:* Reporting—Annually; *Affected Public:* Private Sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 37; *Total Annual Responses:* 37; *Total Annual Hours:* 11,100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: September 21, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–19247 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2267–N]

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Laboratories Licensed by the State of Washington

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

ACTION: Notice.

SUMMARY: This notice announces that laboratories located in and licensed by the State of Washington that possess a valid license under the Medical Test Site Licensure Law, Chapter 70.42 of the Revised Code of Washington, are exempt from the requirements of the Clinical Laboratory Improvement Amendments of 1988 until September 28, 2013.

EFFECTIVE DATES: The exemption granted by the notice is effective until September 28, 2013.

FOR FURTHER INFORMATION CONTACT: Sandra Farragut (410)786–3531.

SUPPLEMENTARY INFORMATION:

I. Background

Section 353 of the Public Health Service Act (PHSA), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578) enacted on October 31, 1988, generally provides that no laboratory may perform tests on human specimens for the diagnosis, prevention or treatment of any disease or impairment of, or assessment of the health of human beings unless it has a certificate to perform that category of tests issued by the Secretary of the Department of Health and Human Services (HHS). Under section 1861(s) of the Social Security Act (the Act), the Medicare program will only pay for laboratory services if the laboratory has a CLIA certificate. Section 1902(a)(9)(C) of the Act requires that State Medicaid plans pay only for laboratory services furnished by CLIA-certified laboratories. Thus, although subject to specified exemptions and exceptions, laboratories generally must have a current and valid CLIA certificate to test human specimens for medical purposes noted above to be eligible for payment for those tests from the Medicare or Medicaid programs. Regulations implementing section 353 of the PHS Act are contained in 42 CFR part 493.

Section 353(p) of the PHS Act provides for the exemption of laboratories from CLIA requirements in States that enact legal requirements that are equal to or more stringent than CLIA's statutory and regulatory requirements.

Section 353(p) of the PHS Act is implemented in subpart E of regulations at 42 CFR part 493. Sections 493.551 and 493.553 provide that we may exempt from CLIA requirements, for a period not to exceed 6 years, all State licensed or approved laboratories in a State if the State Licensure Program meets the specified conditions. Section 493.559 provides that we will publish a notice in the **Federal Register** when we grant exemption to an approved State laboratory licensure program. It also provides that the notice will include the following:

- The basis for granting the exemption.
- A description of how the laboratory requirements are equal to or more stringent than those of CLIA.
- The term of approval, not to exceed 6 years.

State of Washington's Application for CLIA Exemption of Its Laboratories

The State of Washington has applied for exemption of its laboratories from CLIA program requirements. The State of Washington submitted all of the applicable information and attestations required by § 493.551, § 493.553, and § 493.557 for State licensure programs seeking exemption of their licensed laboratories from CLIA program requirements.

Examples of documents and information submitted are: A comparison of its laboratory licensure requirements with comparable CLIA condition-level requirements (that is, a crosswalk); a description of its inspection process; proficiency testing monitoring process; its data management and analysis system; its investigative and response procedures for complaints received against laboratories; and its policy regarding announcement and unannouncement of inspections.

CMS Analysis of Washington's Application and Supporting Documentation

In order to determine whether we should grant a CLIA exemption to laboratories licensed by a State, we review the application and additional documentation that the State submits to CMS and conduct a detailed and in-depth comparison of State licensure program and CLIA requirements to determine whether the State program meets the requirements at subpart E of part 493.

In summary, the State generally must demonstrate that its State licensure program meets the following requirements:

- Have State laws in effect that provide for laboratory requirements that are equal to or more stringent than CLIA condition-level requirements for laboratories.
- Have a State licensure program with requirements that are equal to or more stringent than the CLIA condition-level requirements such that the State program licenses laboratory would meet the CLIA condition-level requirements if it were inspected against those requirements.
- Is shown to meet the requirements of § 493.553, § 493.555, and § 493.557(b) and is approved by CMS under § 493.551. For example, among other things, programs would need to:

—Demonstrate that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements.
—Permit CMS or CMS agents to inspect laboratories within the State.
—Require laboratories within the State to submit to inspections by CMS or CMS agents as a condition of licensure.
—Agree to pay the cost of the validation program administered by CMS and the cost of the State's pro rata share of the general overhead to develop and implement CLIA as specified in § 493.645(a), § 493.646(b), and § 493.557(b).
—Take appropriate enforcement action against laboratories found by CMS or CMS agents not to be in compliance with requirements comparable to condition-level requirements, as specified in § 493.557(b).

As specified in our regulations at § 493.555 and § 493.557(b), our review of a State laboratory program includes (but is not necessarily limited to) an evaluation of the following:

• Whether the State's requirements for laboratories are equal to or more stringent than the CLIA condition-level requirements.

• The State's inspection process requirements to determine the following:

—The comparability of the full inspection and complaint inspection procedures to those of CMS.
—The State's enforcement procedures for laboratories found to be out of compliance with its requirements.
—The ability of the State to provide CMS with electronic data and reports with the adverse or corrective actions resulting from proficiency testing (PT) results that constitute unsuccessful participation in CMS-approved PT programs and with other data we determine to be necessary for validation review and assessment of the State's inspection process requirements.

• The State's agreement with CMS to ensure that the agreement obligates the State to do the following:

—Notify CMS within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval withdrawn or revoked or been in any way sanctioned.
—Notify CMS within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases when the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.
—Notify each laboratory licensed by the State within 10 days of CMS' withdrawal of the exemption.
—Provide CMS with written notification of any changes in its licensure (or approval) and inspection requirements.
—Disclose to CMS or a CMS agent any laboratory's PT results in accordance with a State's confidentiality requirements.
—Take the appropriate enforcement action against laboratories found by CMS not to be in compliance with CLIA condition-level requirements in a validation survey and report these enforcement actions to CMS.
—Notify CMS of all newly licensed laboratories, including changes in the specialties and subspecialties for which any laboratory performs testing, within 30 days.
—Provide CMS, as requested, inspection schedules for validation purposes.

In keeping with the process described above, we evaluated the application and supporting materials that were submitted by Washington State to verify that the laboratories licensed through their program will meet or exceed the requirements of the following subparts of part 493: Subpart H, Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing; Subpart J, Facility Administration for Nonwaived Testing; Subpart K, Quality Systems for Nonwaived Testing, Subpart M, Personnel for Nonwaived Testing; Subpart Q, Inspection; and Subpart R, Enforcement Procedures.

We found that Washington State's laboratory licensure program requirements mapped to all the CLIA condition-level requirements. Its licensure program's inspection process and proficiency testing monitoring processes were adequate. Other materials that were submitted demonstrated compliance with the other above-referenced requirements of subpart E of Part 493. As a result, CMS concluded that the submitted documents supported exempting laboratories licensed under that program from the CLIA program requirements. Furthermore, a review of CMS' validation inspections conducted by the CMS office in Seattle, Washington, supported the conclusion.

The Federal validation inspections of CLIA-exempt laboratories, as specified in § 493.563, were conducted on a representative sample basis as well as in response to any substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections has been and will continue to be CMS' principal tool for verifying that the laboratories located in and licensed by the State are in compliance with CLIA requirements.

The CMS Regional Office in Seattle, Washington has conducted validation inspections of a representative sample (approximately 5 percent) of the laboratories inspected by the Washington State Office of Laboratory Quality Assurance (LQA). The validation inspections were primarily of the concurrent type; that is, CMS surveyors accompanied Washington State's inspectors, each inspecting against his or her agency's respective regulations. Analysis of the validation data revealed no significant differences between the State and Federal findings. The validation surveys verified that the State of Washington inspection process covers all CLIA conditions applicable to each laboratory being inspected, and also verified that the State laboratory licensure requirements meet or exceed CLIA condition-level requirements. The CMS validation surveys found the State inspectors highly skilled and qualified. The LQA inspected laboratories in timely fashion, that is, all laboratories were inspected within the required 24-month cycle. All parameters monitored by CMS' Seattle office to date indicate that the State of Washington is meeting all requirements for approval of CLIA exemption. This Federal monitoring will continue as an on-going process.

Conclusion

Based on review of the documents submitted by the Washington State laboratory licensure program pursuant to the requirements of subpart E of part 493, as well as the outcome of the validation inspections conducted by the CMS regional office in Seattle, we find that the Washington State laboratory licensure program meets the requirements of 42 CFR § 493.551(a), and that as a result, we may exempt from CLIA program requirements all State licensed or approved laboratories.

Approval of the CLIA exemption for laboratories located in and licensed by the State of Washington is subject to removal if we determine that the outcome of a comparability review or a validation review inspection is not acceptable, as described under § 493.573 and § 493.575, or if the State of Washington fails to pay the required fee every 2 years as required under § 493.646.

Laboratory Data

In accordance with our regulations at § 493.557(b)(8), the State of Washington will continue to agree to provide us with changes to a laboratory's specialties or subspecialties based on the State's survey. The State of Washington also will provide us with changes in a laboratory's certification

status, such as a change from a regular certificate to a certificate of waiver.

Required Administrative Actions

CLIA is a user-fee funded program. The registration fee paid by laboratories is intended to cover the cost of the development and administration of the program. However, when a State's application for exemption is approved, we do not charge a fee to laboratories in the State. The State's share of the costs associated with CLIA must be collected from the State, as specified in § 493.645.

The State of Washington must pay for the following:

- Costs of Federal inspection of laboratories in the State to verify that Washington State's laboratory licensure program requirements are enforced in an appropriate manner. The average Federal hourly rate is multiplied by the total hours required to perform Federal validation surveys within the State.
- Costs incurred for Federal investigations and surveys triggered by complaints that are substantiated. We will bill the State of Washington on a semiannual basis.
- The State of Washington's proportionate share of the costs associated with establishing, maintaining, and improving the CLIA computer system, a portion of those services from which the State of Washington received direct benefit or contributed to the CLIA program in the State. Thus, the State of Washington is being charged for a portion of CMS' direct and indirect costs as well as a portion of the costs incurred by the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA).

In order to estimate the State of Washington's proportionate share of the general overhead costs to develop and implement CLIA, we determined the ratio of laboratories in the State to the total number of laboratories nationally. Approximately 1.5 percent of the registered laboratories are in the State of Washington. We determined that a corresponding percentage of the applicable CDC, FDA, and CMS costs should be borne by the State of Washington.

The State of Washington has agreed to pay us the State's pro rata share of the overhead costs and anticipated costs of actual validation and complaint investigation surveys. A final reconciliation for all laboratories and all expenses will be made. We will reimburse the State for any overpayment or bill it for any balance.

II. Approval

In light of the foregoing, CMS grants approval of the State of Washington's laboratory licensure program under Subpart E. All laboratories located in and licensed by the State of Washington under the Medical Test Site Licensure Law, Chapter 70.42 of the Revised Code of Washington, are CLIA-exempt for all specialties and subspecialties until September 28, 2013.

Authority: Section 353(p) of the Public Health Service Act (42 U.S.C. 263a).

Dated: July 20, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7–18731 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Pennsylvania State Plan Amendment (SPA) 06–007

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

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing to be held on November 16, 2007, at Suite 216, The Public Ledger Building, 150 S. Independence Mall West, Conference Room 241, the Pennsylvania Room, Philadelphia, PA 19106; to reconsider CMS's decision to disapprove Pennsylvania SPA 06–007.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, MD 21244. Telephone: (410) 786–2055

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS's decision to disapprove Pennsylvania State plan amendment (SPA) 06–007 which was submitted on September 27, 2006. This SPA was disapproved on June 29, 2007.

Under this SPA, the State requested the addition of targeted case management services to low-income, first-time expectant mothers who have, or are at risk of having, a high incidence of medical or social problems. The new targeted case management services were to be provided through the Nurse Family Partnership Program. CMS made a Request for Additional Information on December 22, 2006, to which the State responded on April 2, 2007. The information provided confirmed that the targeted case management services proposed in SPA 06–007 are currently provided to all individuals without charge.

The amendment was disapproved because CMS found that the amendment violated the statute for reasons set forth in the disapproval letter. CMS consulted with the Secretary as required by Federal regulations at 42 CFR 430.15(c)(2).

Section 1902(a)(10) of the Social Security Act (the Act) requires that States make available medical assistance which is defined at section 1905(a) of the Act, and is limited to payment of medical costs for "individuals whose income and resources are insufficient to meet all of such costs." The term "medical assistance" fundamentally excludes payment for medical services that are free to the general public, since where a service is provided without charge the individual is not in the circumstance of having insufficient income or resources to meet the cost of care. Hence, such services do not meet the definition of "medical assistance."

In addition, section 1902(a)(30) of the Act requires States to have methods and procedures in place to assure that payments are consistent with efficiency, economy, and quality of care. CMS did not find that Medicaid payments for case management for first-time expectant mothers were consistent with this requirement when these same services are available to non-Medicaid enrollees without charge. Furthermore, the State failed to provide documentation requested by CMS demonstrating that the rate methodology used to determine payments to service providers was consistent with section 1902(a)(30). The State also failed to provide documentation of the various cost elements used to determine a fee-schedule amount or to submit provider surveys conducted by the State to determine whether its proposed indirect cost rate should be applied to direct costs to calculate the final fee paid to providers.

Based on the above, and after consultation with the Secretary of the Department of Health and Human Services as required under Federal regulations at 42 CFR 430.15(c)(2), CMS disapproved Pennsylvania Medicaid SPA 06–007.

The issues to be decided at the hearing are:

- Whether Pennsylvania has demonstrated that its SPA 06–007

complies with sections 1902(a)(10) and 1902(a)(30) of the Act by limiting payment of medical assistance to payment of medical costs for individuals who lack sufficient income and resources to meet the cost of care; and

• Whether the State has provided adequate documentation to demonstrate that the State's rate methodology is consistent with the requirements of section 1902(a)(30) of the Act; specifically whether the rates paid to service providers are consistent with efficiency, economy, and quality of care.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Pennsylvania announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Estelle B. Richman,
Secretary of Public Welfare, Commonwealth of Pennsylvania, Department of Public Welfare, Office of Medical Assistance Programs, Bureau of Policy, Budget and Planning,
P.O. Box 8046,
Harrisburg, PA 17105.

Dear Ms. Richman:

I am responding to your request for reconsideration of the decision to disapprove Pennsylvania State plan amendment (SPA) 06–007, which was submitted on September 27, 2006, and disapproved on June 29, 2007.

Under this SPA, the State requested the addition of targeted case management services for first-time, low-income expectant mothers who have, or are at risk of having, a high incidence of medical or social problems. The Centers for Medicare & Medicaid Services (CMS) disapproved the SPA because CMS found that it violated the statute for reasons set forth in the disapproval letter.

The CMS made a Request for Additional Information on December 22, 2006, to which the State responded on April 2, 2007. The information provided confirmed that the targeted case management services proposed in SPA 06–007 are currently provided to first-time expectant mothers without charge through State grant funding and private funds.

Section 1902(a)(10) of the Social Security Act (the Act) requires that States make available medical assistance, which is defined at section 1905(a) of the Act, and is limited to payment of medical costs for "individuals whose income and resources are insufficient to meet all of such costs." The term "medical assistance" fundamentally excludes payment for medical services that are free to the general public, since where a service is provided without charge the individual is not in the circumstance of having insufficient income or resources to meet the cost of care. Hence, such services do not meet the definition of "medical assistance."

In addition, section 1902(a)(30) of the Act requires States to have methods and procedures in place to assure that payments are consistent with efficiency, economy, and quality of care. CMS did not find that Medicaid payments for case management for first-time expectant mothers were consistent with this requirement when these same services are available to non-Medicaid enrollees without charge. Furthermore, the State failed to provide documentation requested by CMS demonstrating that the rate methodology used to determine payments to service providers was consistent with section 1902(a)(30). The State failed to provide documentation of the various cost elements used to determine a fee-schedule amount or to submit provider surveys conducted by the State to determine whether its proposed indirect cost rate should be applied to direct costs to calculate the final fee paid to providers.

Based on the above, and after consultation with the Secretary of the Department of Health and Human Services as required under Federal regulations at 42 CFR 430.15(c)(2), CMS disapproved Pennsylvania Medicaid SPA 06–007.

The issues to be decided at the hearing are

• Whether Pennsylvania has demonstrated that its SPA 06–007 complies with sections 1902(a)(10) and 1902(a)(30) of the Act by limiting payment of medical assistance to payment of medical costs for individuals who lack sufficient income and resources to meet the cost of care; and

• Whether the State has provided adequate documentation to demonstrate that the State's rate methodology is consistent with the requirements of section 1902(a)(30) of the Act; specifically whether the rates paid to service providers are consistent with efficiency, economy, and quality of care.

I am scheduling a hearing on your request for reconsideration to be held on November 16, 2007, at Suite 216, The Public Ledger Building, 150 S. Independence Mall West, Conference Room 241, the Pennsylvania Room, Philadelphia, PA 19106, to reconsider the decision to disapprove SPA 06–007. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,
Kerry Weems,
Acting Administrator.

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program.)

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7–19141 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–3186–PN]

Medicare and Medicaid Programs; Application by the Indian Health Service (IHS) for Continued Recognition as a National Accreditation Organization for Accrediting American Indian and Alaska Native Entities To Furnish Outpatient Diabetes Self-Management Training

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice announces the receipt of an application from the Indian Health Service for continued recognition as a national accreditation organization for accrediting American Indian and Alaska Native entities that wish to furnish outpatient diabetes self-management training to Medicare beneficiaries. This notice also announces 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. October 29, 2007.

ADDRESSES: In commenting, please refer to file code CMS–3186–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3186–PN, P.O. Box 3014, Baltimore, MD 21244–1850.

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–3186–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 (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Eva Fung, (410) 786–7539.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–3186–PN and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. 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.cms.hhs.gov/eRulemaking.* Click on the link "Electronic Comments on CMS Regulations" 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 outpatient diabetes self-management training when ordered by the physician or qualified nonphysician practitioner treating the beneficiary's diabetes, provided certain requirements are met. We sometimes use national accreditation organizations to determine whether a provider entity meets the Medicare requirements that are necessary in order for an entity to provide a service covered by Medicare.

Section 1865(b)(1) of the Social Security Act (the Act), provides that a national accreditation organization must have an agreement in effect with the Secretary and meet the standards and requirements as specified in 42 CFR part 410, subpart H. The regulations pertaining to application procedures for national accreditation organizations for diabetes self-management training services are specified in § 410.142 (CMS process for approving national accreditation organizations).

A national accreditation organization applying for deeming authority must provide us with reasonable assurance that it requires accredited entities to meet requirements that are at least as stringent as those set forth by CMS. Nonprofit or not-for-profit organizations with demonstrated experience in representing the interests of individuals with diabetes are eligible to request recognition as a national accreditation organization. The national accreditation organization, after being approved and recognized by CMS, evaluates the entity to determine if it meets one of the sets of quality standards as specified in § 410.144 (Quality standards for deemed entities). If the national accreditation organization finds that the entity meets or exceeds applicable requirements, the Secretary shall deem the entity as meeting the Medicare requirements.

Section 1865(b)(2) of the Act requires that the Secretary's findings relative to approving a national accreditation organization as a deeming authority consider the organization's requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and its ability to supply information for use in enforcement activities, its monitoring procedures for entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation. The Secretary evaluates the national accreditation organization's accreditation requirements to determine if they meet or exceed the Medicare conditions as we would have applied them.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish within 60 days of receipt of a completed application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In addition, the Secretary has 210 days from receipt of the request to publish a finding of approval or denial of the application. If the Secretary recognizes an accreditation organization in this manner, once an entity that furnishes diabetes training is accredited by a national accreditation organization, it can be "deemed" to meet the Medicare conditions of coverage for diabetes self-management training.

II. Provisions of the Proposed Notice

[If you choose to comment on issues in this section, please include the caption "PROVISIONS OF THE PROPOSED NOTICE" at the beginning of your comments.]

The purpose of this notice is to notify the public of the Indian Health Service's (IHS's) request for the approval for continued recognition as a national accrediting organization for accreditation of American Indian and Alaska Native entities to furnish outpatient diabetes self-management training services. The IHS proposes to continue to adopt the National Standards for Diabetes Self-Management Education as its quality standards. This notice also solicits public comments on the ability of the IHS to develop and apply its standards to entities furnishing outpatient diabetes self-management training services.

Outpatient Diabetes Self-Management Training Services

The regulations specifying the Medicare conditions for coverage for outpatient diabetes self-management training services are specified in 42 CFR parts 410, subpart H. These conditions implement section 1861(qq) of the Act, which provides for Medicare Part B coverage of outpatient diabetes self-management training services specified by the Secretary.

Under section 1865(b)(2) of the Act and our regulations at § 410.142 (CMS process for approving national accreditation organizations) and § 410.143 (Requirements for approved accreditation organizations), we review and evaluate a national accreditation organization based on (but not necessarily limited to) the criteria specified in § 410.142(b), and we review the ongoing responsibilities of an approved accreditation organization.

We may visit the prospective organization's offices to verify information in the organization's reapplication package, including, but not limited to, review of documents, and interviews with the organization's staff. We may conduct onsite inspection of a national accreditation organization's operations and office to verify information and assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing documentation from meetings concerning the accreditation process, evaluating accreditation results or the accreditation status decision making process, and interviewing the organization's staff.

Notice Upon Completion of Evaluation

Upon completion of our evaluation, including consideration of public comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this notice.

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: September 6, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicare Services.

[FR Doc. E7–18470 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1378–N]

Medicare Program; Medicare Provider Feedback Group Town Hall Meeting—October 16, 2007

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

ACTION: Notice of meeting.

SUMMARY: This notice announces the annual Medicare Provider Feedback Group (MPFG) Town Hall meeting. This meeting is open to all Medicare fee-for-service (FFS) providers and suppliers that participate in the Medicare program, including physicians, hospitals, home health agencies, other third-party billers and other interested parties, to present their individual views and opinions on selected FFS Medicare topics. In addition, we will be soliciting input on how we can improve communications to better serve the Medicare providers and suppliers. The meeting agenda and discussion materials will be available by October 12, 2007. The public can access these materials at *http://www.cms.hhs.gov/center/provider.asp*.

The feedback provided during this meeting will assist us as we evaluate FFS Medicare policy, operational issues and CMS' provider and supplier communication activities. The meeting is open to the public, but attendance is limited to space available. Registered participants from the meeting will be included in the Medicare Provider Feedback Group and may be contacted throughout the year for follow-up meetings to solicit additional opinions and clarify any issues that may arise from the October 16, 2007 meeting.

DATES: *Meeting Date:* The Town Hall meeting announced in this notice will be held on Tuesday, October 16, 2007, from 2 p.m. to 4 p.m. e.s.t.

ADDRESSES: The Town Hall meeting will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Written Questions or Statements: Any interested party may send written comments electronically. We will give consideration to feedback received on the topics discussed at the Town Hall meeting, but written responses will not be provided. We will accept and take into consideration written feedback, questions, or other statements about the town hall meeting and agenda topics before the meeting, and up until October 26, 2007. Send written feedback, questions, or other statements to Colette Shatto at *MFG@cms.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Shatto, 410–786–6932. You may also send inquires about this meeting by *MFG@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

CMS has held three Medicare Provider Feedback Group Town Hall Meetings beginning in 2005. The purpose of these meetings is to capture individual provider and supplier feedback on relevant FFS Medicare policy and operational issues. As a result, we are able to further advance our efforts to strengthen the Medicare program and enhance our relationship with providers and suppliers. The Town Hall meetings also provide a venue to allow us to continue a process of communicating with individual providers and suppliers through the following year.

II. Meeting Format

The meeting will begin with an overview of the goals and objectives of the MPFG efforts to gather feedback

from individual Medicare physicians, providers, and suppliers. Topics to be discussed during the meeting include, but are not limited to, FFS Medicare implementation of the National Provider Identifier (NPI), Medicare contractor provider satisfaction survey (MCPSS): "Relevancy of questions in the business functions of appeals and medical review", Medicare contracting reform, and value based purchasing.

There will be a question and answer session that offers meeting attendees an opportunity to provide feedback on how CMS serves physicians, providers, and suppliers, as well as make suggestions on how this process can be improved. The time for participants to ask questions and provide feedback will be limited according to the number of registered participants; however, written submissions will be accepted. Individuals who wish to provide written feedback should e-mail Colette Shatto at MFG@cms.hhs.gov. We will give consideration to feedback received on the topics discussed at the Town Hall meeting, but written responses will not be provided.

III. Registration Instructions

The Division of Provider Relations and Evaluations, Provider Communications Group, Center for Medicare Management, is coordinating the meeting registration. While there is no registration fee, individuals, providers, and suppliers must register to participate. Individuals interested in attending the meeting in person or by teleconference must complete the on-line registration located at *http://registration.intercall.com/go/cms2*.

The on-line registration system will capture contact information and practice characteristics, such as names, e-mail addresses, and provider and supplier types. Registration will be open on September 28, 2007 and close on October 12, 2007. Registration after 5 p.m. e.s.t. on October 12, 2007 will not be accepted.

The on-line registration system will generate a confirmation page to indicate the completion of your registration. Please print this page as your registration receipt. Teleconference instructions will be issued once participants have registered by using the on-line registration tool. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

Special Accommodations: Individuals requiring sign language interpretation or other special accommodations must contact Colette Shatto by e-mail at *MFG@cms.hhs.gov*.

IV. Security, Building, and Parking Guidelines

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by 5 p.m. e.s.t. on October 12, 2007. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants.

The on-site check-in for visitors will be held from 12:30 p.m. to 1:30 p.m. e.s.t. Please allow sufficient time to go through the security checkpoints. It is suggested that you arrive at 7500 Security Boulevard no later than 1:30 p.m. e.s.t. so that you will be able to arrive promptly at the meeting by 2 p.m. e.s.t. All items brought to the building, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection.

Security measures will include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, including personal items such as desktops, cell phones, and palm pilots, are subject to physical inspection.

Authority: Section 1811 and 1831 of the Social Security Act (42 U.S.C. 1395c and 1395j).

Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: September 6, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7–18113 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a new System of Records (SOR).

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to establish a new SOR, "Post-Acute Care Payment Reform / Continuity of Assessment Record and Evaluation Demonstration and Evaluation (PAC–CARE)," System No. 09–70–0569. Information maintained in this system will continue to enable CMS to better understand the relationships among patient needs, post-acute care placement, patient outcomes, and post-acute care related costs in the Medicare program. Additionally, as required by Section 5008 of the Deficit Reduction Act of 2005, CMS is developing a comprehensive assessment for use at the time of hospital discharge which identifies the needs and clinical characteristics of the patient. Additionally, this standardized patient assessment instrument shall be used across post-acute care sites, including skilled nursing facilities, home health agencies, long term care hospitals and inpatient rehabilitation facilities, to measure functional status and other factors during treatment and at discharge from each provider.

CMS proposes to broaden the scope of the disclosure requirement by adding a new routine use number 6, authorizing disclosure of personal health information to providers to facilitate the proper transfer of health information for beneficiaries being discharged from their site of care to an admitting provider's care. Individuals from the admitting providers will only be granted access to personal health information, if they have the approved, authenticated, role based authority to do so, and the need to know and review the admitted patient's personal health information. Individuals will only be granted access to this information if they meet the following requirements: they must (1) provide an attestation or other qualifying information that they are providing assistance to qualified acute care or post-acute care beneficiaries admitted to their care site, (2) have physically admitted the beneficiary to their site and have initiated an assessment of the beneficiary, (3) safeguard the confidentiality of the data and prevent unauthorized access, and (4) accept an on-line statement attesting to the information recipient's understanding of and willingness to abide by these provisions. The routine uses will then be prioritized and reordered according to their usage.

The primary purpose of this proposed system is to collect and maintain, and release when appropriate, demographic, health records, and health resource use related data on the target population of Medicare and potentially, Medicaid beneficiaries who require treatment by a designated acute care or post-acute care provider. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and

policy functions performed within the agency or by a contractor, grantee, consultant or other legal agent; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support the functions of Quality Improvement Organizations; (5) support the functions of national accreditation organizations; (6) permit the release of personal health information to complete a transfer-out (discharge) event and/or a transfer-in (admission) event; (7) support litigation involving the agency; and (8) combat fraud, waste, and abuse in certain Federally-funded health benefits programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the modified or altered routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 21, 2007. To ensure that all parties have adequate time in which to comment, the new system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Shannon Flood, Division of Research on Traditional Medicare, Research and Evaluation Group, Office of Research Development & Information, Mail Stop C3–19–26, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849. She can be reached by telephone at 410–786–2583, or via e-mail at *Shannon.Flood@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: As required by Section 5008 of the Deficit Reduction Act of 2005, CMS is developing a comprehensive assessment for use at the time of hospital discharge which identifies the needs and clinical characteristics of the patient. Additionally this standardized patient assessment instrument shall be used across post-acute care sites, including skilled nursing facilities, home health agencies, long term care hospitals and inpatient rehabilitation facilities, to measure functional status and other factors during treatment and at discharge from each provider. This standardized patient assessment instrument is being developed under a contract between the CMS Office of Clinical Standards & Quality and the Research Triangle International (RTI) is referred to as "Continuity Assessment Record and Evaluation (CARE)." CARE consists of a set of assessment items under 5 major domains: medical, functional, social/environmental, cognitive and continuity of care. This assessment data, as well as demographic, medication, procedure, and treatment information will be collected for Medicare and potentially Medicaid beneficiaries. The CARE instrument will provide a foundation for a continuity of care record for patients across settings, over time. The new proposed routine use (6) refers only to data contained within the CARE tool and not the other data used in the project. The CARE tool is one of the data collection aspects of the demonstration. In addition, the demonstration will make use of such information as claims, staff time measurement logs, and unstructured staff interviews in its analyses.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

The statutory authority for this system is given under Sections 5008 of the Deficit Reduction Act of 2005.

B. Collection and Maintenance of Data in the System

This system will collect and maintain individually identifiable and other data collected on Medicare and potentially Medicaid beneficiaries who require treatment in a designated acute care or post-acute care provider. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. The collected information will include, but is not limited to: Medicare claims and eligibility data, name, health insurance claims number (HICN), social security number (SSN) (the submission of a beneficiary's SSN is optional), race/ethnicity, gender, date of birth, provider name, unique CMS Certification Number (CCN), medical record number, as well as clinical, demographic, medication, procedure, treatment information, health/well-being, and background information relating to Medicare issues. Data will be collected from Medicare administrative and claims records, PAC–CARE site administrative data systems, patient medical charts, physician records, and via information submitted by beneficiaries and providers.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release PAC–CARE information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of PAC–CARE. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to collect and maintain, and release when appropriate, demographic, health, and health resource use related data on the

target population of Medicare and potentially Medicaid beneficiaries who require treatment by a designated acute care or post-acute care provider. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies, in their administration of a Federal health program, may require PAC–CARE information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The PAC–CARE data will provide for research or support of evaluation projects and a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that researchers may have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policies that govern their care.

4. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

The QIO may use this data to support quality improvement activities and other QIO responsibilities as detailed in Title XI §§ 1151–1164. The QIO will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The QIO will assist state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

5. To assist national accreditation organization(s) whose accredited facilities are deemed to meet certain Medicare conditions of participation for inpatient hospital rehabilitation services (e.g., the Joint Commission and the American Osteopathic Association) with their survey process information will be released by CMS for only those providers that they deem and that participate in the Medicare program if they meet the following requirements:

a. Provide identifying information for post acute care facilities that have deemed status with the requesting accreditation organization;

b. Submission of a finder file identifying beneficiaries/patients receiving post-acute care services;

c. Safeguard the confidentiality of the data and prevent unauthorized access; and

d. Upon completion of a signed data exchange agreement or a CMS data use agreement.

At this time, CMS anticipates providing accreditation organizations with PAC–CARE information to enable them to target potential identified problems during the organization's accreditation review process of the facility.

6. To assist with a transfer-out event from a discharging acute or post-acute care provider and/or a transfer-in event to an admitting acute or post-acute care provider to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits; and

b. Enable such providers to ensure the proper transfer of health records, and/or as necessary to enable such a provider to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal fund.

Individuals from the admitting providers will only be granted access to personal health information, if they have the approved, authenticated, role-based authority, and the defined need for access to that information. Individuals will only be granted access to information if they meet the following requirements:

a. Provide an attestation or other qualifying information that they are providing assistance to a qualified acute or post-acute care beneficiary receiving care/services through their provider site;

b. Have physically admitted the beneficiary to their care site, and are initiating an assessment of the

beneficiary, and can validate the beneficiary's name, HICN (or payer number or SSN), date of birth, and gender;

c. Safeguard the confidentiality of the data and prevent unauthorized access; and

d. Accept a written, on-line statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

The PAC–CARE data will give the provider patient-specific personal health information which may facilitate the provider's required utilization reviews and medication management program activities; and assist in quality of care issues as they relate to the beneficiary.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

8. To a CMS contractor (including, but not necessarily limited to, Medicare Administrative Contractors (MAC), fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require PAC–CARE information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent NIST publications; the DHHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: September 18, 2007.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0569

SYSTEM NAME:

"Post-Acute Care Payment Reform / Continuity of Assessment Record and Evaluation Demonstration and Evaluation (PAC–CARE)," HHS/CMS/ORDI.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor sites and at CMS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on Medicare and potentially, Medicaid beneficiaries who require treatment in a designated acute care or post-acute care provider. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will include, but is not limited to: Medicare claims and eligibility data, name, health insurance claims number (HICN), social security number (SSN) (the submission of a beneficiary's SSN is optional), race/ethnicity, gender, date of birth, provider name, unique CMS Certification Number (CCN), medical record number, as well as clinical, demographic, medication, procedure, treatment information, health/well-being, and background information relating to Medicare issues. Data will be collected from Medicare administrative and claims records, PAC–CARE site administrative data systems, patient medical charts, physician records, and via information submitted by beneficiaries and providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under Sections 5008 of the Deficit Reduction Act of 2005.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this proposed system is to collect and maintain, and release when appropriate, demographic, health records, and health resource use related data on the target population of Medicare and potentially, Medicaid beneficiaries who require treatment by a designated acute care or post-acute care provider. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, consultant or other legal agent; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support the functions of Quality Improvement Organizations; (5) support the functions of national accreditation organizations; (6) permit the release of personal health information to complete a transfer-out (discharge) event and/or a transfer-in (admission) event; (7) support litigation involving the agency; and (8) combat fraud, waste, and abuse in certain Federally-funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

5. To assist national accreditation organization(s) whose accredited facilities are deemed to meet certain Medicare conditions of participation for inpatient hospital rehabilitation services (*e.g.*, the Joint Commission and the American Osteopathic Association) with their survey process, information will be released by CMS for only those providers that they deem and that participate in the Medicare program and if they meet the following requirements:

a. Provide identifying information for post acute care facilities that have deemed status with the requesting accreditation organization;

b. Submission of a finder file identifying beneficiaries/patients receiving post acute care services;

c. Safeguard the confidentiality of the data and prevent unauthorized access; and

d. Upon completion of a signed data exchange agreement or a CMS data use agreement.

6. To assist with a transfer-out event from a discharging acute or post-acute care provider and/or a transfer-in event to an admitting acute or post-acute care provider to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits; and

b. Enable such providers to ensure the proper transfer of health records, and/or as necessary to enable such a provider to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal fund.

Individuals from the admitting providers will only be granted access to personal health information, if they have the approved, authenticated, role-based authority, and the defined need for access to that information. Individuals will only be granted access

to information if they meet the following requirements:

a. Provide an attestation or other qualifying information that they are providing assistance to a qualified acute or post-acute care beneficiary receiving care/services through their provider site;

b. Have physically admitted the beneficiary to their care site, and are initiating an assessment of the beneficiary, and can validate the beneficiary's name, HICN (or payer number or SSN), date of birth, and gender;

c. Safeguard the confidentiality of the data and prevent unauthorized access; and

d. Accept a written, on-line statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

8. To a CMS contractor (including, but not necessarily limited to, Medicare Administrative Contractors (MAC), fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures.

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

The Medicare records are retrieved by the HICN and SSN.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the DHHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records will be retained until an approved disposition authority is obtained from the National Archives and Records Administration. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Research and Evaluation Group, Office of Research Development & Information, Mail Stop C3–19–26, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, address, date of birth, and gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Data will be collected from Medicare administrative and claims records

(Outcome and Assessment Information Set, Inpatient Rehabilitation Facilities Patient Assessment Instrument, Long Term Care Minimum Data Set), post-acute care site administrative data systems, patient medical charts, physician records, and via information submitted by beneficiaries and providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–19110 Filed 9–27–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation

AGENCY: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice.

CFDA#: 93.600.

Statutory Authority: Section 649 of the Head Start Act, as amended by the COATES Human Services Reauthorization Act of 1998 (Pub. L. 105–285) and 42 U.S.C. 9844.

SUMMARY: Notice is hereby given that the Administration for Children and Families (ACF), Office of Planning, Research and Evaluation (OPRE) will award a non-competitive successor grant to OMNI Institute, Inc., a non-profit research organization located in Denver, CO. OMNI Institute, Inc. will assume a grant awarded under the Head Start University Partnership Research Grants: Curriculum Development and Enhancement for Head Start and Early Head Start Programs for the remainder of the project period July 15, 2007 to September 29, 2008. This action is taken as the original grantee, the University of Colorado Health Sciences Center, has relinquished the grant.

FOR FURTHER INFORMATION CONTACT: Wendy DeCourcey, PhD., Social Science Research Analyst, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, or by phone at (202) 260–2039, or by e-mail at *wdecourcey@acf.hhs.gov.*

Dated: September 24, 2007.

Naomi Goldstein,

Director, Office of Planning, Research and Evaluation.

[FR Doc. E7–19276 Filed 9–27–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Revision of OMB No. 0925–0001/exp. 09/30/07, Research and Research Training Grant Applications and Related Forms

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 24, 2007, page 40313 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after September 30, 2007, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Research and Research Training Grant Applications and Related Forms. *Type of Information Collection Request:* Revision, OMB 0925–0001, Expiration Date 9/30/2007, Form Numbers: PHS 398, 2590, 2271, 3734 and HHS 568. *Need and Use of Information Collection:* The application is used by applicants to request Federal assistance for research and research-related training. The other related forms are used for trainee appointment, final invention reporting, and to relinquish rights to a research grant. *Frequency of Response:* Applicants may submit applications for published receipt dates. If awarded, annual progress is reported and trainees may be appointed or reappointed. *Affected Public:* Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government. *Type of Respondents:* Adult scientific professionals. The annual reporting burden is as follows: *Estimated Number of Respondents:* 164,820; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 15.2; and *Estimated Total Annual Burden Hours Requested:* 2,517,458. The estimated annualized cost to respondents is $88,110,030.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Contact Ms. Mikia Currie, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 3505, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number 301–435–0941, or e-mail your request, including your address to: *curriem@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 25, 2007.

Mikia Currie,

Program Analyst, National Institutes of Health.

[FR Doc. E7–19265 Filed 9–27–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services at 72, Number 73, page 19209, April 17, 2007 is amended to reflect changes to the structure and functional statements for the Office of Applied Studies (OAS). This amendment reflects the abolishment of the Division of Analysis, and also reflects OAS's increased responsibilities for performance data on State block grants (the State Outcome Measures and Monitoring System (SOMMS)). In addition, the title of the Division of Operations is replaced with the Division of Facility Surveys, and the functional statement of the Division of Populations Surveys, and the Office of the Director are also replaced. These changes will permit the OAS to increase its emphasis on: (1) The use of data sets to support SAMHSA's policy, planning, and program development; (2) customer service; and (3) the integration of analytic and data collection activities for each survey. The changes are as follows:

Section M.20, Functions is amended as follows:

The functional statements for the Office of Applied Studies (OAS), Office of the Director is replaced; Division of Analysis is abolished; Division of Operations is abolished and replaced with the Division of Facility Surveys; and the functional statement for the Division of Populations Surveys is replaced.

Office of Applied Studies (MC)

Office of the Director (MC–1)

(1) Provides overall leadership for the Office of Applied Studies; (2) determines that data collection and analytic activities are consistent with the mission and priorities of the Department and the Agency; (3) advises the Administrator and other Agency officials and staff on policy and technical issues associated with collecting information on substance abuse and mental health problems; (4) serves as Agency liaison to the Office of the Secretary, the Office of National Drug Control Policy, the Drug Enforcement Administration, and other Federal agencies; to State and local government agencies; and to non-governmental organizations and institutions on matters related to the collection and analysis of data on substance abuse and mental health problems; (5) manages SAMHSA responsibilities under the Paperwork Reduction Act, including the process for obtaining Office of Management and Budget clearance for information collection activities; and (6) manages the process for clearing, publishing, and disseminating studies and reports produced by OAS.

Division of Population Surveys (MCA)

(1) Plans, develops, and manages the National Survey on Drug Use and Health (NSDUH) and other surveys of the population to obtain information on substance abuse and mental health problems; (2) develops, implements, and evaluates new statistical and data collection methods, questionnaires, and sampling strategies for surveys; (3) analyzes information obtained from surveys conducted by the Office of Applied Studies to determine the incidence, prevalence, correlates, and consequences of substance abuse; (4) obtains and analyzes data from various sources to examine program and policy issues and evaluate the impact of various Federal initiatives related to substance abuse; (5) prepares statistical publications, special reports, and analyses based on information derived from the NSDUH and other surveys of the population; (6) serves as a source of expertise on substance abuse survey methods, sampling design, statistics, and analytic techniques for SAMHSA and the Department; and (7) determines the annual allotment of Block Grant funds to States and Territories for substance abuse prevention and treatment and mental health services, and provides information and expertise to SAMHSA, the Department, and the States on issues related to the formula in accordance with legislative authorities.

Division of Facility Surveys (MCD)

(1) Plans, develops, and manages the Drug Abuse Warning Network (DAWN) to obtain information on substance abuse-related morbidity and mortality; (2) plans, develops, and manages the Drug and Alcohol Services Information System (DASIS), and other data collection projects on admissions to and services provided by treatment programs in the United States; (3) prepares statistical publications and reports based on data obtained from DAWN, DASIS, and other sources; (4) analyzes data from facility surveys and other sources to study program and policy issues and evaluate the impact of various Federal initiatives related to substance abuse; (5) organizes and manages various meetings to share information and obtain advice and assistance from States with respect to the data collected from substance abuse treatment facilities; and (6) manages the compilation, analysis, and coordination of performance data on block grants to the States.

Delegation of Authority

All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue to be in effect pending further redelegations, providing they are consistent with the reorganization.

These organizational changes are effective: September 24, 2007.

Terry L. Cline,

Administrator.

[FR Doc. 07–4773 Filed 9–27–07; 8:45 am]
BILLING CODE 4160–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Department of Homeland Security. The purpose of the Performance Review Board is to view and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service positions of the Department.

EFFECTIVE DATES: This Notice is effective September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Carmen Arrowood, Office of the Chief Human Capital Office, telephone (202) 357–8348.

SUPPLEMENTARY INFORMATION: Each federal agency is required to establish one or more performance review boards (PRB) to make recommendations, as necessary, in regard to the performance of senior executives within the agency. 5 U.S.C. 4314(c). This notice announces the appointment of the members of the PRB for the Department of Homeland Security (DHS). The purpose of the PRB

is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Aguilar, David V.
Ahern, Jayson P.
Allen, Charles
Atkin, Thomas F. RDML
Aytes, Michael L.
Baker, Stewart
Baldwin, William D.
Barth, Richard
Bathurst, Donald G.
Beagles, James
Bertucci, Theresa C.
Bourne, Marko G.
Breckenridge, Jody A. RADM
Bester, Margot
Brown, Dana A.
Boyd, David G.
Buswell, Bradley I.
Byers, Robert F.
Cade, Gregory B.
Cannon, Glenn M.
Carpenter, Dea D.
Castillo, Carlos J.
Caverly, Robert J.
Chaparro, James
Charbo, Scott
Clark, John P.
Cohen, Jay M.
Conklin, William C.
Conway, Paul
Coogan, Cynthia A. RDML
Coyle, Robert E.
Daitch, William B.
Dannenhauer, Michael
Dayton, Mark
DeVita, Charles N.
Difalco, Frank
Dooher, John
Duke, Elaine C.
Dunham, Carol A.
Dunne, Julie A.
Fagerholm, Eric N.
Falk, Scott A.
Flynn, William F.
Fonash, Peter M.
Ford, Joseph
Forman, Marcy M.
Gabbrielli, Tina W.
Gallaway, Charles
Garcia, Gregory T.
Glenn, David T. RDML
Golden, Michael P.
Gowadia, Huban
Grupski, Thomas F.
Hagan, William K.
Hardiman, Tara
Hill, Marcus
Hooks, Robert R.
Hosenfeld, Robert W.
Howell, David R.
Irving, Paul D.
Jamieson, Gil H.
Jamison, Robert D.
Justice, Wayne E. RDML
Keenan, Alexander S.
Keene, Delma
Kerner, Francine
Killoran, Elaine
Kim, Hun S.
Klaassen, Mark A.
Koerner, Timothy J.
Kostelnik, Michael C.
Kraninger, Kathleen
Krohmer, Jon R.
Kronisch, Matthew
Landis, Bruce T.
Landry, Mary E. RDML
Lane, Susan E.
Lederer, Calvin
Lee, Diedre A.
Lembke, Traci A.
Levy, Andrew J. Puglia
Lunner, Chester
Lynch, Dennis F.
Maher, Joseph B.
Martinez-Fonts, Alfonso
Maurstad, David I.
McCormack, Luke J.
McDermond, James E.
McGinnis, Roger D.
McGowan, Morris
McQuillan, Thomas
Melmed, Lynden D.
Nagel, Brian K.
Neifach, Michael H.
Nichols, Frederick A.
Norquist, David L.
O'Melinn, Barry C.
Oxford, Vayl S.
Paar, Thomas C.
Parent, Wayne
Parker, Robert C. RDML
Parmer Jr,. Raymond R.
Patrick, Connie
Pearson, Clifford I. RADM
Peavy, Sandra
Pekoske, David RADM
Pelowski, Gregg R.
Prez, Marta Brito
Personette, Donald B.
Philbin, Patrick J.
Pierson, Julia A.
Powell, Donald
Prewitt, Keith L.
Rainville, Martha T.
Rausch, Sharla P.
Reichel, Howard E.
Reid, William F.
Rieksts, Derek
Robles, Alfonso
Rogers, George D.
Rosen, Mark E.
Rosenzweig, Paul
Rossides, Gale D.
Rufe, Roger
Runge, Jeffrey W.
Sammon, John P.
Schenkel, Gary W.
Schied, Eugene H.
Schneider, Paul
Schrader, Dennis
Schwien, Fred
Shea, Robert F.
Shingler, Wendell C.
Smislova, Melissa
Stenger, Michael C.
Stephan. Robert B.
Sutherland, Daniel W.
Sweet, Chad
Tomarchio, Jack
Tomsheck, James F.
Torrence, Donald
Torres, John P.
Trissell, David A.
Walker, Carmen
Walters, Thomas J.
White, Raymond P.
Whitford, Richard A.
Williams, Richard N.
Winkowski, Thomas S.
Woodson, Mary Ann
Young, Margaret
Zitz, Robert

This notice does not constitute a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget. Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Dated: September 19, 2007.

Christine Greco,

Acting Director, Executive Resources, Office of the Chief Human Capital Office.

[FR Doc. E7–19153 Filed 9–27–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved collection, OMB No. 1660–0062.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden,

invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning State Hazard Mitigation Plan requirements to support State administration of FEMA Mitigation grant programs.

SUPPLEMENTARY INFORMATION: On February 26, 2002, FEMA published an interim rule at 67 FR 884 implementing section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165, enacted under section 104 of the Disaster Mitigation Act of 2000, 42 U.S.C. 5121 note, to provide new and revitalized approaches to mitigation planning. The Stafford Act provides a framework for linking pre- and-post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. Pursuant to 44 CFR part 201, the mitigation planning requirements require State, local and Indian tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide-range of resources.

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans—Section 322 of the Disaster Mitigation Act of 2000.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0062.

Form Numbers: None.

Abstract: The purpose of State Hazard Mitigation Plan requirements is to support State administration of FEMA Mitigation grant programs, and contemplate a significant State commitment to mitigation activities, comprehensive State mitigation planning, and strong program management. Implementation of plans, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals, priorities to reduce risks from natural hazards.

Affected Public: State, local or tribal governments, and Individuals or households.

Estimated Total Annual Burden Hours: 768,320.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
New Plan Development (Local and Tribal Mitigation Included)	56	5	2,080	280	582,400
Mitigation Plan Updates (Local and Tribal Included)	56	10	320	560	179,200
Mitigation Plans Review by States (Local and Tribal Included)	56	15	8	840	6,720
Total	56		2,408	1,680	768,320

Estimated Cost: The total burden hour costs to respondents using the wage rate categories of Urban and Regional Planners for this information collection is estimated to be $21,282,464 annually. The total annual cost to the Federal Government for staff review and approval of State Hazard Mitigation Plans is estimated to be $226,447 annually.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before November 27, 2007.

ADDRESSES: Interested persons should submit written comments to Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Rosenberg, Section Chief, Mitigation Directorate, (202) 646–3321 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: September 21, 2007.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–19228 Filed 9–27–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved collection, OMB No. 1660–0025.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the forms used to collect financial, programmatic and administrative information from States and local governments pertaining to grant and cooperative agreement.

SUPPLEMENTARY INFORMATION: This information is provided in accordance with the requirements in 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government (subpart B 13.10, subpart C 13.32, 13.33, 13.40, 13.41, and subpart D 13.50). This is FEMA implementation of the Common Rule for grants.

Collection of Information

Title: FEMA Grant Administration Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0025.

Form Numbers: SF–424, Application for Federal Assistance, FEMA Form 20–20, Budget Information, FEMA Form 20–15, Budget Information—Construction, FEMA Form 20–16,A,B,C, Summary Sheet for Assurances and Certifications, SFLLL, Disclosure of Lobbying Activities, FEMA Form 76–10A, Obligating Document for Award/Amendment, FEMA Form 20–10, Financial Status Report and Performance Reports, FEMA Form 20–17, Outlay Report and Request for Reimbursement for Construction Program, FEMA Form 20–18, Report of Government Property, FEMA Form 20–19, Reconciliation of Grants and Cooperative Agreements, and SF 270 Request for Advance or Reimbursement.

Abstract: This collection of information focuses on the standardization and consistent use of standard and FEMA forms associated with grantees requests for disaster and non-disaster Federal assistance, submission of financial and administrative reporting and record keeping. The use of the forms will minimize burden on the respondent and enable FEMA to continue to improve in its grants administration practices. The forms are used to administer the following FEMA grant programs.

Non-Disaster Programs

National Urban Search and Rescue (US&R) Response System—To develop an immediately deployable, national response capability to locate and extricate, and medically stabilize victims of structural collapse during a disaster, while simultaneously enhancing the US&R response capabilities of State and local governments.

Community Assistance Program—State Support Services Element (CAP–SSSE)—To ensure that communities participating in the National Flood Insurance Program (NFIP) are achieving flood loss reduction measures consistent with program direction. The CAP–SSSE is intended to identify, prevent and resolve floodplain management issues in participating communities before they develop into problems requiring enforcement action.

Chemical Stockpile Emergency Preparedness Program (CSEPP)—To enhance emergency preparedness capabilities of the States and local communities at each of the eight chemical agent stockpile storage facilities. The purpose of the program is to assist States and local communities in efforts to improve their capacity to plan for and respond to accidents associated with the storage and ultimate disposal of chemical warfare materials.

National Dam Safety Program (NDSP)—To encourage the establishment and maintenance of effective State programs intended to ensure dam safety, to protect human life and property, and to improve State dam safety programs.

Interoperable Communications Equipment (ICE)—To provide funding to jurisdictions across the nation for demonstration projects on uses of equipment and technologies to increase communications interoperability among the fire service, law enforcement, and emergency medical service communities. These projects will illustrate and encourage the acceptance of new technologies and operating methods to assist communities in achieving interoperability.

Earthquake Consortium (EqC)—To operate a program of grants and assistance to enable States to develop mitigation, preparedness and response plans prepare inventories and conduct seismic safety inspection of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes.

Disaster Donations Management Program (AIDMATRRIX)—To distribute technology solutions to State and local government and voluntary agencies throughout the country prior, to a major event, through the Aidmatrix Foundation/FEMA partnership. This will allow end-users to incorporate technology solutions into their planning, increasing their capacity to respond quickly and effectively once a disaster occurs.

Alternative Housing Pilot Program (AHPP)—Evaluate the efficacy of non-traditional short and intermediate-term housing alternatives for potential future use in a catastrophic disaster environment. Identify, develop and evaluate alternatives to and alternative forms of FEMA Disaster Housing to assist victims of the 2005 hurricanes in the Gulf Coast.

Cooperating Technical Partners (CTP)—To increase local involvement in, and ownership of, the development and maintenance of flood hazard maps produced for the National Flood Insurance Program (NFIP).

Map Modernization Management Support (MMMS)—To increase local involvement in, and ownership of, management of the development and maintenance of flood hazard maps produced for the National Flood Insurance.

New Repetitive Flood Claims (RFC)—The Repetitive Flood Claims (RFC) Program was authorized in 2004 under Pub. L. 108–264, funds were not appropriated until FY 2006. The RFC program is authorized under the NFIA to award grants for actions that reduce flood damages to individual properties for which one or more claim payments for losses have been made. FEMA is not required to publish regulations; however, FEMA will provide notice to eligible applicants, post notice on OMB's Grants.gov Web site, and post the RFC program guidance on its Web site at *http://www.fema.gov.*

Flood Mitigation Assistance (FMA)—To assist States and communities in implementing measures to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insurable under the National Flood Insurance Program (NFIP).

Pre-Disaster Mitigation (PDM)—To provide States and communities with a much needed source of pre-disaster mitigation funding for cost-effective hazard mitigation activities that are part of a comprehensive mitigation program, and that reduce injuries, loss of life, and damage and destruction of property. Competitive grants are part of this program including grants to universities.

Assistance to Firefighters Grant (AFG)—To provide direct assistance, on a competitive basis, to fire departments of a State or tribal nation for the purpose of protecting the health and safety of the public and firefighting personnel against fire and fire-related hazards.

Staffing for Adequate Fire and Emergency Response (SAFER)—To increase the number of firefighters in local communities and to help them meet industry minimum standards and attain 24/7 staffing for adequate protection against fire and fire-related hazards, and fulfill related roles associated with fire departments.

Disaster Programs

Public Assistance Grants (PA)—To provide supplemental assistance to States, local governments, and political subdivisions to the State, Indian Tribes, Alaskan Native Villages, and certain nonprofit organizations in alleviating suffering and hardship resulting from major disasters or emergencies declared by the President.

Crisis Counseling (SCC)—To provide immediate crisis counseling services, when required, to victims of a major Federally-declared disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath.

Presidential Declared Disaster Assistance to Individuals and Households—Other Needs (ONA)—To provide assistance to individuals and households affected by a disaster or emergency declared by the President, and enable them to address necessary expenses and serious needs, which cannot be met through other forms of disaster assistance or through other means such as insurance.

Hazard Mitigation Grant Program (HMGP)—To provide States and local governments' financial assistance to implement measures that will permanently reduce or eliminate future damages and losses from natural hazards through safer building practices and improving existing structures and supporting infrastructure.

Fire Management Assistance Grant (FMAGP)—To provide grants to States, Indian tribal government and local governments for the mitigation, management and control of any fire burning on publicly (nonfederal) or privately owned forest or grassland that threatens such destruction as would constitute a major disaster.

Affected Public: State, local, and tribal governments.

Estimated Total Annual Burden Hours:

Data collections activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
Disaster Programs					
PA					
SF 424	56	1	45 minutes	56	42 hours
FF 20–20	56	1	9.7 hours	56	543 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95 hours.
FF 20–10	56	4	1 hour	224	224 hours.
SF–LLL	56	1	10 minutes	56	9 hours.
Sub-Total	56		13.3 hours	392	57 Disaster Declarations × 913 hours = 52,041.
SCC					
SF 424	17	1	45 minutes	17	13 hours.
SF 20–20	17	1	9.7 hours	17	165 hours.
FF 20–16, A, B, C	17	1	1.7 hours	17	29 hours.
FF 20–10 (SF 269)	17	4	1 hour	68	68 hours.
SF–LLL	17	1	10 minutes	17	3 hours.
Sub-Total	17		13.3 hours	119	57 Disaster Declarations × 278 hours = 15,846.
ONA					
SF 424	40	1	45 minutes	40	30 hours.
FF 20–20	40	1	9.7 hours	40	388 hours.
FF 20–16, A, B, C	40	1	1.7 hours	40	68 hours.
FF 20–10	40	4	1 hour	160	160 hours.
SF–LLL	40	1	10 minutes	40	7 hours.
Sub-Total	40		13.3 hours	320	57 Disaster Declarations × 653 hours = 37,221.
HMGP					
SF 424	52	1	45 minutes	52	39 hours.
FF 20–20	52	15	9.7 hours	780	7,566 hours.
FF 20–16, A, B, C	52	1	1.7 hours	52	88 hours.
FF 20–10	52	4	1 hour	208	208 hours.
FF 20–17	52	15	17.2 hours	780	13,416 hours.
FF 20–18	52	6	4.2 hours	312	1,310 hours.
FF 20–19	52	6	5 minutes	312	25 hours.
SF–LLL	52	1	10 minutes	52	9 hours.
Sub-Total	52		35 hours	2,548	57 Disaster Declarations × 22,661 hours = 1,291,677.
FMAGP					
SF 424	12	4	45 minutes	48	36 hours.
FF 20–20	36	4	9.7 hours	144	1,397 hours.
FF 20–16, A, B, C	36	4	1.7 hours	144	245 hours.
FF 20–15	36	4	17.2 hours	144	2,477 hours.
FF 20–10	12	4	1 hour	48	48 hours.
FF 20–18	36	4	4.2 hours	144	605 hours.
FF 20–19	36	4	5 minutes	144	12 hours.
SF–LLL	36	4	10 minutes	144	24 hours.

Data collections activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
Sub-Total	36		35 hours	960	94 Disasters Declarations × 4,844 hours = 455,336.
Disaster Grants Total	56		110 hours	3,800	1,852,121 hours.
Non-Disaster Programs					
US&R					
SF 424	28	1	45 minutes	28	21 hours.
FF 20–20	28	1	9.7 hours	28	272 hours.
FF 20–16, A, B, C	28	1	1.7 hours	28	48 hours.
FF 76–10A	28	1	1.2 hours	28	34 hours.
FF 20–10	28	2	1 hour	56	56 hours.
SF 270	28	1	1 hour	28	28 hours.
SF–LLL	28	1	10 minutes	28	5 hours.
Sub-total	28		16 hours	224	498 hours.
CAP–SSSE					
SF 424	56	1	45 minutes	56	42 hours.
FF 20–20	56	1	9.7 hours	56	543 hours.
FF 20–15	56	1	17.2 hours	56	963 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95 hours.
FF 76–10A	56	1	1.2 hours	56	67 hours.
FF 20–10	56	2	1 hour	112	112 hours.
FF 20–18	56	1	4.2 hours	56	235 hours.
FF 20–19	56	1	5 minutes	56	4 hours.
SF–LLL	56	1	10 minutes	56	9 hours.
Sub-total	56		36 hours	560	2,070 hours.
CSEPP					
SF 424	10	1	45 minutes	10	8.0 hours.
FF 20–20	10	1	9.7 hours	10	97.0 hours.
FF 20–10	10	4	1 hour	40	40.0 hours.
FF 20–16, A, B, C	10	1	1.7 hours	10	17.0 hours.
FF 76–10A	10	1	1.2 hours	10	12.0 hours.
FF 20–18	10	1	4.2 hours	10	42.0 hours.
FF 20–19	10	1	5 minutes	10	1.0 hours.
SF–LLL	10	1	10 minutes	10	2.0 hours.
Sub-total	10		19 hours	120	219 hours.
NDSP					
SF 424	51	1	45 minutes	51	38.0 hours.
FF 20–20	51	1	9.7 hours	51	495.0 hours.
FF 20–16, A, B, C	51	1	1.7 hours	51	87.0 hours.
FF 76–10A	51	1	1.2 hours	51	61.0 hours.
FF 20–10	51	4	1 hour	204	204.0 hours.
SF 270	51	1	1 hour	51	51.0 hours.
SF–LLL	51	1	10 minutes	51	8.0 hours.
Sub-total	51		16 hours	510	944 hours.
ICE					
FF 20–10	17	4	1 hour	68	68.0 hours.
Sub-total	17		1 hour	17	68 hours.
EqC					
FF 20–10	3	2	1 hour	6	6 hours.
Sub-Total	3		1 hour	6	6 hours.
AIDMATRIX					
SF 424	1	1	45 minutes	1	.75 minutes
FF 20–20	1	1	9.7 hours	1	9.7 hours.
FF 20–10	1	4	1 hour	4	4.0 hours.
FF 20–16 A,B,C	1	1	1.7 hours	1	1.7 hours.
SF–LLL	1	1	10 minutes	1	.16 minutes
Sub-Total	1		13 hours	8	16 hours.
AHPP					
SF 424	4	1	45 minutes	4	3.0 hours.
FF 20–20	4	1	9.7 hours	4	39.0 hours.
FF 20–10	4	4	1 hour	16	16.0 hours.
FF 20–16–A,B,C	4	1	1.7 hours	4	6.8 hours.
SF–LLL	4	1	10 minutes	4	.66 hours.
Sub-Total	4		13 hours	32	65 hours.
CTP					
SF 424	20	1	45 minutes	20	15.0 hours.
FF 20–20	20	1	9.7 hours	20	194.0 hours.
FF 20–15	20	1	17.2 hours	20	344.0 hours.
FF 20–16, A, B, C	20	1	1.7 hours	20	34.0 hours.
FF 20–10	20	4	1 hour	80	80.0 hours.

Data collections activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
SF–LLL	20	1	10 minutes	20	3.3 hours.
Sub-total	20		31 hours	180	670.3 hours.
MMMS					
SF 424	20	1	45 minutes	20	15.0 hours.
FF 20–20	20	1	9.7 hours	20	194.0 hours.
FF 20–15	20	1	17.2 hours	20	344.0 hours.
FF 20–16, A,B,C	20	1	1.7 hours	20	34.0 hours.
FF 20–10	20	2	1 hour	40	40.0 hours.
SF–LLL	20	1	10 minutes	20	3.0 hours.
Sub-total	20		31 hours	120	630 hours.
RFC					
SF 424	56	1	45 minutes	56	42.0 hours.
FF 20–20	56	1	9.7 hours	56	543.0 hours.
FF 76–10A	56	1	1.2 hours	56	67.0 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95.0 hours.
FF 20–10	56	4	1 hour	224	224.0 hours.
FF 20–18	56	1	4.2 hours	56	235.0 hours.
FF–20–19	56	1	5 minutes	56	5.0 hours.
SF–LLL	56	1	10 minutes	56	9.0 hours.
Sub-total	56		19 hours	616	1,220 hours.
FMA					
SF 424	56	3	45 minutes	168	126.0 hours.
FF 20–20	56	3	9.7 hours	168	1630.0 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95.0 hours.
FF 76–10A	56	3	1.2 hours	168	202.0 hours.
FF 20–10	56	4	1 hour	224	224.0 hours.
FF 20–18	56	1	4.2 hours	56	235.0 hours.
FF 20–19	56	1	5 minutes	56	4.0 hours.
SF–LLL	56	1	10 minutes	56	9.0 hours.
Sub-Total	56		19 hours	952	2,525 hours.
PDM					
SF 424	56	2	45 minutes	112	84 hours.
FF 20–15	56	1	17.2 hours	56	963.2 hours.
FF 20–20	56	2	9.7 hours	112	1,086.4 hours.
FF 76–10A	56	2	1.2 hours	112	134.4 hours.
FF 20–16, A, B, C	56	2	1.7 hours	112	190.4 hours.
FF 20–10	56	8	1 hour	448	448 hours.
FF 20–17	56	20	17.2 hours	1,120	19,264 hours.
FF 20–18	56	2	4.2 hours	112	470.4 hours.
FF 20–19	56	2	5 minutes	112	9.3 hours.
SF–LLL	56	2	10 minutes	112	18.6 hours.
Sub-total	56		53 hours	2,408	22,668.7 hours.
AFG*					
SF 424	4,246	1	45 minutes	4,246	3,185.0 hours.
FF 20–20	4,246	2	9.7 hours	8,492	82,372.0 hours.
FF 76–10A	4246	2	1.2 hours	8,492	10,190.0 hours.
FF 20–16, A, B, C	4,246	1	1.7 hours	4,246	7,218.0 hours.
FF 20–10	4,246	2	1 hour	8,492	8,492.0 hours.
FF 20–17	4,246	1	17.2 hour	4,246	73,031.0 hours.
FF 20–18	4,246	1	4.2 hours	4,246	17,833.0 hours.
FF 20–19	4,246	1	5 minutes	4,246	340.0 hours.
SF–LLL	4,246	1	10 minutes	4,246	705.0 hours.
Sub-total	4,246		36 hours	50,952	203,366 hours.
SAFER					
SF 424	243	1	45 minutes	243	182.0 hours.
FF 20–20	243	2	9.7 hours	486	4,714.0 hours.
FF 76–10A	243	2	1.2 hours	486	583.0 hours.
FF 20–16, A, B, C	243	1	1.7 hours	243	413.1 hours.
FF 20–10	243	4	1 hour	972	972 hours.
FF 20–17	243	1	17.2 hours	243	4,179.6 hours.
FF 20–18	243	1	4.2 hours	243	1,020.6 hours.
FF 20–19	243	1	5 minutes	243	20.2 hours.
SF–LLL	243	1	10 minutes	243	40.5 hours.
Sub-total	243		36 hours	3,402	12,125.7 hours.
Non-Disaster Grants Total			359	55,378	247,091.7
Grand Total			469	59,178	2,099,212.7

*AFG and SAFER grants are awarded directly to individual fire departments.

Estimated Cost: The annualized hour burden cost to respondents is estimated to be $53,588,308. This estimate is based on the hourly wage rate for State Representative and Fire Department Chiefs completing and submitting the FEMA Grant Administration forms to FEMA for review and approval.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before November 27, 2007.

ADDRESSES: Interested persons should submit written comments to Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Rosenberg, Section Chief, Mitigation Directorate, (202) 646–3321 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: September 25, 2007.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency. Department of Homeland Security.

[FR Doc. E7–19231 Filed 9–27–07; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved collection, OMB No. 1660–0072.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the e-Grants application used to determine whether mitigation activities proposed for funding meets eligibility criteria. To better reflect all of the mitigation grant programs using the mitigation e-Grants application, the Flood Mitigation Assistance (FMA) e-Grant Program, the Pre-Disaster Mitigation (PDM) e-Grant Program and the Repetitive Flood Claims (RFC) e-Grant Program have been combined and renamed to be called the Mitigation Grant Program/e-Grants.

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Mitigation Grant Program/e-Grants (previously named Flood Mitigation Assistance (e-Grants).

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0072.

Form Numbers: None.

Abstract: The States will utilize the Mitigation Grant Program/e-Grants, automated application to report to FEMA on a quarterly basis, certify how funding is being used and to report on the progress of mitigation activities funded under grant awards, made to Grantees by FEMA. FEMA will use this system to review the Grantees quarterly reports to ensure that mitigation grant activities are progressing on schedule and to track the expenditure of funds.

Affected Public: State, local or tribal governments, and Federal government.

ESTIMATED TOTAL ANNUAL BURDEN HOURS

Data collection activities/instrument	Number of respondents (A)	Frequency of responses (B)	Hours burden per response (C)	Annual responses (D) = (A × B)	Annual burden hours (C × D)
FMA					
Benefit-Cost Determination	56	2	5	112	560
Environmental Review	56	2	7.5	112	840
Project Narrative—Sub-grant Application	56	4	12	224	2,688
Subtotal for FMA e-Grants Supplemental Information	56		24.5	448	4,088
PDM					
Benefit-Cost Determination	56	20	5	1,120	5,600
Environmental Review	56	20	7.5	1,120	8,400
Project Narrative—Sub-grant application (including PDM Evaluation Information Questions)	56	20	12	1,120	13,440
Subtotal for PDM e-Grants Supplemental Information	56		24.5	3,360	27,440
RFC					
Benefit-Cost Determination	56	1	5	56	280
Environmental Review	56	1	7.5	56	420
Project Narrative—Sub-grant application	56	2	12	112	1,344

ESTIMATED TOTAL ANNUAL BURDEN HOURS—Continued

Data collection activities/instrument	Number of respondents (A)	Frequency of responses (B)	Hours burden per response (C)	Annual responses (D) = (A × B)	Annual burden hours (C × D)
Subtotal for RFC e-Grants Supplemental Information	56		24.5	224	2,084
Totals	56		24.5	4,032	33,612

Estimated Cost: The total annual estimated costs to States and Indian Tribal governments for information collection associated with the mitigation grant programs is $891,726.36. This calculation is based on the number of annual burden hours for wage rates for Urban and Regional Planners, responsible for collecting the information or completing the e-Grants information at the State level. The cost for developing e-Grants system is approximately $4.4 million. System enhancements will continue into future years, at an average cost to FEMA of $750,000 annually in contract costs.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before November 27, 2007.

ADDRESSES: Interested persons should submit written comments to Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Rosenberg, Section Chief, Mitigation Division, (202) 646–3321 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: September 24, 2007.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–19232 Filed 9–27–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in National Coalition for the Homeless v. Veterans Administration, No. 88–2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ENERGY: Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–0072; GSA: Mr. John E.B. Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; NAVY: Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305. (These are not toll-free numbers.)

Dated: September 20, 2007.

Mark R. Johnston

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program

Suitable/Available Properties

Building

Alabama

SSA Building,
201 College Street,
Gadsden, AL 35901.
Landholding Agency: GSA.
Property Number: 54200730013.
Status: Surplus.
GSA Number: 4–G–AL–0773.
Comments: single story structure w/parking, presence of asbestos, most recent use—office, to be vacant 11/2007.

Massachusetts

Former Railroad Depot.
240 Central Street,
Lowell, MA 01852.
Landholding Agency: GSA.
Property Number: 54200730015.
Status: Excess.
GSA Number: 1–I–MA–910.
Comments: 11,200 sq. ft., estimated $1 million required for interior and mechanical systems, subject to Historic Preservation Standards.

Unsuitable Properties

Building

California

Bldg. CM46A,
Sandia Natl Lab.,
Livermore, CA 94551.
Landholding Agency: Energy.
Property Number: 41200730005.
Status: Excess.
Reasons: Secured Area.

Parcel F, Sewage Treatment Facility,
Norco Co: Riverside, CA 92860.
Landholding Agency: GSA.
Property Number: 54200730014.
Status: Surplus.
GSA Number: 9–G–CA–0432–9.
Reasons: Extensive deterioration.

Portion/Bldg. T17,
Naval Base Point Loma,
San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730016.
Status: Underutilized.
Reasons: Secured Area.

Bldg. 297,
Naval Base,
San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730017.
Status: Unutilized.
Reasons: Secured Area.

Unsuitable Properties

Building

California
Bldgs. 13, 87,
Naval Air Station,
Coronado Co: San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730022.
Status: Excess.
Reasons: Extensive deterioration. Secured Area.

Bldg. 243,
Naval Air Station,
Coronado Co: San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730023.
Status: Excess.
Reasons: Secured Area. Extensive deterioration.

Bldg. 381,
Naval Air Station,
Coronado Co: San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730024.
Status: Excess.
Reasons: Secured Area.

Unsuitable Properties

Building

California

4 Bldgs.,
Naval Air Station,
493, 663, 682, 784.
Coronado Co: San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730025.
Status: Excess.
Reasons: Extensive deterioration. Secured Area.

Bldg. 809,
Naval Air Station,
Coronado Co: San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730026.
Status: Excess.
Reasons: Secured Area.

Bldg. 983,
Naval Air Station,
Coronado Co: San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730027.
Status: Excess.
Reasons: Secured Area.

Unsuitable Properties

Building

California

Bldg. 1459,
Naval Air Station,
Coronado Co: San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730028.
Status: Excess.
Reasons: Extensive deterioration. Secured Area.

Bldg. 334,
Naval Base,
San Diego, CA.
Landholding Agency: Navy.
Property Number: 77200730029.
Status: Excess.
Reasons: Secured Area.

District of Columbia

Bldgs. 86, 87,
Naval Support Activity,
District of Columbia, DC 20373.
Landholding Agency: Navy.
Property Number: 77200730018.
Status: Unutilized.
Reasons: Secured Area.

Unsuitable Properties

Building

Maryland

Structures 1478, 1736, 1738,
Naval Air Station,
Patuxent River, MD 20670.
Landholding Agency: Navy.
Property Number: 77200730019.
Status: Excess.
Reasons: Secured Area.

Bldgs. C1, C14,

Naval Air Station,
Solomons, MD.
Landholding Agency: Navy.
Property Number: 77200730020.
Status: Excess.
Reasons: Extensive deterioration. Secured Area.

Tennessee

Bldgs. 413, 1059,
E. TN Tech Park,

Oak Ridge, TN 37831.
Landholding Agency: Energy.
Property Number: 41200730006.
Status: Excess.
Reasons: Contamination. Secured Area.

Unsuitable Properties

Building

Utah

Myton Comm. Site,
Duchesne, UT.
Landholding Agency: GSA.
Property Number: 54200730016.
Status: Surplus.
GSA Number: 7–A–UT–524.
Reasons: Within 2000 ft. of flammable or explosive material.

Virginia

Bldg. 2398,
Naval Station,
Norfolk, VA.
Landholding Agency: Navy.
Property Number: 77200730021.
Status: Excess.
Reasons: Secured Area.

[FR Doc. E7–18891 Filed 9–27–07; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0068).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for "Ferrous Metals Surveys, (13 USGS forms)." This notice provides the public an opportunity to comment on the paperwork burden of these forms.

DATES: Submit written comments by November 27, 2007.

ADDRESSES: You may submit comments on this information collection to the Department of the Interior, USGS, via:

- *E-mail: atravnic@usgs.gov.* Use Information Collection Number 1028–0068 in the subject line.
- *Fax:* (703) 648–7069. Use Information Collection Number 1028–0068 in the subject line.
- Mail or hand-carry comments to the Department of the Interior; USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. Please reference Information Collection 1028–0068 in your comments.

FOR FURTHER INFORMATION CONTACT: Scott F. Sibley at (703) 648–4976. Copies of the forms can be obtained at no cost at *www.reginfo.gov* or by contacting the USGS clearance officer at the phone number listed below.

SUPPLEMENTARY INFORMATION:

Title: Ferrous Metals Surveys.
OMB Control Number: 1028–0068.
Form Number: Various (13 forms).
Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on ferrous and related metals, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

We will protect information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked. We intend to release data collected on these 13 forms only in a summary format that is not company-specific.

Frequency: Monthly and Annually.
Estimated Number and Description of Respondents: Approximately 1,307 producers and consumers of ferrous and related metals. Respondents are canvassed for one frequency period (e.g., monthly respondents are not canvassed annually).
Estimated Number of Responses: 2,979.
Annual burden hours: 1,614.
Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for these 13 forms is 1,978 hours. We estimate the public reporting burden averages 10 minutes to 1 hour per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.
Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.
Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (44 U.S.C. 3501, *et seq.*) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * " Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60-day public comment period.

USGS Information Collection Clearance Officer: Alfred Travnicek, 703–648–7231.

Dated: September 21, 2007.
John H. DeYoung, Jr.,
Chief Scientist, Minerals Information Team.
[FR Doc. 07–4772 Filed 9–27–07; 8:45 am]
BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colorado River Tribe-Health and Safety Code, Article 2—Liquor

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes an amendment to the Colorado River Tribal Health and Safety Code, Article 2, Liquor, Chapter 6, Sections 2–601 through 620. The Code regulates and controls the possession, sale and consumption of liquor within the Colorado River Tribe's Reservation. The land is located on trust land and this Code allows for the possession and sale of alcoholic beverages within Colorado River Tribe's Reservation. This Code will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation and at the same time will provide an important source of revenue

and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Act is effective as of September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Sharlot Johnson, Tribal Government Services Officer, Western Regional Office, Bureau of Indian Affairs, 400 N. 5th Street, Two Arizona Center, 12th Floor, Phoenix, Arizona 85001; Telephone (602) 379–6786; Fax (602) 379–4100; or Elizabeth Colliflower, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone (202) 513–7627; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Colorado River Tribal Council adopted this amendment to the Colorado River Tribal Health and Safety Code, Article 2, Liquor by Ordinance No. 04–1 on March 12, 2004.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council duly adopted this amendment to the Colorado River Indian Tribes—Health and Safety Code, Article 2—Liquor on March 12, 2004.

Dated: September 21, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

The amendment to Colorado River Indian Tribes-Health and Safety Code, Article 2—Liquor, Chapter 6, Sections 2–601 through 620 reads as follows:

Chapter 6. Bar, Liquor and Package Liquor Privilege Tax

Section 2–601. General Purpose.

The Colorado River Indian Tribes have a significant interest in protecting the health, safety and general welfare of its members, the residents within the boundaries of the Reservation and those persons and businesses doing business on and/or visiting the Reservation. The purpose of the bar, liquor and package liquor privilege tax is to regulate and monitor the sale of alcohol within the boundaries of the Reservation and to raise revenues to fund health, safety and general welfare programs and services.

Section 2–602. Definitions.

In addition to the definitions in Section 2–101, for purposes of this Chapter, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Chapter:

(1) "Bar" means and includes an establishment used, maintained, advertised and held out to the public as a place which serves liquor.

(2) "Department" shall mean the Department of Revenue and Finance of the Colorado River Indian Tribes which is responsible for the administration and enforcement of the tax revenue laws of the Tribes and the investigation, examination and audit of tribal finances, departments, offices, officers and employees.

(3) "Director" shall mean the Director of the Department of Revenue and Finance of the Colorado River Indian Tribes.

(4) "Packaged liquor at retail" means a place of business in which the premises are used for the retail sale of liquor in original package for consumption off the premises where sold.

(5) "Records" shall mean any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts and financial statements.

(6) "Return" or "Tax Return" shall mean any form, report or document prescribed and approved by the Department for the return of a tax obligation including any supporting schedules, attachments, worksheets and lists.

(7) "Taxes" shall include taxes, interest, penalties and costs of collection assessed or imposed pursuant to this Chapter or Title 20: Taxation of the Tribal Code.

Section 2–603. Imposition of Tax.

There is hereby levied and imposed a tax upon the privilege of receiving a liquor license to sell liquor served or prepared at either a restaurant or bar within the boundaries of the Colorado River Indian Reservation and upon privilege of receiving a liquor license to sell packaged liquor at retail within the boundaries of the Reservation.

Section 2–604. Rate of Tax.

The tax rate imposed under this Chapter shall be established by the Tribal Council of the Colorado River Indian Tribes and shall be no less than two percent (2%) nor more than ten percent (10%) of the purchase price of the liquor. Until the tax rate is changed by Resolution of the Tribal Council, the current tax rate imposed under this Chapter shall be levied, imposed and collected at the rate of six and six-tenths percent (6.6%) of the purchase price of the liquor.

Section 2–605. Tax is Additional Tax.

The tax herein levied and imposed shall be in addition to all other taxes and fees.

Section 2–606. Exemptions.

The provision of liquor by a person or entity not occurring at a place of business held out as a retailer of such liquor is exempt from the provisions of this Chapter.

Section 2–607. Liability for Payment.

(1) The legal incidence of and liability for payment of said tax shall be on the "retailer".

(2) Each retailer within the boundaries of the Reservation, regardless of whether they are licensed under this Article, shall have the duty to collect and account for the tax imposed herein, and shall remit all due and owing taxes from the sale of liquor and/or packaged alcoholic liquor to consumers, whether such payment is by credit or cash, to the Department of Revenue and Finance at the time such payment is due.

Section 2–608. Collection of Tax.

The invoice, receipt or other statement of payment given to the consumer at the time of payment shall show the amount due under the tax provided herein which shall be stated separately on said invoice, receipt or, statement. The retailer shall be liable for the payment of the tax to the Tribes, whether any additional fee is actually collected from the consumer.

Section 2–609. Payment of Tax.

Payment of the tax shall be made at the time the tax return is due.

Section 2–610. Administration.

All provisions of Title 20 of the Tribal Code, the Taxation Code, Article I, shall apply to this Chapter.

Section 2–611. Tax Identification Number.

Upon receipt of an application for a license with the Board pursuant to Chapter 2 of this Article, all retailers intending to conduct business within the boundaries of the Reservation or currently conducting business within the boundaries of the Reservation on the effective date of this Article shall, within thirty (30) days of the effective

date of this Article, be assigned a taxpayer identification number by the Department pursuant to Title 20, Section 20–1417.

Section 2–612. Filing of Return.

All retailers shall pay to the Department of Revenue and Finance all taxes under this Chapter. Each retailer that sells liquor and/or packaged liquor at retail within the boundaries of the Reservation shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Department. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

Section 2–613. Records.

All retailers shall maintain and preserve complete and accurate books, records and accounts showing the gross receipts for sales of liquor and/or packaged liquor at retail and the taxes collected each day and shall make available such books, records and accounts to the Director of the Department of Revenue and Finance for examination for those periods of time prescribed in Article I, Chapter 8 of the Taxation Code.

Section 2–614. Failure to Pay Tax.

Taxes that are not remitted to the Department of Revenue and Finance on or before the due date are delinquent.

Section 2–615. Violations; Additional Penalties.

Any retailer which violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Chapter, may be assessed a penalty of not less than Seventy-Five Dollars ($75.00) nor more than Five Thousand Dollars ($5,000.00) for the first violation, and not less than One Hundred Fifty Dollars ($150.00), nor more than Five Thousand Dollars ($5,000.00) for the second violation, and not less than Three Hundred Dollars ($300.00) nor more than Five Thousand ($5,000.00) for the third violation, and not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00) for the fourth and eacn subsequent violation, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said retailer continues any such violation, or permits any such violation to exist after notification thereof. The penalties imposed under this Chapter shall be in addition to the tax and in addition to those penalties, if any, imposed under Article I, Chapter 7 of the Taxation Code.

Section 2–616. Promulgation of Regulations.

The Director shall have the power to promulgate regulations for the enforcement of the provisions of this Chapter and the collection of revenues hereunder.

Section 2–617. Amendments.

The provisions of this Chapter may be amended at the discretion of the Tribal Council by Ordinance or Resolution.

Section 2–618. Failure to Remit; Licensing.

Collection and payment of this tax may be enforced by action in any court of competent jurisdiction and failure to account for or pay the tax by retailers of taxable alcoholic liquor shall be cause for revocation of any license of such retailer or applicable to the premises thereof, in addition to any other penalty provided in this Article.

Section 2–619. Application to the Tribes.

The provisions of this Chapter shall apply to the Tribes including any governmental entity or enterprise of the Tribes. For purposes of this Chapter, the Tribes, including any governmental entity or enterprise of the Tribes, if applicable, shall be considered a "retailer."

Section 2–620. Nondiscrimination.

No provision of this Chapter shall be construed as imposing a tax that discriminates on the basis of whether a bar, restaurant, packaged liquor store or similar establishment is owned, managed or operated by a member of the Tribes.

[FR Doc. E7–19150 Filed 9–27–07; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–025–07–1610–DQ–089L]

Notice of Availability of Kobuk-Seward Peninsula Proposed Resource Management Plan and Final Environmental Impact Statement, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (Proposed RMP/Final EIS) for the Kobuk-Seward Peninsula Planning Area in Alaska.

DATES: The BLM Planning Regulations state that any person who participated in the planning process, and has an interest that is or may be adversely affected, may protest the BLM's approval or amendment of an RMP within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. Instructions for filing of protests are described in the Dear Reader letter of the Kobuk-Seward Peninsula Proposed RMP/Final EIS. Please consult BLM's Planning Regulations (43 CFR 1610.5–2) for further instructions on protests.

FOR FURTHER INFORMATION CONTACT: Jeanie Cole, BLM Central Yukon Field Office, 1150 University Avenue, Fairbanks, AK 99709, (907) 474–2340, *jeanie_cole@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The Kobuk-Seward Peninsula planning area covers approximately 11.9 million acres of BLM-managed land in northwestern Alaska. The Kobuk-Seward Peninsula Proposed RMP/Final EIS focuses on the principles of multiple use and sustained yield as prescribed by section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA). The Proposed RMP/Final EIS considers and analyzes four alternatives, including a No Action and a Preferred Alternative. The alternatives provide for an array of variable levels of commodity production and resource protection and restoration. The Proposed RMP/Final EIS will help the BLM meet its mandate of multiple use and sustained yield.

The alternatives were developed based on public scoping and participation, and the requirements of the BLM's Land Use Planning Handbook (H–1601–1). The public involvement and collaboration process included 9 public scoping meetings, 12 public meetings on the Draft RMP/EIS, and meetings with other interested parties.

Four primary issues were raised and addressed through this planning process. (1) Recreation, including how the BLM should manage recreation to provide and maintain a diversity of experiences on BLM-managed public lands while protecting subsistence

resources and opportunity, and what level of commercial recreational permits is appropriate, particularly in the Squirrel River area; (2) Subsistence, including maintaining and protecting subsistence uses; (3) Minerals Management, determining which areas should be available for mineral exploration and development; (4) Access/Travel Management, allowing for access to BLM-managed public lands for various purposes. In addition to these issues, the Proposed RMP/Final EIS addresses management of various program areas such as vegetation, fish and wildlife habitat, fire management, cultural resources, visual resources, forest products, livestock grazing, and realty. The Proposed RMP/Final EIS also resulted in development of required operating procedures (ROP), which are requirements, procedures, management practices, or design features the BLM adopts as operational requirements for all permitted activities. The ROPs were developed to ensure that Alaska Statewide Land Health Standards are met.

The Squirrel River area contains BLM-and-State-managed land, and is surrounded by National Park Service- and Fish and Wildlife Service-managed lands. Ultimately, the Northwest Arctic Borough will also be a land owner. Approximately 14 percent of the public comments were related to recreation and 7 percent were specific to the Squirrel River. Relatively easy access to this area from Kotzebue by fixed-wing aircraft, a large number of gravel bars that can be used for landing strips, and the reduced level of regulation compared to other surrounding federal lands, make the Squirrel River a popular destination for hunters. Local subsistence hunters have expressed concern about this area for more than a decade, raising issues such as competition with subsistence hunters by large numbers of sport hunters, potential deflection of migrating caribou away from subsistence villages, waste of game meat, lack of enforcement, and unmanaged commercial guiding/transporter operations. Alternatives B, C, and D of the Proposed RMP/Final EIS all identify the Squirrel River as a special recreation management area. One component of the BLM's preferred alternative (D) is to maintain recreational use of the Squirrel River at the current level while developing a recreation area management plan. This recreation area management plan, developed in concert with the State and Northwest Arctic Borough, both of which do or soon will own land in the Squirrel River watershed, would develop special rules to address the issues in the area.

As required by 43 CFR 1610.7–2, areas with potential for designation as Areas of Critical Environmental Concern (ACEC) have been considered during the planning process. Approximately seven percent of the total comments submitted during the public-comment period pertained to ACECs. The Proposed RMP/Final EIS identifies six ACECs for designation in the BLM's preferred alternative. Final acreage for areas designated as ACECs will depend on the result of land conveyance to the State of Alaska and Native Corporations. The following table provides a summary of proposed ACECs and descriptions of resource use limitations provided by decisions made in the proposed plan.

TABLE 1.—PROPOSED ACECS UNDER ALTERNATIVE D (PREFERRED ALTERNATIVE) OF THE PROPOSED RMP/FINAL EIS

Name of area	Acreage	Resource use limitations
Nulato Hills ACEC	1.1 million	Limited OHV designation. Retained in Federal ownership. Closed to grazing outside of existing allotments. Designate as ROW avoidance area. Open to fluid mineral leasing subject to special stipulations. Open to locatable mineral entry subject to required operating procedures.
Western Arctic Caribou Herd Insect Relief ACEC.	1.5 million	Same as Nulato Hills except it would not be designated as a ROW avoidance area and the entire ACEC would be closed to grazing.
Inglutalik Watershed ACEC	466,000	Same as Nulato Hills except it would not be a ROW avoidance area.
Ungalik Watershed ACEC	264,000	Same as Nulato Hills except it would not be a ROW avoidance area.
Shaktoolik Watershed ACEC	234,000	Same as Nulato Hills except it would not be a ROW avoidance area.
Mount Osborn ACEC	82,000	Same as Nulato Hills except the level of commercial recreational use may be limited, it would be open to grazing, and it would not be a ROW avoidance area.

During the public comment period on the Draft RMP/EIS the BLM received nine additional ACEC nominations. The areas nominated were: Coastal areas near Kivalina, Teller, Koyuk, and Unalakleet; the Bendeleben and Darby mountains; the Agiapuk and American rivers; and the multiple major pathways and convergence area of caribou migration routes in the vicinity of Selawik-Kobuk. The BLM evaluated these areas for possible ACEC designation and determined that designation was not warranted. The BLM will not retain sufficient land in the Teller, Kivalina and Koyuk areas to warrant designation, Unalakleet is outside of the Planning Area, and the BLM does not administer any land along the American River. The Bendeleben and Darby mountains and the Agiapuk River have some relevant values but do not meet the importance criteria defined under 43 CFR 1601.7–2. The caribou migration routes meet the relevance criteria of supporting a significant wildlife resource. However, data on caribou migration routes is not sufficient to support the importance criteria. In fact, the limited data available seems to indicate that caribou migrate less on BLM-managed public land and more on private, National Park Service, Fish and Wildlife Service, and State lands. The primary areas of BLM-managed public land in this migration area are the Squirrel River, which was identified as a special recreation management area where BLM proposes to develop a recreation area management plan, and the northern Nulato Hills, which is within the proposed Nulato Hills ACEC.

All comments received on the plan were analyzed and evaluated. Appendix J of the Proposed RMP/Final EIS contains all substantive comments received and BLM responses to those comments. Comments on the Draft RMP/EIS received from the public and internal BLM review comments were incorporated into the Proposed RMP/Final EIS. Public comments resulted in changes to the preferred alternative through the addition of clarifying text and additional analysis of impacts. A summary of these changes is included in the Proposed RMP/Final EIS after the Executive Summary.

Copies of the Kobuk-Seward Peninsula Proposed RMP/Final EIS have been sent to affected Federal, State, and Local Government agencies and to interested parties. Copies of the Proposed RMP/Final EIS have also been sent to individuals, agencies, and groups as requested or as required by regulation or policy. Copies of the Proposed RMP/Final EIS are available for public inspection at the BLM Fairbanks District Office at 1150 University Avenue, Fairbanks, Alaska, during normal business hours from 7:45 a.m. to 4:30 p.m., Monday through Friday except holidays.

Interested persons may also view the Proposed RMP/Final EIS on the Internet at *http://www.ak.blm.gov/ksp* or at one of the following locations in Alaska: The BLM Fairbanks District Office, Fairbanks; BLM Nome Field Station, Nome; BLM Anchorage Field Office, Anchorage; BLM Alaska State Office, Public Room, Anchorage; Noel Wien Library, Fairbanks; Keyoayah Kozga Library, Nome; Chukchi Consortium Library, Kotzebue; Anchorage Municipal Library, Anchorage; Alaska State Library, Juneau; Tuzzy Consortium Library, Barrow; Selawik National Wildlife Refuge Headquarters, Kotzebue; Northwest Arctic Borough Planning Department, Kotzebue.

E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period to one of the following addresses, or as appropriate:

Regular Mail: Director (210), *Attention:* Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), *Attention:* Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*.

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 20, 2007.

Julia Dougan,

Acting State Director.

[FR Doc. E7–19064 Filed 9–27–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Madera Irrigation District Water Supply Enhancement Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of public scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) proposes to prepare an EIS for the proposed Madera Irrigation District (MID) Water Supply Enhancement Project (Project), in which MID would construct a groundwater bank on the property known as Madera Ranch, west of the City of Madera, Madera County, CA. The Federal actions include approval from Reclamation for MID to bank a portion of their Central Valley Project (CVP) Friant Division contract water supply outside of its service area in the newly constructed groundwater bank at Madera Ranch and approval to extend the Reclamation-owned 24.2 Canal.

DATES: Reclamation will hold a scoping meeting to seek public input on topics, issues, and alternatives to be considered in the EIS. The scoping meeting will occur on October 22, 2007 at 6:30 p.m.

Written comments should be mailed to Reclamation at the address below by close of business November 5, 2007.

If special assistance is required at the scoping meeting, please contact Ms. Patti Clinton, Reclamation, at (559) 487–5127, TDD (559) 487–5933, or via e-mail at *pclinton@mp.usbr.gov* no less than five working days prior to the meeting.

ADDRESSES: The scoping meeting will be held at the Madera Irrigation District Office, 2152 Road 28 1/4, Madera, CA 93637.

Written comments on the scope of the environmental document should be sent to Ms. Patti Clinton, Bureau of Reclamation, 1243 N Street, Fresno, CA 93721, via e-mail at *pclinton@mp.usbr.gov*, or fax to 559–487–5397.

FOR FURTHER INFORMATION CONTACT: Ms. Patti Clinton, Reclamation, at the above address, (559) 487–5127; or MID, 12152 Road 28 1/4, Madera, CA 93637–9199 (559) 268–2483, fax: (559) 673–0564.

SUPPLEMENTARY INFORMATION: In accordance with the California Environmental Quality Act (CEQA), MID approved its Water Supply Enhancement Project in September 2005 based on a Final Environmental Impact Report (EIR)—State Clearing House # 2005031068. At the time, there was no Federal action. Reclamation commented on the draft EIR stating that once MID proposed a Federal action, Reclamation would need to complete and satisfy all NEPA and Endangered Species Act requirements before approving any Federal action. This EIS has been initiated in response to MID's request that Reclamation approve the banking of CVP water outside of its service area in the proposed Madera Ranch water bank, as well as alterations to Federal facilities.

The primary objectives of the Project are to:

- Enhance water supply reliability and flexibility;
- Help maintain water costs at levels that are affordable to farmers;
- Reduce aquifer overdraft;
- Improve groundwater quality; and
- Encourage conjunctive use, where appropriate.

The Project includes facilities necessary to store water in and recover water from the underlying aquifer. Phase 1 would be recharge-related facilities only. Phase 2 would involve supplemental recharge facilities and facilities for recovery of stored water. The water bank would have a total storage capacity of 250,000 acre-feet (AF), and could recharge or recover up to 55,000 AF of water per year.

Public Disclosure

Before including your name, 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.

Dated: August 22, 2007.

Susan M. Fry,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E7–19249 Filed 9–27–07; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1111–1113 (Final)]

Glycine From India, Japan, and Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1111–1113 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from India, Japan, and Korea of glycine, provided for in statistical reporting number 2922.49.4020 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* September 13, 2007.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727; *russell.duncan@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of glycine from Japan and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on March 30, 2007, by GEO Specialty Chemicals, Lafayette, IN.

Although the Department of Commerce has postponed its preliminary determination as to whether imports of glycine from India are being, or are likely to be sold, in the United States at less than fair value,[2] for purposes of efficiency the Commission is scheduling the final phase of that investigation so that it may proceed concurrently with the Commission's investigations concerning Japan and Korea.

Participation in the investigations and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 13, 2007, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Wednesday, November 28, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 20, 2007. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 21, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is Wednesday, November 20, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "* * * glycine, which in its solid (*i.e.*, crystallized) form is a free-flowing crystalline material. Glycine is used as a sweetener/taste enhancer, buffering agent, reabsorbable amino acid, chemical intermediate, metal complexing agent, dietary supplement, and is used in certain pharmaceuticals. The scope of each of these investigations covers glycine in any form and purity level. Although glycine blended with other materials is not covered by the scope of each of these investigations, glycine to which relatively small quantities of other materials have been added is covered by the scope. Glycine's chemical composition is $C_2H_5NO_2$ and is normally classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). The scope of each of these investigations also covers precursors of dried crystalline glycine, including, but not limited to, glycine slurry (*i.e.*, glycine in a non-crystallized form) and sodium glycinate. Glycine slurry is classified under the same HTSUS subheading as crystallized glycine (2922.49.4020) and sodium glycinate is classified under subheading HTSUS 2922.49.8000."

[2] *Glycine from India: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 72 FR 48257, August 23, 2007. Commerce is scheduled to make its preliminary determination by October 26, 2007.

posthearing briefs is Wednesday, December 5, 2007; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before December 5, 2007. On December 19, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 21, 2007, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 25, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19182 Filed 9–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–452 and 731–TA–1129–1130 (Preliminary)]

Raw Flexible Magnets From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty investigation and antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping duty investigations Nos. 701–TA–452 and 731–TA–1129–1130 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) and section 733(a) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Taiwan of raw flexible magnets, provided for in subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China,[1] and that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)) or 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in these cases by November 5, 2007. The Commission's views are due at Commerce within five business days thereafter, or by November 13, 2007.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* September 21, 2007.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on September 21, 2007, by Magnum Magnetics Corp., Marietta, OH.

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the

[1] Raw flexible magnets were provided for in HTS subheading 8505.19.0040 (prior to December 19, 2004).

Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 12, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than October 9, 2007, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 17, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 25, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19183 Filed 9–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–604]

In the Matter of Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof; Notice of Commission Determination To Review and Vacate an Initial Determination Denying a Motion To Terminate the Investigation With Regard to Three Patents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and vacate an initial determination ("ID") (Order No. 11) of the presiding administrative law judge ("ALJ") in the above-captioned investigation denying a motion to terminate the investigation as to United States Patent Nos. 4,980,463, 5,470,969, and 5,034,551.

FOR FURTHER INFORMATION CONTACT: James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 10, 2007, based upon a complaint filed on behalf of Tate & Lyle Technology Ltd. of London, United Kingdom, and Tate & Lyle Sucralose, Inc. of Decatur, Illinois (collectively, "Tate & Lyle"). The complaint alleged a violation of section 337(a)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of sucralose, sweeteners containing sucralose, and related intermediate compounds thereof by reason of infringement of various claims of United States Patent Nos. 4,980,463 ("the '463 patent"), 5,470,969 ("the '969 patent"), 5,034,551 ("the '551 patent"), 5,498,709, and 7,049,435. The notice of investigation named twenty-five respondents.

On June 12, 2007, respondents Changzhou Niutang Chemical Plant Co., Ltd.; U.S. Niutang Chemical, Inc.; Garuda International Inc.; Guangdong Food Industry Institute; and L&P Food Ingredient Co., Ltd. (collectively, "Changzhou") filed a motion to terminate the investigation with respect to the '463 patent, the '969 patent, and the '551 patent. Several other respondents joined Changzhou's motion to terminate. Tate & Lyle opposed the motion. The Commission investigative attorney ("IA") supported the motion with respect to the '551 patent, but not with respect to the '463 patent or the '969 patent.

On August 8, 2007, the ALJ issued an ID (Order No. 11), denying Changzhou's motion to terminate the investigation with regard to the '463 patent, the '969 patent, and the '551 patent. The ALJ issued his order in the form of an ID under 19 CFR 210.42, pursuant to the notice of investigation. The complainants, certain respondents, and the Commission investigative attorney filed petitions for review of Order No. 11.

Having examined the record of this investigation, including the ALJ's ID and the submissions of the parties, the Commission has determined to review and vacate the ALJ's ID. The issues raised by Changzhou's motion, including whether the importation of the finished product alone (sucralose) constitutes a violation of section 337 based on the '463, '969, and '551 patents, and the ID, including whether trace amounts of an intermediate product or catalyst in the imported product can constitute a violation of section 337, may be addressed in the final initial determination (or earlier, if appropriate).

In addressing these issues, the parties and the ALJ should consider the following:

1. The amount of any subject product which has been or is currently being imported.

2. Whether there is a difference in effective scope between 35 U.S.C. 271(g)

and 19 U.S.C. 1337(a)(1)(B)(ii). Whether this question has been decided by *Kinik* v. *International Trade Commission*, 362 F.3d 1359, 1361–63 (Fed. Cir. 2004).

3. The language and legislative history of 19 U.S.C. 1337(a)(1)(B)(ii) and the language and legislative history of former section 337a (former 19 U.S.C. 1337a). The statements in *Amgen* v. *ITC*, 902 F.2d 1532 (Fed. Cir. 1990), as to "covered" and that former section 337a was reenacted as section 337(a)(1)(B)(ii) without a change in scope. Any special rule of statutory interpretation that should be applied given that former section 337a was enacted in response to In re *Amtorg Trading Corp.*, 75 F.2d 826 (CCPA 1935). The processes and patents in In re *Amtorg Trading Corp.* and in *In re Northern Pigment Co.*, 71 F.2d 447 (CCPA 1934), and the underlying Commission proceedings. The processes and patents in all Commission and related court proceedings involving process patents and section 337 before and after the enactment of former section 337a.

4. The Supreme Court's recent decision in *Microsoft Corp.* v. *AT&T Corp.*, 550 U.S. (2007).

5. How the above cases may best be read in conjunction with each other.

The Commission has also determined to grant the investigative attorney's motion for leave to file its petition for review out of time and to deny Tate & Lyle's motion for oral argument on review as moot.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.43–45 of the Commission's Rules of Practice and Procedure (19 CFR 210.43–45).

By order of the Commission.

Issued: September 24, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19168 Filed 9–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–564]

In the Matter of Certain Voltage Regulators, Components Thereof and Products Containing Same; Notice of Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of 19 U.S.C. 1337 by Advanced Analogic Technologies, Inc. ("AATI") of Sunnyvale, California in the above-captioned investigation, and has issued a limited exclusion order directed against products of respondent AATI. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3107. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 22, 2006, based on a complaint filed by Linear Technology Corporation ("Linear") of Milpitas, California. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain voltage regulators, components thereof and products containing the same, by reason of infringement of various claims of United States Patent No. 6,411,531 ("the '531 patent") and United States Patent No. 6,580,258 ("the '258 patent"). The complaint named AATI as the sole respondent.

On May 22, 2007, the ALJ issued his final ID finding no violation of section 337. Specifically, he found that none of AATI's accused products directly infringe the asserted claims of the '258 patent, and that one accused product directly infringed claims 4 and 26 of the '531 patent. He found that no indirect infringement had occurred in connection with any of the asserted claims of either patent. As to validity, the ALJ determined that claim 35 of the '258 patent and claims 4, 9, and 26 of the '531 patent are invalid due to anticipation, rejecting other arguments of invalidity, unenforceability, and estoppel. The ALJ also determined that a domestic industry exists with regard to the '258 patent; but that there was no domestic industry with regard to the '531 patent, because of a failure to meet the technical prong of the domestic industry requirement. On May 30, 2007, the ALJ issued his Recommended Determination ("RD") on remedy and bonding. Linear, AATI, and the Commission investigative attorney ("IA") filed petitions for review of the ALJ's ID.

On July 6, 2007, the Commission determined to extend the deadline for determining whether to review the subject final ID by fifteen (15) days, *i.e.*, to July 24, 2007. On July 24, 2007, the Commission determined to review the final ID in part. Specifically, the Commission made the following determinations. With respect to the '258 patent, the Commission determined (1) to review the ID concerning the issues of claim construction, infringement, and validity; and (2) not to review the remainder of the ID as to the '258 patent. With respect to the '531 patent, the Commission determined (1) to review the ID concerning the issue of whether asserted claim 9 of the '531 patent is invalid for anticipation by the Kase reference, and upon review to take no position as to that issue, and (2) not to review the remainder of the ID as to the '531 patent.

The Commission requested written submissions from the parties relating to the issues on review, and submissions on the appropriate remedy, whether the statutory public interest factors preclude issuance of that remedy, and the amount of bond to be imposed during the Presidential review period.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to reverse-in-part the subject ID such that: (i) The ALJ's construction of the terms in claims 2, 3, 34, and 35 of the '258 patent are modified; (ii) the ALJ's conclusions on infringement of the '258 patent are reversed-in-part by reversing the ALJ's finding of no literal infringement with respect to the sleep mode claims (asserted claims 2, 3, and 34) only as to representative product AAT1143, and affirming the ALJ's finding of no infringement with respect to the reverse current claim (asserted claim 35); and (iii) the ALJ's findings of validity of claims 2, 3, and 34 and of invalidity of claim 35 of the '258 patent are affirmed. The Commission determined not to reach the issue of indirect infringement. The Commission has determined that the appropriate

form of relief is a limited exclusion order prohibiting the unlicensed entry of voltage regulators that infringe one or more of claims 2, 3, and 34 of the '258 patent and that are manufactured by or on behalf of AATI, its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period (19 U.S.C. 1337(j)) shall be in the amount of one hundred (100) percent of the entered value of the articles that are subject to the order. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.45).

By order of the Commission.

Issued: September 24, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19123 Filed 9–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–019]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 5, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1124 and 1125 (Preliminary) (Electrolytic Manganese Dioxide from Australia and China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before October 9, 2007; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before October 16, 2007.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 25, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–19186 Filed 9–27–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Financial Literacy, Working Group on Participant Benefit Statements, and Working Group on Fiduciary Responsibilities Updates and Revenue Sharing; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Groups assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issues of (1) financial literacy, (2) participant benefit statements, and (3) fiduciary responsibilities updates and revenue sharing will hold public teleconference meetings on October 16, 2007.

The sessions will take place in Room C5515A, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meetings is for each Working Group to discuss its report/recommendations for the Secretary of Labor. The meetings will run from 10 a.m. to approximately 4 p.m., starting with the Working Group on Financial Literacy, followed by the Working Group on Participant Benefit Statements, followed by the Working Group on Fiduciary Responsibilities Updates and Revenue Sharing.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before October 9, 2007 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before October 9, 2007 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address one or more of the Working Groups should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 9 at the address indicated.

Signed at Washington, DC this 24th day of September, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E7–19190 Filed 9–27–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,927]

C-Tech Industries, A Subsidiary of Alfred Karcher GMBH and Co. KG Calumet, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 5, 2007, a worker requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of C-Tech Industries, A Subsidiary of Alfred Karcher GMBH & Co. KG, Calumet, Michigan (subject firm) to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The negative determination applicable to workers of the subject firm was issued on August 14, 2007. The Department's Notice of determination was published in the **Federal Register** on August 30, 2007 (72 FR 50126). Workers at the subject firm produce automatic parts cleaners (parts washers).

The petition, dated August 1, 2007, stated that the subject firm shifted production to a foreign country and that the subject firm will close in November 2007. The petition attachments stated that production of pressure washers at the C-Tech Industries, Camas, Washington plant shifted to an affiliated facility in Monterrey, Mexico, and that "C-Tech industries in Camas, Washington takes over all production of parts washers."

The investigation revealed that neither sales nor production of parts

cleaners/washers at the subject firm decreased during the relevant period. Rather, sales and production levels at the subject firm increased in 2006 from 2005 levels, and increased during January through July 2007 from January through July 2006 levels. The investigation also revealed that the subject firm did not shift production of parts cleaners/washers abroad. Rather, the shift of production was to an affiliated, domestic facility. Therefore, the Department determined that neither Section 222(a)(2)(A) nor Section 222(a)(2)(B) was satisfied.

The petitioner contends that "no automatic parts washers were manufactured in Mexico, but pressure washers are being manufactured in Mexico" and that it does not matter that "the manufacture of our specific product did not go to Mexico, because our company produces a family of products. Transfer of one product in the family, affects the other products in the family."

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

In the request for reconsideration, the petitioner did not provide any new facts or allege any mistake of facts. Rather, the petitioner alleges that the Department has misinterpreted the law—that the shift of production of pressure washers from C-Tech Industries, Camas, Washington, to Mexico is a basis for a certification of eligibility for workers and former workers of C-Tech Industries, A Subsidiary of Alfred Karcher GMBH & Co. KG, Calumet, Michigan to apply for TAA and ATAA.

The statute requires that the shift of production abroad must be of an article that is like or directly competitive with those produced at the subject firm. Because pressure washers and automatic parts washers are not similar to each other and are not directly competitive with each other, the Department determines that the shift of pressure washers to Mexico cannot be the basis for certification of a worker group that produces parts washers.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of September 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19181 Filed 9–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,674]

EGS Electrical Group, Sola/Hevi-Duty Division, Nashville, TN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at EGS Electrical Group, Sola/Hevi-Duty Division, Nashville, Tennessee. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, a letter of dismissal was issued, which constitutes a negative determination regarding the application for reconsideration.

TA–W–61,674; EGS Electrical Group Sola/ Hevi-Duty Division Nashville, Tennessee (September 4, 2007).

Signed at Washington, DC this 21st day of September 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–19178 Filed 9–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,671]

Faradyne Motors, A Joint Venture of ITT Industries and Pentair, Incorporated, Formerly Known as Success Enterprises LLC, Including On-Site Leased Workers From Kelly Services, Newark, NY, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 20, 2007, applicable to workers of Faradyne Motors, A Joint Venture of ITT Industries and Pentair, Inc., Newark, New York. The notice was published in the **Federal Register** on July 9, 2007 (72 FR 37365).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of motors for pumps. The subject firm originally named Success Enterprises LLC was renamed Faradyne Motors due to a corporate decision in 2006. The State agency reports that some workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Success Enterprises LLC, Newark, New York.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Faradyne Motors who were adversely affected by increased company imports following a shift in production to China.

The amended notice applicable to TA–W–61,671 is hereby issued as follows:

All workers of Faradyne Motors, A Joint Venture of ITT Industries and Pentair, Inc., formerly known as Success Enterprises LLC, including on-site leased workers from Kelly Services, Newark, New York, who became totally or partially separated from employment on or after June 11, 2006, through June 20, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of September 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19177 Filed 9–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,183]

Hartmann, Inc., Lebanon, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 21, 2007 in response to a worker petition filed by a company official on behalf of workers at Hartmann, Inc., Lebanon, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of September, 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19176 Filed 9–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,852]

Schnadig Corporation, Montoursville, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 3, 2007, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on August 3, 2007 and published in the **Federal Register** on August 14, 2007 (72 FR 45451).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed on behalf of workers at Schnadig Corporation, Montoursville, Pennsylvania engaged in the production of lawn and garden products, was denied based on the findings that during the relevant time period, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner alleges that because he was a part of the initially certified worker group and remained employed by the subject firm after all the production stopped and beyond the expiration date of the original TAA certification, he should be also eligible for TAA.

The workers of the subject firm were previously certified eligible for TAA (TA–W–55,198). This certification expired on July 15, 2006. The investigation revealed that production at the subject firm ceased in August of 2004.

When assessing eligibility for TAA, the Department exclusively considers the relevant employment data (for one year prior to the date of the petition and any imminent layoffs) for the facility where the petitioning worker group was employed. In this case, the employment since the expiration of the previous certification was considered. The subject firm did not separate or threaten to separate a significant number of proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers in a firm or appropriate subdivision means at least three workers in a workforce of fewer than 50 workers, five percent of the workers in a workforce of over 50 workers, or at least 50 workers.

Moreover, in its investigation, the Department considers production that occurred one year prior to the date of the petition as required in the Trade Adjustment Assistance regulations. Thus the period ending in 2004 is outside of the relevant period as established by the current petition date of July 12, 2007. The investigation revealed that the subject facility did not manufacture articles since 2004 and workers of the subject firm were not engaged in production of an article or supporting production of the article during the relevant time period. The Department further found that no new information was provided to contradict the original negative findings.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of September, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19179 Filed 9–27–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,864; TA–W–61,864C]

Syroco, Inc., Baldwinsville, NY, Including an Employee Located in Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 27, 2007, applicable to workers of Syroco, Inc., Baldwinsville, New York. The notice was published in the **Federal Register** on August 9, 2007 (72 FR 44865).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation has occurred involving an employee of the Baldwinsville, New York facility of Syroco, Inc. located in Houston, Texas. Mr. John Minnelli provided sales support services for the production of plastic patio furniture that is produced at the Baldwinsville, New York location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Baldwinsville, New York facility of Syroco, Inc., located in Houston, Texas.

The intent of the Department's certification is to include all workers of Syroco, Inc., Baldwinsville, New York who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–61,864 is hereby issued as follows:

All workers of Syroco, Inc., Baldwinsville, New York (TA–W–61,864), including an employee in support of Syroco, Inc., Baldwinsville, New York located in Houston, Texas (TA–W–61,864C), who became totally or partially separated from employment on or after July 23, 2006, through July 27, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of September 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19180 Filed 9–27–07; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a revision of existing exemptions from Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Fire Areas ETN–4 and PAB–2, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit No. 3 (IP3), located in Westchester County, NY. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the January 7, 1987 safety evaluation (SE) to reflect that the installed Hemyc electrical raceway fire barrier system (ERFBS) configurations provide either a 30-minute fire resistance rating, or in one case a 24-minute fire resistance rating, in lieu of the previously stated 1-hour fire resistance rating. The licensee states that a Hemyc ERFBS fire resistance rating will provide sufficient protection for the affected raceways, with adequate margin, to continue to meet the intent of the original requests for exemption and conclusions presented in the NRC's January 7, 1987, SE. The licensee concludes that the revised fire resistance rating of the Hemyc ERFBS does not reflect a reduction in overall fire safety, and presents no added challenge to the credited post-fire safe-shutdown capability which remains materially unchanged from the configuration originally described in previous letters and as credited in the January 7, 1987, SE.

The proposed action is in accordance with the licensee's application dated July 24, 2006, as supplemented by letters dated April 30, May 23, and August 16, 2007.

The Need for the Proposed Action

The proposed revision of existing exemptions from 10 CFR part 50, appendix R, is needed in response to NRC Information Notice 2005–07. The information notice provided licensees the details of Hemyc ERFBS full-scale fire tests conducted by the NRC's Office of Nuclear Regulatory Research. The test results concluded that the Hemyc ERFBS does not provide the level of protection expected for a 1-hour rated fire barrier, as originally designed. The proposed revision to existing exemptions would revise the fire resistance rating of Hemyc ERFBS configurations.

Environmental Impacts of the Proposed Action

The NRC has completed its SE of the proposed action and concludes that the configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate. The details of the staff's SE will be provided in the exemptions that will be issued as part of the letter to the licensee approving the exemption. Based on the presence of redundant safe-shutdown trains, minimal fire hazards and combustibles, automatic cable tray fire suppression system, manual fire suppression features, fire barrier protection, existing Hemyc configuration, and the installed smoke detection system, the NRC staff finds that the use of this Hemyc fire barrier in these zones will not significantly increase the consequences from a fire in these fire zones.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site.

There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for IP3, dated February, 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on February 13, 2007, the NRC staff consulted with the New York State official, Alyse Peterson of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 24, 2006, Agencywide Documents Access and Management System (ADAMS) accession number ML062140057, as supplemented on April 30, 2007, ADAMS accession number ML071280504, May 23, 2007, ADAMS accession number ML071520177, and August 16, 2007, ADAMS accession number ML072400369. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR),

located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of September 2007.

For the Nuclear Regulatory Commission.

John P. Boska,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–19245 Filed 9–27–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension: Form F–4; OMB Control No. 3235–0325; SEC File No. 270–288.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–4 (17 CFR 239.34) is used by foreign issuers to register securities in business combinations, reorganizations and exchange offers pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–4 takes approximately 1,447 hours per response and is filed by approximately 68 respondents. We estimate that 25% of the 1,447 hours per response (361.75 hours) is prepared by the registrant for a total annual reporting burden of 24,599 hours (361.75 hours per response x 68 responses). The remaining 75% of the burden hours is attributed to outside cost.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: September 24, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19185 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27976; 812–13417]

WisdomTree Investments, Inc., et al.; Notice of Application

September 21, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application to amend a prior order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order ("Order") to amend a prior order that permits: (a) An open-end management investment company, whose series track the performance of certain domestic and international equity securities indexes developed by the parent company of the series' investment adviser, to issue shares ("Shares") redeemable only in large aggregations; (b) secondary market transactions in Shares to occur at negotiated prices; (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' Shares; (e) under certain circumstances, the series that track certain foreign equity securities indexes to pay redemption proceeds more than seven days after the tender of Shares; and (f) certain management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares (the "Prior Order").[1] Applicants seek to amend the Prior Order in order to offer additional series based on certain fixed income securities indexes (the "New Funds"). In addition, the Order would delete a condition related to future relief in the Prior Order.

APPLICANTS: WisdomTree Investments, Inc. ("WTI"), WisdomTree Asset Management, Inc. (the "Advisor"), and WisdomTree Trust (the "Trust").

FILING DATES: The application was filed on August 13, 2007 and amended on September 19, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 16, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: 48 Wall Street, Suite 1100, New York, NY 10005.

[1] WisdomTree Investments, Inc., *et al.*, Investment Company Act Release Nos. 27324 (May 18, 2006) (notice) and 27391 (June 12, 2006) (order).

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trust, a Delaware statutory trust registered under the Act as an open-end management investment company, is organized as a series fund with multiple series (the "Equity Funds"). WTI, a Delaware corporation with its principal offices in New York City, is the sole shareholder of the Advisor. WTI has developed and maintains the proprietary indexes that serve or will serve as the basis for the Equity Funds and the New Funds. The Advisor is a Delaware corporation that is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Advisor serves as investment adviser to the Equity Funds, and the Advisor, or an entity controlled by or under common control with the Advisor, will serve as investment adviser to the New Funds and any future series of the Trust ("Future Funds"). The Advisor and the Trust intend to hire one or more subadvisers ("Subadvisers") for the New Funds, each of which will be registered as an investment adviser under the Advisers Act and will not otherwise be an affiliated person, or an affiliated person of an affiliated person, of the Trust, the Advisor, or WTI. ALPS Distributors, Inc. ("Distributor"), a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), acts as distributor and principal underwriter of the Equity Funds and may perform such services for the New Funds and any Future Funds.

2. The Trust is currently permitted to offer the Equity Funds, which track equity securities indexes developed by WTI, in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trust to offer the New Funds, as well as Future Funds (together with the Equity Funds and the New Funds, the "Funds") that are advised by the Advisor or an entity controlled by or under common control with the Advisor and that comply with the terms and conditions of the Prior Order, as modified by the requested relief.

3. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of its underlying index ("Underlying Index") by investing in a portfolio of securities generally consisting of the component securities ("Component Securities") of the Underlying Index.[2] The Underlying Index for each New Fund tracks fixed income securities and will be rebalanced monthly.[3] The Underlying Indexes for the New Funds, as well as the Underlying Indexes for the Equity Funds, have been created by WTI, an affiliated person, as defined in section 2(a)(3) of the Act, of the Advisor and the Trust. Future Funds may be based on Underlying Indexes created, compiled, sponsored, or maintained by WTI or another index provider that is controlled by or under common control with WTI (a "WTI Index Provider") or on Underlying Indexes created, compiled, sponsored, or maintained by an entity that is not an affiliated person, or an affiliated person of an affiliated person, of the Fund, the Advisor, the Distributor, promoter, or any Subadviser to a Fund (a "Non-Affiliated Index Provider"). Because Funds based on Underlying Indexes created by a WTI Index Provider could introduce potential conflicts of interest, the Prior Order contains certain representations and undertakings relating to the transparency of the methodology for those Underlying Indexes, and the establishment of certain policies and procedures to limit communication between index personnel and employees of the Advisor and any Subadviser. Applicants believe that these conflicts of interest do not exist where the index creator is a Non-Affiliated Index Provider. Applicants therefore seek to amend the Prior Order to provide that the relevant representations and undertakings in the application for the Prior Order should not apply to a Fund based on an Underlying Index created by a Non-Affiliated Index Provider.

4. The applicants state that the Component Securities of the WisdomTree International Government ex Japan Bond Index include liquid investment grade government bonds denominated in developed market currencies other than the U.S. dollar and the Japanese yen, with a primary focus on fixed-rate coupon bonds in developed markets maturing between 3 and 10 years, and exclude securities with embedded options, floating-rate coupons, and zero coupons. The Component Securities of the WisdomTree Government Strategies Index include U.S. Treasury securities, obligations of U.S. government agencies and quasi-government corporations, and U.S. mortgage-backed securities.[4] Each New Fund may fully replicate its Underlying Index, but each New Fund currently intends to use a "representative sampling" strategy. Under a representative sampling strategy, a New Fund will hold a basket of the Component Securities of its Underlying Index, but may not hold all of the Component Securities of its Underlying Index. Each New Fund generally will invest at least 80% of its total assets in the Component Securities of the relevant Underlying Index. However, a New Fund may also at times invest up to 20 percent of its total assets in certain futures, options and swap contracts, and cash and cash equivalents, including money market funds, as well as securities not included in its Underlying Index, but which the Advisor believes will help the New Fund to track its Underlying Index. At all times, a New Fund and any Future Fund will hold in the aggregate at least 80% of its total assets in Component Securities and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index.[5] Applicants expect that each New Fund will have a tracking error relative to the performance of its respective

[2] The Underlying Indexes for the New Funds are the WisdomTree International Government ex Japan Bond Index and the WisdomTree Government Strategies Index.

[3] The application for the Prior Order specified that Underlying Indexes created, compiled, sponsored, or maintained by a WTI Index Provider (as defined below) would be reconstituted no more frequently than quarterly. Applicants seek to amend the Prior Order to allow such Underlying Indexes to be reconstituted as frequently as monthly, which applicants indicate is a common methodology for fixed income indexes.

[4] The Trust intends to substitute a cash-in-lieu amount to replace any Deposit Security or Fund Security (each as defined below) that is a "to-be-announced transaction" or "TBA Transaction." A TBA Transaction is a method of trading mortgage-backed securities where the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered are determined two days prior to settlement date. The amount of substituted cash in the case of TBA Transactions will be equivalent to the value of the TBA Transaction listed as a Deposit Security or Fund Security.

[5] Applicants anticipate that investments that have economic characteristics substantially identical to those of the Component Securities of an Underlying Index will encompass securities such as depository receipts based on Component Securities and TBA Transactions.

Underlying Index of no more than 5 percent.

5. Applicants state that the New Funds will comply with the federal securities laws in accepting a deposit of a portfolio of securities designated by the Advisor to correspond generally to the price and yield performance of the New Fund's Underlying Index ("Deposit Securities") and satisfying redemptions with portfolio securities of the New Funds ("Fund Securities"), including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.[6]

6. Applicants state that the New Funds will operate in a manner identical to the operation of the Equity Funds under the Prior Order, except as specifically noted by applicants (and summarized in this notice), and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

Future Relief

7. Applicants also seek to amend the Prior Order to modify the terms under which the Trust may offer Future Funds. The Prior Order is currently subject to a condition that does not permit applicants to register the shares of any Future Fund by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or if the Future Fund could be listed on a national securities exchange ("Exchange") without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

8. The order would amend the Prior Order to delete this condition. Any Future Fund will (a) be advised by the Advisor or an entity controlled by or under common control with the Advisor; (b) track Underlying Indexes that are created, compiled, sponsored or maintained by a WTI Index Provider or a Non-Affiliated Index Provider; and (c) comply with the respective terms and conditions of the Prior Order, as amended by the present application.

9. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Funds and the commencement of secondary market trading of such Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the existing series of the Trust and would remain appropriate for Future Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Fund to be listed on an Exchange without the need for a rule 19b–4 filing under the Exchange Act is not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

Applicants' Conditions

Applicants agree that any Order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which will be deleted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19148 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

[6] In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the New Funds will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Fund Securities. The prospectus for each New Fund will also state that an authorized participant that is not a "Qualified Institutional Buyer," as defined in rule 144A under the Securities Act, will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27975; 812–13382]

ProShares Trust, et al.; Notice of Application

September 21, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Applicants: ProShares Trust ("Trust"), ProShare Advisors LLC ("Adviser"), and SEI Investments Distribution Company ("Distributor").

Summary of Application: Applicants request an order to amend a prior order that permits: (a) Series of an open-end management investment company ("Initial Funds") to issue shares of limited redeemability; (b) secondary market transactions in the shares to occur at negotiated prices; (c) dealers to sell the shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933; and (d) certain affiliated persons of the Initial Funds to deposit securities into, and receive securities from, the Initial Funds in connection with the purchase and redemption of aggregations of the shares ("Prior Order").[1] Applicants seek to amend the Prior Order to permit certain new series ("Additional Funds" and, together with the Initial Funds, the "Funds") to be offered using domestic equity securities indices different than those permitted under the Prior Order and certain international equity securities indices and debt securities indices (collectively, "New Underlying Indices").

Filing Dates: The application was filed on May 11, 2007, and amended on May 30, 2007, September 7, 2007 and September 20, 2007.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 16, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: ProShares Trust and ProShare Advisors LLC, 7501 Wisconsin Avenue, Suite 1000, Bethesda, MD 20814; SEI Investments Distribution Company, One Freedom Valley Drive, Oaks, PA 19456.

[1] ProShares Trust, *et al.*, Investment Company Act Release Nos. 27323 (May 18, 2006) (notice) and 27394 (June 13, 2006) (order), as subsequently amended by ProShares Trust, *et al.*, Investment Company Act Release Nos. 27609 (Dec. 22, 2006) (notice) and 27666 (Jan. 18, 2007) (order).

FOR FURTHER INFORMATION CONTACT: Shannon Conaty, Senior Counsel, at (202) 551–6827, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust is authorized to offer an unlimited number of series. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will advise each Fund. The Adviser may enter into subadvisory agreements with additional investment advisers to act as subadviser to the Trust and any Fund. Any subadviser to the Trust or a Fund will be registered under the Advisers Act. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 and will act as the distributor and principal underwriter for each Fund's shares.

2. The Prior Order permits the Initial Funds to seek daily investment results, before fees and expenses, that (a) correspond to the return of certain domestic equity securities indices; (b) provide 125%, 150% or 200% of the return of certain domestic equity securities indices; or (c) move in the opposite direction of the performance of certain domestic equity securities indices in multiples of 100%, 125%, 150% or 200% ("Inverse Funds"). Applicants seek to amend the Prior Order to permit the Additional Funds to be offered using New Underlying Indices. Applicants seek to amend the Prior Order to permit the Trust to offer Funds that seek daily investment results, before fees and expenses, that correspond to twice (200%) the return of, the inverse return of, and twice the inverse (double the opposite) return of the: NASDAQ Biotechnology Index, Dow Jones Select Biotechnology Index and Dow Jones Select Telecommunications Index. Applicants also intend to offer Funds that seek daily investment results, before fees and expenses, that correspond to the inverse return of and twice the inverse (double the opposite) return of the: MSCI Emerging Markets Index, MSCI Japan Index, MSCI EAFE Index, FTSE/Xinhua China 25 Index, Lehman Brothers 7–10 Year U.S. Treasury Index, Lehman Brothers 20+ Year U.S. Treasury Index, iBoxx $ Liquid Investment Grade Index, and iBoxx $ Liquid High Yield Index (collectively, the "New Inverse Funds"). Consistent with the operations of the Inverse Funds that were the subject of the Prior Order, the New Inverse Funds will not hold any equity securities. All Additional Funds will operate in a manner identical to the Initial Funds. No creator, provider or compiler of a New Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a promoter, the Adviser, any subadviser to any Fund, or the Distributor.

3. Applicants state that the Additional Funds will be offered pursuant to the same terms and provisions contained in the application for the Prior Order, except as expressly modified by this application. Applicants agree that the amended order will be subject to the same conditions as those imposed by the Prior Order. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19149 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56509]

Securities Exchange Act of 1934; Order Granting Registration of Fitch, Inc. as a Nationally Recognized Statistical Rating Organization

September 24, 2007.

Fitch, Inc., a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by Fitch, Inc. is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g-1 (17 CFR 240.17g-1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly, *It is ordered,* under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of Fitch, Inc. with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19171 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No.34–56507]

Securities Exchange Act of 1934; Order Granting Registration of A.M. Best Company, Inc. as a Nationally Recognized Statistical Rating Organization

September 24, 2007.

A.M. Best Company, Inc., a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of credit ratings described in clauses (i) through (iv) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by A.M. Best Company, Inc. is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g-1 (17 CFR 240.17g-1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly, *It is ordered,* under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of A.M. Best Company, Inc. with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (iv) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19169 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56508]

Securities Exchange Act Of 1934; Order Granting Registration Of DBRS Limited As A Nationally Recognized Statistical Rating Organization

September 24, 2007.

DBRS Limited, a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by DBRS Limited is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g-1 (17 CFR 240.17g-1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly, *It is ordered*, under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of DBRS Limited with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19170 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 56510]

Securities Exchange Act of 1934; Order Granting Registration of Japan Credit Rating Agency, LTD., as a Nationally Recognized Statistical Rating Organization

September 24, 2007.

Japan Credit Rating Agency, Ltd., a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by Japan Credit Rating Agency, Ltd. is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g–1 (17 CFR 240.17g–1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly, *It is ordered,* under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of Japan Credit Rating Agency, Ltd., with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19174 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 56511/September 24, 2007]

Securities Exchange Act of 1934; Order Granting Registration of Moody's Investors Service, Inc. as a Nationally Recognized Statistical Rating Organization

Moody's Investors Service, Inc., a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by Moody's Investors Service, Inc. is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g–1 (17 CFR 240.17g–1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly,

It is ordered, under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of Moody's Investors Service, Inc. with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19172 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 56512]

Securities Exchange Act of 1934; Order Granting Registration of Rating and Investment Information, Inc., as a Nationally Recognized Statistical Rating Organization

September 24, 2007.

Rating and Investment Information, Inc., a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by Rating and Investment Information, Inc. is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g–1 (17 CFR 240.17g–1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly, *It is ordered*, under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of Rating and Investment Information, Inc., with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19173 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56513/September 24, 2007]

Securities Exchange Act of 1934; Order Granting Registration of Standard & Poor's Ratings Services as a Nationally Recognized Statistical Rating Organization

Standard & Poor's Ratings Services, a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by Standard & Poor's Ratings Services is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g–1 (17 CFR 240.17g–1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly,

It is ordered, under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of Standard & Poor's Ratings Services with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19175 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56498; File No. SR–Amex–2007–103]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Quoting Obligations in Long Term Options

September 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Amex. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to limit the expirations that are included in a Registered Options Trader's ("ROTs"), Supplemental Registered Options Trader's ("SROTs"), and Remote Registered Options Trader's ("RROTs") minimum quoting requirements.

The text of the proposed rule change is available at the Amex, the Commission's Public Reference Room, and *http://www.amex.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex 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

Amex Rule 958–ANTE sets forth an ROT's list of obligations, including the maintenance of minimum quoting requirements. As part of its quote mitigation procedures, the Exchange is proposing to exclude options with a series of more than nine months until expiration from an ROT's, SROT's, and RROT's minimum quoting requirements. The Exchange believes that this amendment will reduce market data traffic because ROTs, SROTs and RROTs will no longer be required to comply with the minimum quoting requirements in the less actively traded series (far out months, etc.).

Amex Rule 958–ANTE (h)(iii) provides that any ROT who transacts more than 20% of their contract volume in an assigned option class electronically and not through open outcry, measured over a calendar quarter, shall, commencing the next calendar quarter, be obligated to maintain continuous two-sided quotations for at least ten contracts in a certain percentage of series in that option class. The percentage of series an ROT is obligated to quote varies depending on the amount of contract volume executed electronically on the Exchange in that option class. The Exchange has established for each option class the percentage of series that must be continuously quoted by those ROTs based upon the Exchange's percentage of electronic contract volume.[5]

Amex Rules 993–ANTE and 994–ANTE provide that SROTs and RROTs must provide continuous electronic two-sided quotations in accordance with the parameters set forth in Amex Rule 958–ANTE (c) in at least 60% of the series of their assigned classes.

To reduce the number of quotations submitted by ROTs, SROTs and RROTs, the Exchange is proposing to exclude options with a series of more than nine months until expiration, which are known as LEAPS (Long-term Equity Anticipation Securities), from an ROT's,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Amex Rule 958–ANTE (h)(iii).

SROT's and RROT's minimum quoting requirements.[6] The effect of this is to relax their continuous quoting obligations, and ultimately the number of quotes they are required to submit, because the continuous quoting obligations in Amex Rules 958–ANTE, 993–ANTE, and 994–ANTE will not apply to those series of options classes that have a time to expiration of more than nine months.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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 either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder,[10] because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30-days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[12] The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately implement a quote mitigation strategy that it believes should help to mitigate the Exchange's quote message traffic and capacity. In addition, the proposed rule change does not present any novel regulatory issues because it is substantially similar to recently approved rules on the Philadelphia Stock Exchange, Inc. and the Chicago Board Options Exchange, Incorporated.[13] For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.[14]

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.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–103. 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 St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–103 and should be submitted on or before October 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19160 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

[6] Specialists will still be required to quote in LEAPS as they are required to disseminate quotations in all series of the option classes they trade. *See* Amex Rule 950–ANTE(l).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Amex has satisfied the five-day pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release Nos. 55689 (May 1, 2007), 72 FR 26192 (May 8, 2007) (SR–Phlx–2007–36) and 55853 (June 4, 2007), 72 FR 32151 (June 11, 2007) (SR–CBOE–2007–56).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56495; File No. SR–Amex–2007–105]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Require That the AEMI Trading Platform Function To Assure Compliance With the Exchange's Priority and Parity Rules

September 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Amex. The Amex has designated the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In compliance with a Commission order in a recent administrative proceeding,[5] the Amex proposes to adopt new Commentary .06 to Amex Rule 126–AEMI, "Precedence of Bids and Offers," to provide that the Amex's new hybrid trading platform for equity products and exchange-traded funds ("ETFs"), designated as AEMI℠ ("AEMI"), shall function at all times in a manner that assures compliance with the Amex's priority and parity rules. In particular, AEMI shall systemically prevent a Specialist attempting to execute his/her proprietary order from trading ahead of a customer order in the Specialist's possession or for which the Specialist otherwise has responsibility and which customer order could trade in place of some or all of the Specialist's side of the trade, *unless* the trade meets a specified exemption in the Exchange's rules.

The proposed rule change is available at the Amex, in the Commission's Public Reference Room, and on the Amex's Web site at *http://www.amex.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add to its AEMI rules a provision requiring that the AEMI platform function at all times in a manner that assures compliance with the Exchange's priority and parity rules. More specifically, AEMI must ensure that, when a Specialist is in the process of executing his/her proprietary order while a customer order in the Specialist's possession or for which the Specialist otherwise has responsibility could trade in place of some or all of the Specialist's side of the trade, AEMI will systemically (i) prevent the reporting of the execution, and (ii) allocate the appropriate portion of the Specialist's trade to the customer order, *unless* the trade meets a specified exemption in the Exchange's rules and has thereby been programmed into the AEMI system as an allowable trade. All of the Exchange's priority and parity rules for equity products and ETFs are pre-programmed into AEMI and may not be disabled or otherwise changed by the Specialist or any other market participant. The provision with the foregoing requirements is being added as new Commentary .06 to Amex Rule 126–AEMI.[6]

The Exchange believes that the new AEMI platform, as currently operational, does in fact meet the foregoing requirements.[7] The implementation of AEMI, whose operation has been described in detail in previous filings, goes well beyond simply adding enhancements to the Amex's legacy trading systems to bring the Exchange into compliance. AEMI is an entirely new trading platform whose design and operation will, in transactions involving equity products and ETFs,[8] prevent Specialists from violating the Exchange's priority and parity rules in ways that the Amex's legacy systems could not.

Under normal circumstances, when auto-ex is enabled in AEMI, incoming orders are executed against resting orders on the AEMI Book in accordance with the Exchange's priority and parity rules that are pre-programmed into the system. The system also permits manual trades to occur when auto-ex is enabled in the form of negotiated trades (between two crowd members), crosses in the crowd (one crowd member), and auctions (between multiple crowd members). When auto-ex is disabled, only auctions performed by the Specialists may occur (*see* discussion of auctions below).

The following illustrates the steps involved in negotiated trades, which have been relatively infrequent during the first few months that AEMI has been in effect. Suppose two Floor Brokers negotiate the terms of a trade between them while standing in the crowd. They would then verbally request that the Specialist enter the trade into AEMI. Within a few seconds, the Specialist

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* In the Matter of American Stock Exchange LLC, Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions, a Censure, and a Cease-and-Desist Order Pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 55507 (March 22, 2007) (Administrative Proceeding File No. 3–12594) ("Settlement Order").

[6] As noted above, the Amex is making this rule filing in compliance with the Settlement Order. *See* note 5, *supra*. The Amex has withdrawn its original filing with respect to this proposed rule change, SR–Amex–2007–50, which the Amex filed on May 21, 2007, and is replacing it with the current rule filing.

[7] There are two exceptions to this statement that the Amex has recently become aware of and that the Amex is working to correct in the near future. First, there are certain circumstances immediately following the opening or reopening pair-off in an equity or ETF under which the Specialist's quotation could be routed out to execute against a better priced protected quotation of another market ahead of a marketable customer order on the AEMI Book. Secondly, the Exchange's rules provide for a post-opening pair-off of marketable orders held in the message queue during the opening pair-off. This post-opening pair-off is handled by the AEMI system in such a way that it could result in the Specialist's quote being executed ahead of marketable customer orders on the AEMI Book. Although the Amex does not believe that either of these situations occurs with any frequency and the Specialist has no ability to direct their occurrence, the Exchange is currently working to implement in a timely manner the software changes necessary to correct these system flaws and will make an additional rule filing at the time that the corrections become effective.

[8] Options are not traded on AEMI at this time.

would enter the badge identifiers of both Floor Brokers along with the terms of the trade (price and number of shares) into AEMI and click the "GO" button, during which time the two Floor Brokers would be physically present. It would be very obvious to these Floor Brokers, and to other crowd members as well, if the Specialist were to attempt to delay the entry of the order into AEMI or take other action that would disadvantage the parties to the negotiated trade and benefit the Specialist (*e.g.*, moving his quotation). AEMI would automatically validate that the trade meets all required parameters (*e.g.*, the trade price relative to the Amex Published Quote ("APQ")) and, if so, accepts the trade into AEMI for execution. If the price of the trade is outside the national best bid or offer ("NBBO"), then intermarket sweep orders are immediately generated as required to execute against the protected quotations of away markets, while the balance of the order prints on the Amex and is allocated based on the Exchange's priority and parity rules. In that allocation, electronic orders and quotations that already exist on the AEMI Book at the price of the verbal trade have priority over the verbal trade that has just been accepted by AEMI for execution. Following the allocation, AEMI will send a trade execution message to each Floor Broker's hand held terminal ("HHT") with the number of shares allocated to the Floor Broker at the trade price. Each Floor Broker would then further allocate those shares among the customer orders in his/her HHT.

The following example illustrates the automatic application of the priority and parity rules by AEMI in a situation involving a manual trade with auto-ex enabled. As provided in Rule 128B—AEMI, "Auction Trades," a negotiated trade may take place only at or inside the APQ. A negotiated trade that takes place at the APQ automatically incorporates electronic orders and quotes already resident on the AEMI Book at the time of the print, because these orders and quotes have priority and standing over the verbal trade. For example, assume that the APQ for an ETF is 34.55 x 35.10 and the AEMI Book has 4,000 shares on the bid side at that price, comprised of a customer order for 3,000 shares and the Specialist's bid for 1,000 shares. Assume that the customer order is a reserve order with a display size of 1,000 shares. Therefore, the size of the APQ on the bid side is 2,000 shares (the visible size of the reserve order and the Specialist's bid). Two Floor Brokers in the crowd wish to transact a negotiated trade for 5,000 shares at the price of 34.55, a price that has been agreed to verbally and that must be entered into AEMI by the Specialist in order for the trade to represent a valid contract. When the Specialist prints the trade for the two Floor Brokers, the electronic orders at the price take priority and the seller will sell 3,000 shares to the customer reserve order (displayed and non-displayed liquidity), 1,000 shares to the Specialist's quote, and 1,000 shares to the contra party in the negotiated trade. The remaining 4,000 shares on the buy-side of the negotiated trade expire. The 4,000 shares on the AEMI Book, including the Specialist's quote, take priority at the price because they represent passive liquidity already resident on the AEMI Book and the Specialist is not agent to the negotiated trade in the crowd. Similarly, a cross from a crowd member must interact with orders on the AEMI Book, with the exception of crosses that meet the size and value requirements outlined in Commentary .01 and .02 of Rule 126—AEMI, in which case they do not interact with orders already on the AEMI Book.

Next, suppose that the negotiated trade in the crowd in the foregoing example is for only 1,000 shares. The priority and parity rules for ETFs in AEMI will automatically result in the seller executing all 1,000 shares against the displayed size of the customer reserve order, which has a higher priority than the Specialist's quote. On the other hand, if the negotiated trade had been for 2,000 shares, 1,000 shares would have executed against the displayed size of the customer reserve order and 1,000 shares would have executed against the Specialist's quote, because the latter has a higher priority than the replenished reserve size (which is not visible liquidity). This is an example of a specified exemption in the Exchange's priority and parity rules that allows the Specialist to have a higher priority than part of a customer order.[9]

Finally, a Specialist may conduct an auction when auto-ex is either enabled or disabled. In both circumstances, resting orders on the AEMI Book are automatically incorporated into the pair-off, and the parity and priority rules referred to above are systematically applied. When conducting a pair-off, the Specialist has agency responsibility to orders on the AEMI Book and may participate at the pair-off price but only after all other orders at the pair-off price trade first.

In the circumstance when auto-ex is disabled, an auction pair-off would be conducted to resolve any imbalance and re-enable auto-ex. (If there were no imbalance, auto-ex could be re-enabled based simply on a quotation.) The only auction trade that can take place in this situation is one to resolve the imbalance. During the time that auto-ex is disabled, incoming orders, amendments, and cancellations continue to enter the AEMI Book and members may *not* trade in the open-outcry market except as part of the auction trade that re-enables AEMI. Any verbal involvement by crowd members would take place during the post-trade allocation process as follows. The Specialist would set the price of the pair-off, with the contra interest that is applied against the imbalance coming from marketable orders on the contra side of the AEMI Book (and with intermarket sweep orders being generated to away markets as necessary).[10] Once the Specialist has set the auction price, he does not exercise any additional discretion that would influence the number of shares of the imbalance that he is allocated vis-à-vis the other members of the crowd. He must announce the price of the trade to the crowd before it is printed to the tape, so crowd members will know whether they are entitled to be part of the trade. Any remainder of the imbalance will be parity-allocated against the Specialist and/or eligible crowd participants represented electronically on the contra side of the AEMI Book. Each active crowd participant with a bid, offer, or order on the contra side of the aggressing order will receive a message from AEMI with the initial allocation that AEMI has automatically calculated for that crowd member. Following this initial post-trade allocation, those crowd participants who receive an initial allocation will verbally confirm their

[9] In addition to executing ahead of the replenished reserve size of customer reserve orders for both ETFs and equities, as provided by the Amex's priority and parity rules, the Specialist's quotation may also be executed, for both ETFs and equities under those rules, ahead of a percentage order that is a customer order and is elected by a trade event. In addition, for equities only, the Specialist's quotation may be executed ahead of some customer orders pursuant to the Amex priority and parity rules (and depending on whether public orders are also involved) under the following circumstances: (i) Parity allocation takes place among the Specialist's quotation in parity and the visible size of crowd customer orders in parity; and (ii) the Specialist's quotation and the visible size of certain crowd customer orders not in parity are executed based on time priority. *See* Amex Rule 126—AEMI (b) and (d).

[10] The Specialist may not be part of the pair-off at that price; he participates only in the absorption of the imbalance.

participation or non-participation to the Specialist.[11] The Specialist enters the necessary adjustments into AEMI, and AEMI will compute the revised individual allocations for each crowd member. AEMI will then immediately send a message to each of these crowd participants with their respective individual final trade allocations, with Floor Brokers completing an additional allocation of their individual trades to existing orders in their HHTs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Regulation NMS, as well as Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to section 19(b)(3)(A)(i) of the Act[14] and Rule 19b–4(f)(1) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–105 and should be submitted on or before October 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19163 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

[11] If the Specialist were to ignore a particular crowd member's confirmation of participation (arguably so that the Specialist could execute more of the imbalance himself), this would be very obvious to the disadvantaged crowd member (because his allocation would go to zero from the number that he initially was assigned by AEMI), who could challenge the result. The Amex believes, in other words, that it is highly unlikely that the Specialist could get away with such a blatant act.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(i).

[15] 17 CFR 240.19b–4(f)(1).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56494; File No. SR–CBOE–2007–110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Obvious Error Rules

September 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE has designated this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rules 6.25 and 24.16, which are the Exchange's rules applicable to the nullification and adjustment of transactions. The text of the proposed rule change is available at the Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(2).

the Commission's Public Reference Room, and *http://www.cboe.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under CBOE's obvious error rules, Trading Officials render certain determinations regarding the nullification and adjustment of transactions. The term "Trading Officials" is currently defined to mean two Exchange members designated as Floor Officials and one member of the Exchange's trading floor liaison ("TFL") staff. The Exchange states that the purpose of the proposed rule change is to replace the reference to the "TFL staff" with a reference to 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 reassign the Trading Official function from the CBOE TFL group to a group of designated Exchange personnel within CBOE's market control center. In trying to accommodate the reassignment, the Exchange believes a better approach than making a specific reference to a particular Exchange staff group is to make reference to the "Exchange's staff designated to perform Trading Official functions." In this way, the Exchange would have the flexibility to delegate the Trading Official authorities under the obvious error rules to the appropriate Exchange staff and would not have to make a rule change merely, for instance, to accommodate a future change in the title of a staff group or to accommodate the reassignment of the authority to another staff group. The Exchange believes that because the authority exercised by Exchange staff is delegated pursuant to Exchange rules, the title of the particular group exercising their authority should not be relevant.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation among persons engaged in facilitating securities transactions, and protect investors and the public interest. The Exchange believes that this proposal complies with the Act because the Exchange is amending its rules to update and/or generalize references to certain Exchange staff in order to facilitate compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(3)[8] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–110 and should be submitted on or before October 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19162 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(3).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56493; File No. SR–ISE–2007–83]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Eliminate Position and Exercise Limits for Options on the Russell 2000 Index, and to Specify that Certain Reduced-Value Options on Broad-Based Security Indexes Have No Position and Exercise Limits

September 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. On September 17, 2007, ISE submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate position and exercise limits for options on the Russell 2000 Index ("RUT"), and to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits will similarly have no position and exercise limits. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.ise.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 2004 to eliminate position and exercise limits for options on RUT, a broad-based securities index that is multiply listed and heavily traded.[5] The Exchange further proposes to amend ISE Rule 2004 to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits will similarly have no position and exercise limits. Currently, options on the Full Size Nasdaq 100 Index Options ("NDX") have no position and exercise limits. In this regard, the Exchange proposes to eliminate position and exercise limits for options on the Mini Nasdaq 100 Index ("MNX").

Eliminate Position and Exercise Limits for RUT Options

The Exchange believes that the circumstances and considerations relied upon in approving the elimination of position and exercise limits for other heavily traded broad-based index options (*e.g.*, options on NDX) equally apply to the current proposal relating to position and exercise limits for RUT options.[6]

In approving the elimination of position and exercise limits for NDX options, the Commission considered the capitalization of this index and the deep and liquid markets for the securities underlying the index significantly reduced concerns of market manipulation or disruption in the underlying markets. The Commission also noted the active trading volume for options on the index. ISE believes that RUT shares these factors in common with NDX. As of July 31, 2007, the approximate market capitalization of NDX was $2.28 trillion, the average daily trading volume ("ADTV") for the components of NDX was 572 million, and the ADTV for options on NDX was 64,003 contracts per day. ISE believes that RUT has very comparable characteristics. The market capitalization for RUT is $1.73 trillion dollars, the ADTV for the underlying securities is 535 million shares, and the ADTV for the option is 79,000 contracts.

In approving the elimination of position and exercise limits for NDX, the Commission also noted the financial requirements imposed by both the Exchange and the Commission serve to address any concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in options on NDX. These financial requirements also apply to RUT options. Under ISE rules, the Exchange also has the authority to impose additional margin upon accounts maintaining underhedged positions, and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange's rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3–1 under the Act[7] to the extent of any resulting margin deficiency.[8]

In approving the elimination of position and exercise limits for NDX, the Commission relied heavily on the Exchange's ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits in options on the index. The Exchange represents that it monitors the trading in RUT options in the same manner as trading in NDX options and that the current ISE surveillance procedures are adequate to continue monitoring RUT options. In addition, the Exchange intends to impose a reporting requirement on ISE members who trade RUT options. This reporting requirement, which is currently imposed on members who trade NDX options, will require members who maintain in excess of 100,000 RUT option contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange. The Exchange may also specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.

The Exchange believes that eliminating position and exercise limits

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The current position and exercise limits, under ISE Rules 2004 and 2007, respectively, for RUT options are 50,000 contracts, with no more than 30,000 of such contracts in a series in the nearest expiration month.

[6] *See* Securities Exchange Act Release No. 52894 (December 5, 2005), 70 FR 73497 (December 12, 2005) (SR–ISE–2005–45) ("NDX Approval Order").

[7] 17 CFR 240.15c3–1.

[8] *See* ISE Rule 2006(a)(14).

for RUT options is consistent with ISE rules relating to similar broad-based indexes and also allows ISE members and their customers greater hedging and investment opportunities.

Elimination of Position Limits for Reduced-Value Options on Broad-Based-Indexes for Which There Are Not Position and Exercise Limits for Full-Value Options

The Exchange lists and trades reduced-value options on broad-based indexes for which the Exchange also lists and trades full value options (*e.g.*, MNX options). When the Exchange received approval to list and trade MNX options, the proscribed position and exercise limits were equivalent to the reduced-value contract factor (*e.g.*, 10) multiplied by the applicable position and exercise limits for the full-value options on the same broad-based index.[9] For example, when the Exchange received approval to list and trade NDX and MNX options,[10] the position and exercise limits for MNX (1/10th NDX value) options were 750,000 contracts, which was equal to the applicable factor (10) multiplied by the position limit for NDX options (75,000 contracts). In the NDX/MNX Approval Order, the Exchange noted that NDX contracts would be aggregated with MNX contracts to determine compliance with applicable position and exercise limits. Since position and exercise limits were eliminated for NDX options,[11] the Exchange now proposes to eliminate position and exercise limits for MNX options. The Exchange further proposes to amend Rule 2004 to state that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits would similarly have no position and exercise limits.

In addition, because position and exercise limits for reduced-value options are aggregated with full-value options for purposes of determining compliance with position and exercise limits, the Exchange proposes amending Rule 2006(a)(13) to reflect that such aggregation would apply when calculating reporting requirements (*e.g.*, 10 MNX options equal 1 NDX full-value contract). Further, the Exchange proposes to delete certain rule text in Rule 2006(a)(5) relating to MNX options because, pursuant to this proposed rule change, there is no longer a need for an exemption from position limits for MNX options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Exchange notes that this proposed rule change is similar to proposals filed by the American Stock Exchange LLC ("Amex") and the Chicago Board Options Exchange, Incorporated ("CBOE") that were recently approved by the Commission.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow ISE members and their customers greater hedging and investment opportunities in RUT options without further delay. The Commission notes that it recently approved substantially similar proposals filed by CBOE and Amex.[19] The Commission believes that ISE's proposal to eliminate position and exercise limits for RUT options raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[20]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[21]

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.

---

[9] *See* Securities Exchange Act Release No. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (SR–ISE–2005–01) ("NDX/MNX Approval Order").

[10] *Id.*

[11] *See* NDX Approval Order, *supra* note 6.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release Nos. 56351 (September 4, 2007), 72 FR 51875 (September 11, 2007) (SR–Amex–2007–81); and 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR–CBOE–2007–79).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

[18] *Id.*

[19] *See supra* note 14.

[20] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on September 17, 2007, the date on which the Exchange submitted Amendment No. 1.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–83 and should be submitted on or before October 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19161 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56496; File No. SR–ISE–2007–85]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PrecISE Fees

September 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by ISE. ISE filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, as establishing or changing a due, fee, or other charges applicable to a member, 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

ISE is proposing to amend its Schedule of Fees to establish fees to: (i) Raise its PrecISE through VPN fees; and (ii) adopt a PrecISE Sponsored Customer fee. The text of the proposed rule change is available at ISE, *http://www.iseoptions.com*, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Exchange's Schedule of Fees to: (i) Raise its PrecISE through VPN fees; and (ii) adopt a PrecISE Sponsored Customer fee.

"PrecISE" is ISE's internally-developed proprietary order-routing terminal used by Electronic Access Members ("EAMs") to send order flow to the Exchange. The Exchange currently permits EAMs to access the Exchange through a VPN connection from their PrecISE terminals for which the Exchange currently charges $250 per month per terminal.[5] VPN is an internet-based "virtual private network" that allows secure access to the ISE through the internet. PrecISE through VPN provides PrecISE functionality without requiring dedicated network lines and is a cost-efficient means of access for small and mid-sized broker-dealers. The Exchange notes that EAMs may also use PrecISE through VPN as a back-up or disaster recovery connection to the Exchange. The Exchange now proposes to increase its PrecISE through VPN fee from $250 per month per terminal to $300 per month per terminal to offset the Exchange's costs for maintaining these connections.[6]

The Exchange also proposes to adopt a PrecISE Sponsored Customer fee of $300 per month per terminal. The Exchange currently operates a program that permits sponsored customers of Members to access the Exchange directly via a PrecISE trade terminal, provided certain conditions are met.[7] The proposed Sponsored Customer fee shall only apply to sponsored customers that are not affiliates of the ISE member who sponsors its access. For example, an ISE member that sponsors five of its customers, all of whom are not affiliated with it, will be charged $1,500 per month for the five sponsored terminals through which the Member's customers

[5] *See* Securities Exchange Act Release No. 54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR–ISE–2006–31).

[6] The Exchange notes that this proposed fee increase will bring the PrecISE through VPN fees in line with the fee the Exchange currently charges EAMs for a network connection. *See* Securities Exchange Act Release No. 55960 (June 26, 2007), 72 FR 36531 (July 3, 2007) (SR–ISE–2007–42) (notice of filing and immediate effectiveness of proposed rule change adopting a per user per month fee for the Exchange's PrecISE Trade® terminal).

[7] *See* Securities Exchange Act Release No. 55586 (April 5, 2007), 72 FR 18701 (April 13, 2007) (SR–ISE–2007–19) (notice of filing and immediate effectiveness of proposed rule change relating to access to the Exchange by Sponsored Customers).

will be able to directly connect to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act,[8] in general, and furthers the objectives of section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, these fees will permit the Exchange to recover the costs of developing, maintaining, and supporting PrecISE Trade terminals and its various functionalities. Additionally, the Exchange believes the proposed fees are equitable in that they only apply to those members that elect to use PrecISE.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–85 and should be submitted on or before October 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19164 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] Telephone amendment between Samir Patel, Assistant General Counsel, ISE, and Richard Holley, Senior Special Counsel, Division of Market Regulation, Commission, September 21, 2007.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56497; File No. SR–ISE–2007–86]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Commence a One Year Pilot Program Relating to a Quote Mitigation Plan for Competitive Market Makers

September 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2007, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. The Exchange has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE submits this rule filing to implement a quote mitigation plan for the Exchange's Competitive Market Makers ("CMM") on a pilot basis for one-year.[5] The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and *http://www.ise.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 56444 (September 14, 2007) (Order approving SR–ISE–2007–45).

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 ISE 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 ISE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to implement a quote mitigation plan for the Exchange's CMMs. As noted above, the Commission recently approved,[6] on a one-year pilot basis, this quote mitigation plan applicable to up to twenty (20) securities that are in the Penny Pilot. Under this proposal, a CMM will be required to enter continuous quotations in just 60 percent of the series, rather than in all series, of the options classes to which it is appointed. Once a CMM enters a quote in a series, it must continue to quote in that series until the close of trading that day.

Further, ISE Rule 804(e)(2)(iii), which states that a CMM may be called upon to submit quotes in one or more series of options to which it is appointed in the interest of maintaining fair and orderly markets, shall continue to apply during the pilot period.

The Exchange proposes to commence this pilot program on September 20, 2007 for a period of one year. Prior to the commencement of the pilot program, the Exchange will issue a circular to CMMs identifying the initial list of securities selected for the pilot program.

2. Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective Section 19(b)(3)(A)(i) of the Act,[8] and Rule 19b–4(f)(1) thereunder,[9] because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml)*; cr
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2007–86 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–86. 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 Commissions 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 St., NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–86 and should be submitted by October 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19165 Filed 9–27–07; 8:45 am]

BILLING CODE 8010–01–P

[6] *Id.*

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the City of Manchester, New Hampshire's request to change a portion (.42 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located on South Willow Street, Manchester, New Hampshire and is a portion of map 854, Lot 5 and Map 854, Lot 1B. Upon disposition the property

will be used for the realignment of South Willow Street for Runway Safety Area Improvements at Manchester Airport, Manchester, New Hampshire. The property was acquired under AIP Project Nos. 3–33–0011–31 and 3–33–0011–67.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999.

DATES: Comments must be received on or before October 29, 2007.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Richard Fixler, Assistant Airport Director, Engineering & Planning at Manchester Airport. Telephone (603) 628–6211, Ext. 519 or by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: Section 124 of The Wendell H. Ford Aviation investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Dated: Issued in Burlington, Massachusetts on September 17, 2007.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 07–4799 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Request To Release Airport Property at Arlington Municipal Airport, Arlington, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for public comment.

SUMMARY: The FAA proposes to rule and invites public comment on the release of airport property consisting of two buildings (Fire Hall, Armory/Instrument) at Arlington Municipal Airport from obligations under the provisions of the Surplus Property Act of 1944.

DATES: Comments must be received on or before October 29, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Karen J. Miles; Civil Engineer, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office; 1601 Lind Avenue, SW., Suite 250; Renton, Washington 98057–3356. Telephone number: (425) 227–2661; Fax number: (425) 227–1650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Arlington Municipal Airport, Arlington, Washington: Mr. Rob Putnam, Airport Manager; City of Arlington; 18204 59th Drive, NE.; Arlington, WA 98223. Telephone number: (360) 403–3472; Fax number (360) 435–1012.

FOR FURTHER INFORMATION CONTACT: Karen Miles, at the above address. The request to release may be reviewed in person at this same location, by appointment or at the Offices of the Airport Manager, Arlington, Washington.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the release of airport property consisting of two buildings (Fire Hall, Armory/Instrument) from surplus property obligations. The airport proposes to demolish both buildings to clear the land for future aeronautical development. Both buildings are on Runway 16/34 flight line, and are in a condition that could be considered a potential public safety hazard. The buildings are within the Naval Auxiliary Air Station—Arlington Historic District, and FAA has completed consultation with the Washington State Historic Preservation Officer and other consulting parties pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f). Under consultation, the Armory/Instrument building was determined to be non-contributing to the district. The Fire Hall was determined to be contributing to the district and a Memorandum of Agreement has been signed stipulating mitigation to account for the adverse effect of demolition. Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for aeronautical purposes.

Carol A. Key,

Acting Assistant Manager, Seattle Airports District Office.

[FR Doc. 07–4800 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34955]

Buffalo & Pittsburgh Railroad, Inc.—Lease and Operation Exemption—Norfolk Southern Railway Company and CSX Transportation, Inc.

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. 11323–24 to enable Buffalo & Pittsburgh Railroad, Inc., a Class II rail carrier, to acquire from Norfolk Southern Railway Company (NSR), by assignment, NSR's lease of approximately 24.6 miles of a line of railroad that is owned by CSX Transportation, Inc. (CSXT). The line extends from milepost BKC 2.0 near Cloe, PA, to milepost BKC 26.6 at Ridge Branch Junction near Creekside, PA. The exemption is subject to employee protective conditions.

DATES: The exemption will be effective on October 8, 2007. Petitions to stay must be filed by October 3, 2007, and petitions to reopen must be filed by October 18, 2007.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34955, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

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. To purchase a copy of the full decision, write to, e-mail, or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite

103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* telephone: (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 20, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–19121 Filed 9–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35077]

Stourbridge Railroad Company—Acquisition Exemption—Lackawaxen-Honesdale Shipper Association

Stourbridge Railroad Company (SRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 24.74 miles of rail line from the Lackawaxen-Honesdale Shippers Association (LHSA), in Wayne and Pike Counties, PA. The line, known as the Honesdale Branch, extends between milepost 110.26, in Lackawaxen, PA, and milepost 135.00 in Honesdale, PA.[1]

SRC certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

The earliest this transaction may be consummated is October 12, 2007, the effective date of the exemption (30 days after the exemption was 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 will not automatically stay the transaction. Petitions for stay must be filed no later than October 5, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35077, 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 Richard R. Wilson, Esq., 127 Lexington Avenue, Suite 100, Altoona, PA 16601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 24, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–19184 Filed 9–27–07; 8:45 am]

BILLING CODE 4915–01–P

[1] LHSA obtained authority to acquire the Honesdale Branch in *Lackawaxen-Honesdale Shippers Association, Inc.—Acquisition Exemption—Pennsylvania Department of Transportation,* STB Finance Docket No. 34891 (STB served July 13, 2006).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 24, 2007.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. 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, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 29, 2007.

Internal Revenue Service (IRS)

OMB Number: 1545–0023.

Type of Review: Extension.

Title: TAP Tax Check Waiver.

Form: 720.

Description: The information supplied on Form 720 is used by the IRS to determine the correct tax liability. Additionally, the data is report by the IRS to Treasury so that funds may be transferred from the general revenue funds to the appropriate trust funds.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 3,576,704 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–19214 Filed 9–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on the Auditing Profession

AGENCY: Office of the Undersecretary for Domestic Finance, Treasury.

ACTION: Notice of meeting.

SUMMARY: The Department of the Treasury's Advisory Committee on the Auditing Profession will convene its first meeting on Monday, October 15, 2007, in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on Monday, October 15, 2007 at 10 a.m. Eastern Time.

ADDRESSES: The Advisory Committee will convene its first meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements with the Advisory Committee by any of the following methods:

Electronic Statements

- Use the Department's Internet submission form (*http://www.treas.gov/offices/domestic-finance/acap/comments*); or

Paper Statements

- Send paper statements in triplicate to Advisory Committee on the Auditing Profession, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treas.gov/offices/domestic-finance/acap/comments*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10

a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kristen E. Jaconi, Senior Policy Advisor to the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–6618.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, section 10(a), and the regulations thereunder, David G. Nason, Designated Federal Officer of the Advisory Committee, has ordered publication of this notice that the Advisory Committee will convene its first meeting on Monday, October 15, 2007, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Domestic Finance, at (202) 622–4944, by 5 p.m. Eastern Time on Thursday, October 11, 2007, to inform the Department of the desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. The purpose of this meeting is to discuss general organizational matters of the Advisory Committee and begin discussing the issues impacting the sustainability of the auditing profession.

Dated: September 24, 2007.

Taiya Smith,

Executive Secretary.

[FR Doc. E7–19140 Filed 9–27–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2007–0015]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1294]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[ID–OTS–2007–0018]

NATIONAL CREDIT UNION ADMINISTRATION

Proposed Guidance on Garnishment of Exempt Federal Benefit Funds

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA) (collectively, the Agencies).

ACTION: Notice with request for comment.

SUMMARY: The Agencies are proposing guidance entitled Garnishment of Exempt Federal Benefit Funds. This proposed guidance has been developed to encourage financial institutions to have policies and procedures in place with respect to handling garnishment orders and sets forth best practices, including procedures designed to expedite notice to the consumer of the garnishment process and release of funds to the consumer as quickly as possible.

DATES: Comments must be submitted on or before November 27, 2007.

ADDRESSES: The Agencies will jointly review all of the comments submitted. Therefore, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Please consider submitting your comments by e-mail or fax, since paper mail in the Washington area and at the Agencies is subject to delay. Interested parties are invited to submit comments to:

OCC: You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2007–0015" in your comment. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received 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 by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 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) 874–5043. 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 method described above.

Board: You may submit comments, identified by Docket No. OP–1294, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be

edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include "Garnishment Statement" in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

OTS: You may submit comments, identified by ID OTS–2007–0018, by any of the following methods:

- *E-mail: regs.comments@ots.treas.gov.* Please include ID OTS–2007–0018 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ID OTS–2007–0018.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Address envelope as follows: Attention: Regulation Comments, Chief Counsel's Office, Attention: ID OTS–2007–0018.

Instructions: All submissions received must include the agency name and docket number for this proposed Guidance. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Guidance (Garnishment of Federal Benefit Payments)" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael Bylsma, Director, Community and Consumer Law Division; (202) 874–5750 or Ann Jaedicke, Deputy Comptroller, Compliance, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Legal Division: Kara L. Handzlik, Attorney (202) 452–3852, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf only, call (202) 263–4869.

FDIC: Patricia Cashman, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6534, Mark Mellon, Counsel, Legal Division, (202) 898–3884 or Patricia Colohan, Senior Examination Specialist, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Stacy Messett, Senior Project Manager, Compliance and Consumer Protection, (202) 906–6241 or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Ross Kendall, Staff Attorney, Office of General Counsel, (703) 518–6540 or Matthew Biliouris, Program Officer, Office of Examination and Insurance, (703) 518–6360, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies developed this proposed guidance, Garnishment of Exempt Federal Benefits Funds, to address concerns associated with garnishment of exempt federal benefit payments, such as Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, Federal Civil Service retirement benefits, and Federal Railroad retirement benefits. These benefits, which are generally exempt under federal law from garnishment orders and the claims of judgment creditors, often constitute an important part, and sometimes all of an individual's income. As a result, when financial institutions receive garnishment orders and place freezes on accounts containing exempt federal benefit funds, the recipients of these funds can face significant hardship. At the same time, financial institutions are required by state law to comply with garnishment orders, which may necessitate placing a freeze on an account that contains federal benefit payments. The agencies have developed this proposed guidance to encourage financial institutions to minimize the hardships encountered by federal benefit funds recipients and to do so while remaining in compliance with applicable law.

II. Request for Comment

The Agencies request comment on all aspects of the proposed guidance. In addition, the Agencies seek comment on the following issues:

1. Are there practices that would enable an institution to avoid freezing funds altogether by determining at the time of receipt of a garnishment order that the funds are federally protected and not subject to an exception?

2. Are there other permissible practices that would better serve the

interests of consumers who have accounts containing federal benefit payments? Are there ways to provide consumers with reasonable access to their funds during the garnishment process?

3. Are customers adequately informed of their rights when a creditor attempts to garnish their funds? What could be done to provide consumers with better information?

4. Institutions often charge customers a fee for freezing an account. How do these fees compare to those charged separately when an account holds insufficient funds to cover a check presented for payment? Are there operational justifications for both types of fees to be assessed?

III. Text of Proposed Joint Guidance

Garnishment of Exempt Federal Benefit Funds

Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, Federal Civil Service retirement benefits, and Federal Railroad retirement benefits often constitute an important part, and sometimes all of an individual's income. Consequently, federal law protects these benefit payments from garnishment orders and the claims of judgment creditors.[1] For example, Section 207 of the Social Security Act provides that, with certain exceptions, moneys paid or payable as Old-Age, Survivors, and Disability Insurance (OASDI) benefits are not "subject to execution, levy, attachment, garnishment, or other legal process."[2] Similarly, Veterans' benefits are exempt, in most cases, from "attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary" under a separate section of the United States Code.[3] Federal Civil Service pension benefits are similarly protected under federal law.[4] These federal provisions are subject to certain exceptions, such as garnishment orders relating to alimony or child support payments.[5]

The Social Security Administration (SSA) and Department of Veterans Affairs (VA) have not to date specified rules outlining the scope of these protections. However, a number of court decisions have addressed aspects of these protections. This statement, issued by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, and National Credit Union Administration (Agencies), represents guidance on best practices for financial institutions to protect consumers' funds while remaining in compliance with state laws and court orders governing garnishment, attachment, and other legal process.

Creditors and debt collectors are often able to obtain enforceable orders from state courts on an ex parte basis garnishing funds in a consumer's account. To comply with state court garnishment orders, financial institutions often place a temporary freeze or hold on an account upon receipt of a garnishment order. Although the freeze will preserve the funds in the account and provide the account owner with an opportunity to assert any rights, exemptions, and challenges to the garnishment order, including the exemptions under applicable federal benefits laws, the freeze can also cause significant hardship for the account owner. This is especially true when, as is often the case, the recipients of federal benefits, such as SSA and VA benefits, depend on these funds as their primary source of income.

At the same time, financial institutions are required by state law to comply with garnishment orders, and in many states, are liable for any funds that are withdrawn by a consumer after the financial institution has received a garnishment order for a particular account. State garnishment orders may not provide sufficient information to allow financial institutions to know if the order is subject to one of the exceptions in federal law allowing garnishment of federal benefit funds. Moreover, consumer accounts may include both funds that may be protected by federal law from garnishment and other funds that are not protected.

The interplay of federal law and state garnishment laws raises difficult and complex issues. A freeze is designed to preserve the funds in an account until the legal status of the funds can be determined. The Agencies are aware, however, of the hardship that recipients of exempt federal benefit funds may face when a freeze is placed on their accounts. In order to minimize this hardship and ensure compliance with applicable law, the Agencies encourage financial institutions to have policies and procedures in place to address garnishment orders, including procedures designed to expedite notice to the consumer of the garnishment process and release funds to the consumer as quickly as possible.

Among the best practices in this area are the following:

- Promptly notify a consumer when a financial institution receives a garnishment order and places a freeze on the consumer's account;
- Provide the consumer with information about what types of federal benefit funds are exempt, including SSA and VA benefits, in order to aid the consumer in asserting federal protections;
- Promptly determine, as feasible, if an account contains only exempt federal benefit funds such as SSA or VA benefits;
- Notify the creditor, collection agent, or relevant state court that the account contains exempt funds in cases in which the financial institution is aware that the account contains exempt funds;
- If state law or the court order will permit a freeze not to be imposed if the account is determined to contain only exempt federal benefit funds, act accordingly if that determination is made;
- Minimize the cost to a consumer when the consumer's account containing exempt federal benefit funds is frozen, such as by refraining from imposing overdraft, NSF, or similar fees while the account is frozen or refunding such fees when the freeze has been lifted;
- Allow the consumer access to a portion of the account equivalent to the documented amount of exempt federal benefit funds as soon as the financial institution determines that none of the exceptions to the federal protections against garnishment of exempt federal benefit funds are triggered by the garnishment order;
- Offer consumers segregated accounts that contain only federal benefit funds without commingling of other funds; and
- Lift the freeze on an account as soon as permissible under state law.

The Agencies encourage financial institutions to stay apprised of any future guidance issued by the SSA or VA regarding garnishment practices and of developments in the courts in their jurisdiction regarding garnishment practices.

Dated: September 21, 2007.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 19, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, the 19th day of September, 2007.

[1] See 42 U.S.C. 407(a); 42 U.S.C. 1383(d)(1); 38 U.S.C. 5301; 5 U.S.C. 8346(a); and 45 U.S.C. 231m(a).

[2] 42 U.S.C. 407.

[3] 38 U.S.C. 5301.

[4] 5 U.S.C. 8346.

[5] *See, e.g.*, 42 U.S.C. 659.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: September 19, 2007.

By the Office of Thrift Supervision.

John Reich,

Director.

Dated: September 19, 2007.

By the National Credit Union Administration.

JoAnn M. Johnson,

Chairman.

[FR Doc. 07–4783 Filed 9–27–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Inpatient DRG and SNF Medical Services; 2008 Fiscal Year Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Title 38 of the Code of Federal Regulations (CFR), section 17.01 sets forth the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran for: (1) A non-service-connected disability for which the veteran is entitled to care or the payment of expenses of care under a health plan contract; (2) a non-service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a non-service-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations include methodologies for establishing billed amounts for the following types of charges: acute inpatient facility charges; skilled nursing facility and sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. The regulations also provide that data for calculating actual charge amounts at individual VA facilities based on these methodologies will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo*, under "Charge Data." Certain charges are hereby updated as described in the **SUPPLEMENTARY INFORMATION** Section of this notice. These changes are effective October 1, 2007.

In circumstances when charges for medical care or services provided or furnished at VA expense, by either VA or non-VA providers, have not been established under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0361. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Of the charge types listed in the summary section of this notice, only the acute inpatient facility charges and skilled nursing facility and sub-acute inpatient facility charges are being changed. Charges for the following: partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes are not being changed. These outpatient facility charges and professional charges remain the same as set forth in a notice published in the **Federal Register** on December 22, 2006 (71 FR 77096).

Based on the methodologies set forth in 38 CFR 17.101(b), this document provides an update to acute inpatient charges that were based on 2007 diagnosis related group (DRG). Acute inpatient facility charges by DRG are set forth in Table A in the September 28, 2006, **Federal Register** Notice. VA is adopting the Medicare Severity DRG (MS-DRG) classification system as established by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) (see Final Rule with Comment Period as published in the **Federal Register** on August 22, 2007, Vol. 72, No.162 FR 47130). Table A in this notice provides updated charges based on Fiscal Year 2008 MS-DRGs and will replace Table A in the September 28, 2006, **Federal Register** Notice.

Also, this document provides for an updated all-inclusive per diem charge for skilled nursing facility/sub-acute inpatient facility charge using the methodologies set forth in 38 CFR 17.101(c) and it is adjusted by a geographic area factor based on the location where the care is provided. The skilled nursing facility/sub-acute inpatient facility per diem charge is set forth in Table B in the September 28, 2006, **Federal Register** Notice. Table B in this Notice provides the updated all-inclusive nationwide skilled nursing facility/sub-acute inpatient facility per diem charge and will replace Table B in the September 28, 2006 Notice. The charges in this update for acute inpatient facility and skilled nursing facility/sub-acute inpatient facility services are effective October 1, 2007.

In this update, VA is retaining the table designations used for acute inpatient facility charges by DRGs in the notice published in the **Federal Register** on September 28, 2006 (71 FR 57028). VA is retaining the table designation used for skilled nursing facility/sub-acute inpatient facility charges in the notice published in the **Federal Register** on September 28, 2006. Accordingly, the tables identified as being updated by this Notice correspond to the applicable tables published in the September 28, 2006, **Federal Register** Notice, beginning with Table A through Table B.

VA has updated the list of data sources presented in Supplementary Table 1 to reflect the updated data sources used to establish the updated charges described in this Notice.

The list of VA medical facility locations has also been updated. As a reminder, in Supplementary Table 3 published in the **Federal Register**, dated December 22, 2006 (71 FR 77096), we set forth the list of VA medical facility locations, which includes the first three-digits of their zip codes and provider-based/non-provider-based designations.

Consistent with VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo*, under "Charge Data."

Approved: September 25, 2007.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E7–19279 Filed 9–27–07; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 72, No. 188
Friday, September 28, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 75

[EPA–HQ–OAR–2007–0164, FRL–8459–8]

RIN 2060–AO01

Two Optional Methods for Relative Accuracy Test Audits of Mercury Monitoring Systems Installed on Combustion Flue Gas Streams and Several Amendments to Related Mercury Monitoring Provisions

Correction

In rule document 07–4147 beginning on page 51494 in the issue of Friday, September 7, 2007, make the following corrections:

Appendix A–8 to Part 60 [Corrected]

1. On page 51507, in Appendix A–8 to Part 60, in Method 30A, in section 9.0, in the fourth column of the table, in the tenth line from the bottom of the column, "percentages.." should read "percentages.".

2. On the same page, in the same appendix, in the same section, in the fifth column of the table, in the third line from the bottom of the column, "initial dynamic" should read "initial run; dynamic".

3. On page 51508, in the same appendix, in the same section, in the table, entry "A" is corrected to read as follows:

SUMMARY TABLE OF QA/QC REQUIREMENTS—Continued

Status[1]	Process or element	QA/QC specification	Acceptance criteria	Checking frequency
* * * * * * *				
A	Sample Point Selection	Stratification Test (See Section 8.1.3).	If the Hg concentration[2] at each traverse point during the stratification test is: • Within ±5% of mean, use 1-point sampling (at the point closest to the mean); or • Not within ±5% of mean, but is within ±10% of mean, use 3-point sampling. Locate points according to Section 8.1.3.2.2 of this method. Alternatively, if the Hg concentration at each point is: • Within ±0.2 µg/m^3 of mean, use 1-point sampling (at the point closest to the mean); or • Not within ±0.2 µg/m^3 of mean, but is within ±0.5 µg/m^3 of mean, use 3-point sampling. Locate points according to Section 8.1.3.2.2 of this method.	Prior to first run. Prior to 1/1/09, you may (1) forgo stratification testing and use 3 sampling points (as per Section 8.1.3.2.2) or (2) perform a SO_2 stratification test (see Sections 6.5.6.1 and 6.5.6.3 of appendix A to part 75), in lieu of a Hg stratification test. If the test location is unstratified or minimally stratified for SO_2, it can be considered unstratified or minimally stratified for Hg also.
* * * * * * *				

4. On page 51509, in the same appendix, in section 12.1, in the first column, in the 13th line from the bottom of the column, "$C_{baseline}$" should read "$\bar{C}_{baseline}$".

5. On the same page, in the same appendix, in the same section, in the third column, in the 16th line, "%;." should read "%.".

6. On the same page, in the same appendix, in the same section, in the same column, in the 17th and 18th lines, "R= Mean value of spike recoveries at a particular target level, %;." should read "$\bar{R}$ = Mean value of spike recoveries at a particular target level, %.".

7. On the same page, in the same appendix, in the same section, in the same column, in the 19th line, "%;." should read "%.".

8. On page 51522, in the same appendix, in Method 30B, in section

9.0, in the table, in the second column, in the last two lines of the column, "<10% of section 1 Hg mass for Hg concentrations > 1 µg/dscm;." should read "≤10% of section 1 Hg mass for Hg concentrations > 1 µg/dscm;".

Appendix B to Part 60 [Corrected]

9. On page 51527, in Appendix B to Part 60, in the second column, in section 8.6.6.1, in the third line "Eq. 12A-1" should read "(Eq. 12A-1)".

Appendix K to Part 75 [Corrected]

10. On page 51530, in Appendix K to Part 75, in section 8.0, in the table, in the third column, in the 13th line, "analyzing field." should read "analyzing field samples.".

11. On the same page, in the same appendix, in the same section, in the same table, in the fourth column, in the third line, "Sample check invalidated" should read "Sample invalidated".

12. On the same page, in the same appendix, in the same section, in the same table, in the same column, in the 12th and 13th lines, "analysis samples until successful" should read "analysis until successful".

[FR Doc. C7–4147 Filed 9–27–07; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP–2006–0021; CBP Dec. 07–78]

Interpretive Rule Concerning Classification of Unisex Footwear

Correction

In notice document E7–18588 beginning on page 53790 in the issue of Thursday, September 20, 2007 make the following correction:

On page 53790, in the first column, in the **ACTION** heading, "Final interpretion" should read "Final interpretation".

[FR Doc. Z7–18588 Filed 9–27–07; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
September 28, 2007

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2007; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9041–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2007

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

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April 2007 through June 2007, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations (NCDs) affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. This notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations and a list of Medicare-approved carotid stent facilities. Included in this notice is a list of the American College of Cardiology's National Cardiovascular Data registry sites, active CMS coverage-related guidance documents, and special one-time notices regarding national coverage provisions. Also included in this notice is a list of National Oncologic Positron Emissions Tomography Registry sites, a list of Medicare-approved ventricular assist device (destination therapy) facilities, a list of Medicare-approved lung volume reduction surgery facilities, a list of Medicare-approved clinical trials for fluorodeoxyglucose positron emissions tomogrogphy for dementia, and a list of Medicare-approved bariatric surgery facilities.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning CMS manual instructions in Addendum III may be addressed to Timothy Jennings, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2134.

Questions concerning regulation documents published in the **Federal Register** in Addendum IV may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

Questions concerning Medicare NCDs in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to John Manlove, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–13–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6877.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Melissa Musotto, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6962.

Questions concerning Medicare-approved carotid stent facilities in Addendum VIII may be addressed to Sarah J. McClain, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2994.

Questions concerning Medicare's recognition of the American College of Cardiology-National Cardiovascular Data Registry sites in Addendum IX may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare's active coverage-related guidance documents in Addendum X may be addressed to Janet Brock, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2700.

Questions concerning one-time notices regarding national coverage provisions in Addendum XI may be addressed to Ellie Lund, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2281.

Questions concerning National Oncologic Positron Emission Tomography Registry sites in Addendum XII may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning Medicare-approved ventricular assist device (destination therapy) facilities in Addendum XIII may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved lung volume reduction surgery facilities listed in Addendum XIV may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved bariatric surgery facilities listed in Addendum XV may be addressed to Kate Tillman, RN, MA, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–9252.

Questions concerning fluorodeoxyglucose positron emission

tomography for dementia trials listed in Addendum XVI may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, NCDs, and FDA-approved IDEs published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare NCD Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into 11 addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.
- Addendum VIII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients.
- Addendum IX includes a list of the American College of Cardiology's National Cardiovascular Data registry sites. We cover implantable cardioverter defibrillators (ICDs) for certain indications, as long as information about the procedures is reported to a central registry.
- Addendum X includes a list of active CMS guidance documents. As required by section 731 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003), we will begin listing the current versions of our guidance documents in each quarterly listings notice.
- Addendum XI includes a list of special one-time notices regarding national coverage provisions. We are publishing a list of issues that require public notification, such as a particular clinical trial or research study that qualifies for Medicare coverage.
- Addendum XII includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.
- Addendum XIII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices used as destination therapy. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.
- Addendum XIV includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial are also eligible to receive coverage.
- Addendum XV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities

must meet our standards in order to receive coverage for bariatric surgery procedures.

- Addendum XVI includes a listing of Medicare-approved clinical trials for fluorodeoxyglucose positron emission tomography (FDG–PET) for dementia and neurodegenerative diseases.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register.** Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access.* The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html,* by using local WAIS client software, or by telnet to *swais.gpoaccess.gov,* then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register.** Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http:cms.hhs.gov/rulings.*

D. CMS's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.
- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 2005. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.*) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare Benefit Policy publication titled "Guidelines for Payment of Diabetes Self-Management Training," use CMS–Pub. 100–02, Transmittal No. 72.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: September 14, 2007.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120–01–P

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

June 24, 2005 (70 FR 36620)

September 23, 2005 (70 FR 55863)

December 23, 2005 (70 FR 76290)

March 24, 2006 (71 FR 14903)

June 23, 2006 (71 FR 36101)

September 29, 2006 (71 FR 57604)

December 22, 2006 (71 FR 77202)

March 30, 2007 (72 FR 15282)

June 22, 2007 (72 FR 34508)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III
Medicare and Medicaid Manual Instructions
April Through June 2007

Transmittal No.	Manual/Subject/Publication Number

Medicare General Information
(CMS-Pub. 100-01)

44 Fee-for-Service Contractor Transition Handbooks.
Fee-for-Service Contractor Workload Transitions
Transition Handbooks
Workload Implementation Handbook
Workload Closeout Handbook

Medicare Benefit Policy
(CMS-Pub. 100-02)

69 Change to the Inpatient Psychiatric Facility Prospective Payment System
Discharge Bill
Benefits Exhaust
70 Bone Mass Measurements
Background
Authority
Definition
Conditions for Coverage
Frequency Standards
Beneficiaries Who May Be Covered
Noncovered Bone Mass Measurements
Claims Processing
National Coverage Determinations
71 Clarification of Manual Instruction Regarding the Scope of Portable X-Ray Benefit
Scope of Portable X-ray Benefit
72 Guidelines for Payment of Diabetes Self-Management Training
Diabetes Self-Management Training Services
Certified Providers
Frequency of Training
Coverage Requirements for Individual Training

Payment for Diabetes Self-Management Training
73 Coverage Requirements for Therapy Services Provided in a Skilled Nursing Facility
General
74 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction

Medicare National Coverage Determination (CMS-Pub. 100-03)

67 Blood Brain Barrier Osmotic Disruption for Treatment of Brain Tumors
68 Ventricular Assist Devices
Artificial Hearts and Related Devices (Effective March 27, 2007)
69 Bone Mass Measurements
Bone (Mineral) Density Studies
70 Vagus Nerve Stimulation for Resistant Depression
Vagus Nerve Stimulation
71 Percutaneous Transluminal Angioplasty

Medicare Claims Processing (CMS-Pub. 100-04)

1218 Program Instructions Designating the Competitive Bidding Areas and Product Categories Included in the CY 2007 Durable Medical Equipment Prosthetic Orthotics & Supplies Competitive Bid Program
1219 Part C and D Plan Type Display on the Common Working File - This CR rescinds and fully replaces CR 5349
1220 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1221 Common Working File Duplicate Claim Edit for the Technical Component of Radiology and Pathology Laboratory Services Provided to Hospital Patients
Hospital and Skilled Nursing Facility Patients
Technical Component of Physician Pathology Services to Hospital Patients
1222 This Transmittal is rescinded and replaced by Transmittal 1234
1223 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1224 Home Health Agencies Providing Durable Medical Equipment in Competitive Bidding Areas
General Guidelines for Processing Home Health Agency Claims
Home Health Prospective Payment System Consolidated Billing
1225 This Transmittal is rescinded and replaced by Transmittal 1227
1226 Medicare Program, Correction of Hospice Cap for FY 2003 and FY 2004

1227 Medicare Fee-For-Service National Provider Identifier Implementation Contingency Plan

1228 Instructions for Implementation of CMS 1536-R; Astigmatism-Correcting Intraocular Lens
Presbyopia-Correcting and Astigmatism-Correcting Intraocular Lenses (General Policy Information)
Payment for Services and Supplies
Coding and General Billing Requirements
Provider Notification Requirements
Beneficiary Liability

1229 Modification to the Model Medicare Redetermination Notice (for partly or fully unfavorable redeterminations) and the Administrative Law Judge Filing Locations Where the Place of Service Was in Delaware, Kentucky, Puerto Rico, Virginia, and/or the US Virgin Islands
Medicare Redetermination Notice (for partly or fully unfavorable redeterminations)
Forwarding Requests to HHS/Office of Medicare Hearings and Appeals (OMHA)

1230 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction

1231 The Use of Benefit's Exhaust Day as the Day of Discharge for Payment Purposes for the Inpatient Psychiatric Facility Prospective Payment System and Clarification of Discharge for Long Term Care Hospitals and the Allowance of No-Pay Benefits Exhaust Bills
Frequency of Billing for Providers
Inpatient Billing from Hospitals and Skilled Nursing Facilities
Determining Covered/Noncovered Days and Charges
Interrupted Stays
Billing Requirements Under Long Term Care Hospital Prospective Payment System
Benefits Exhausted
Interim Billing
Inputs/Outputs to Pricer
General Rules
Billing Period
Benefits Exhaust

1232 Modifications to the National Coordination of Benefits Agreement Crossover Process
Consolidated Claims Crossover Process
Consolidation of the Claims Crossover Process
The Coordination of Benefits Agreement Detailed Error Report Notification Process

The Coordination of Benefits Agreement Full Claim File Repair Process

1233 Clarification of Bariatric Surgery Billing Requirements Issued in CR 5013
General
Healthcare Common Procedure Coding System Procedure Codes for Bariatric Surgery
ICD-9 Procedure Codes for Bariatric Surgery (FIs only)
ICD-9 Diagnosis Codes for Bariatric Surgery
ICD-9 Diagnosis Codes for BMI & #61619;35
Claims Guidance for Payment
Medicare Summary Notices and Claim Adjustment Reason Codes
Fiscal Intermediary Billing Requirements
Advance Beneficiary Notice and Hospital-Issued Notice of Noncoverage Information

1234 Update of Healthcare Common Procedure Coding System Codes for Hemophilia
Clotting Factors

1235 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction

1236 Bone Mass Measurements
Payment Methodology and Healthcare Common Procedure Coding System Coding
Medicare Summary Notice Messages
Remittance Advice Messages
Advance Beneficiary Notices

1237 Instructions for Downloading the Medicare ZIP Code Files - October 2007

1238 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction

1239 Enhancements to Claims Processing Requirements for the Competitive Acquisition Program for Part B Drugs and Biologicals for the October 2007 Release

1240 Present On Admission Indicator

1241 Stage 3 NPI Changes for Transaction 835 and Standard Paper Remittance Advice
Background
Remittance Balancing
Medicare Standard Electronic PC Print Software for Institutional Providers
Part A (A/B Macs/FIs/RHHIs) Standard Paper Remittance Format
Part B (A/B Mac/Carrier/DMERC/DME MAC) Standard Paper Remittance Format
Part A (A/B MAC/FI/RHHI) Standard Paper Remittance Crosswalk to the 835
Part B (A/B Mac/Carrier/DMERC/DME MAC) Standard Paper Remittance Crosswalk to the 835

1242 Transitioning the Mandatory Medigap ("Claim-Based") Crossover Process to the Coordination of Benefits Contractor
Claims Crossover Disposition Indicators
Coordination of Benefits Agreement Medigap Claim-Based Crossover Process
Completion of the Claim Form
Coordination of Medicare With Medigap and Other Complementary Health Insurance Policies

1242 Update to Correct Coding Initiative Edits, Version 13.2, Effective July 1, 2007

1243 Quarterly Update to Correct Coding Initiative Edits, Version 13.2, Effective July 1, 2007

1244 New Waived Tests

1245 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction

1246 Home Health Agencies Providing Durable Medical Equipment in Competitive Bidding Areas
General Guidelines for Processing Home Health Agency Claims
Home Health Prospective Payment System Consolidated Billing

1247 New Deadline for Required Submission of the Form CMS-1500 (08-05)

1248 Revisions, in the Medicare Claims Processing Manual, to Section 40, Titled, "Discarded Drugs and Biologicals," and Section 100.2.9, Titled, "Submission of Health Common Procedure Coding System Procedure Codes Claims With the Modifier JW, "Drug Amount Discarded/Not Administered to Any Patient"
Discarded Drugs and Biologicals
Submission of Claims with the Modifier JW, "Drug Amount Discarded/Not Administered to Any Patient"

1249 Update to Publication 100-4, Chapters 1 & 15 for ZIP5 and ZIP9 Medicare Zip Code Files
Claims Processing Instructions for Payment Jurisdiction for Claims Received on or After April 1, 2004
Transition Overview

1250 Implementation of the Carrier Jurisdictional Pricing Rules for All Purchased Diagnostic Service Claims
Payment to Physician or Other Supplier for Purchased Diagnostic Tests – Claims Submitted to Carriers
Payment to Supplier of Diagnostic Tests for Purchased Interpretations

1251 Clarification of the National Provider Identifier Reporting Requirements for Ambulance Service Claims

1252 Clarification of Skilled Nursing Facility No Pay Billing
Dialysis and Dialysis-Related Services to a Beneficiary With End-Stage Renal Disease

End-Stage Renal Disease Services
Coding Applicable to Dialysis Services Provided in a Renal Dialysis Facility or Home
Ambulance Services
Health Insurance Prospective Payment System Rate Code
Same Day Transfer
Billing in Benefits Exhaust and No-Payment Situations
Skilled Nursing Facility Spell of Illness Quick Reference Chart
Medicare Advantage Beneficiaries
Beneficiaries Disenrolled from Medicare Advantage Plans

1253 This Transmittal is rescinded and replaced by Transmittal 1265

1254 National Uniform Billing Committee Update to Chapter 25

1255 Guidelines for Payment of Diabetes Self-Management Training
Diabetes Self-Management Training Services Provided by Rural Health Centers and Federally Qualified Health Centers
Diabetes Self-Management Training Services
Coding and Payment of Diabetes Self-Management Training Services
Bill Processing Requirements
Special Processing Instructions for Billing Frequency Requirements
Advance Beneficiary Notice Requirements

1256 Update Inpatient Psychiatric Facility Prospective Payment System for Rate Year 2008

1257 Important Message from Medicare and Expedited Determination Procedures for Hospital Discharges
Expedited Review Process for Hospital Inpatients in Original Medicare
Scope of the Instructions
Special Considerations
Notifying Beneficiaries of their Right to an Expedited Review
Delivery of the Important Message from Medicare
The Follow-Up Copy of the Signed Important Message from Medicare
Rules and Responsibilities When a Beneficiary Requests an Expedited Review
The Role of the Beneficiary and Liability
The Responsibilities of the Hospital
The Role of the Quality Improvement Organizations
Effect of a Quality Improvement Organization Expedited Determination
General Notice Requirements
Number of Copies
Reproduction
Length and Page Size
Contrast of Paper and Print

1264 Quarterly Update to Medically Unlikely Edits, Version 1.2, Effective July 1, 2007

1265 October Quarterly Update to 2007 Annual Update of Healthcare Common Procedure Coding System Codes Used for Skilled Nursing Facility Consolidation Billing Enforcement

1266 Remittance Advice Remark Code and Claim Adjustment Reason Code Update and Medicare Remit Easy Print Enhancement

1267 Update-Long Term Care Hospital Prospective Payment System Rate Year 2008
Short-Stay Outliers
Payment Policy for Co-Located Providers

1268 Medicare Contractor Annual Update of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM)

1269 July 2007 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Effective July 1, 2007, and Revisions to the January 2007 and April 2007 Quarterly Average Sale Price Medicare Part B Drug Pricing Files

1270 Vagus Nerve Stimulation for Resistant Depression
ICD-9 Diagnosis Codes for Vagus Nerve Stimulation (Covered since Date Of Service on and after July 1, 1999)
Carrier/Medicare Administrative Contractor Billing Requirements
Fiscal Intermediary Billing Requirements
Medicare Summery Notice, Remittance Advice Remark Codes, and Claims Adjustment Reason Code Messages
Advance Beneficiary Notice and Hospital-Issued Notice of Noncoverage Information

1271 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction

1272 Billing and Payment in a Health Professional Shortage Area
Provider Education
Carrier Web Pages
Health Professional Shortage Area Designations

1273 Appeals of Claims Decisions: Appointment of Representatives; Fraud and Abuse; Guidelines for Writing Appeals Correspondence; Disclosure of Information
Appointment of Representative
Appointment of Representative – Introduction
Who May Be a Representative
How to Make and Revoke an Appointment
When to Submit the Appointment
Where to Submit the Appointment
Rights and Responsibilities of a Representative
Duration of Appointment

Curing a Defective Appointment of Representative
Incapacitation or Death of Beneficiary
Disclosure of Individually Identifiable Beneficiary Information to Representative
Assignment of Appeal Rights
Assignment of Appeal Rights – Introduction
Who May Be An Assignee
How to Make and Revoke a Transfer of Appeal Rights
When to Submit the Transfer of Appeal Rights
Where to Submit the Transfer of Appeal Rights
Rights of the Assignee of Appeal Rights
Duration of Transfer of Appeal Rights
Curing a Defective Transfer of Appeal Rights
Disclosure of Individually Identifiable Beneficiary Information to Representative
Medicare Secondary Payer Specific Limitations or Additional Requirement
Fraud and Abuse
Fraud and Abuse – Authority
Inclusion and Consideration of Evidence of Fraud and/or Abuse
Claims Where There is Evidence That Items or Services Were Not Furnished or Were Not Furnished as Billed
Responsibilities of Adjudicators
Requests to Suspend the Appeals Process
Continuing Appeals of Providers, Physicians, or Other Suppliers Who Are Under Fraud or Abuse Investigations
Appeals of Claims Involving Excluded Providers, Physicians, or Other Suppliers
Guidelines for Writing Appeals Correspondence
General Guidelines
Letter Format
How to Establish Reading Level
Writing in Plain Language
Reading Levels
Required Elements in Appeals Correspondence
Disclosure of Information
General Information
Disclosure of Information to Third Parties
Fraud and Abuse Investigations
Medical Consultants Used
Multiple Beneficiaries

1274 Claims Processing Change for Services Submitted with the Health Professional Shortage Area Modifiers QB or QU for Claims with Dates of Service on or

After January 1, 2006
1275 Waiving Medicare Fee-for-Service Appeals Requirements
The Redetermination Decision
Medicare Redetermination Notice (for fully favorable redeterminations)
Tracking Cases
1276 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1277 Update to Pub. 100-04, Chapter 18, Section 10 for Part B influenza Billing
Healthcare Common Procedure Coding System and Diagnosis Code
Claims Submitted to Carriers
Carrier Payment Requirements
Roster Claims Submitted to Carriers for Mass Immunization
Centralized Billing for Flu and Pneumococcal Vaccines to Medicare Carriers
Common Working File Edits on Carrier Claims
1278 Charges for Missed Appointments
1279 Update to the Hospice Payment Rates, Hospice Cap, Hospice Wage Index, and the Hospice Pricer for FY 2008

Medicare Secondary Payer
(CMS-Pub. 100-05)

00 None

Medicare Financial Management
(CMS-Pub. 100-06)

118 Recurring Update Notification for the Notice of New Interest Rate for Medicare Overpayments and Underpayments - 3rd Quarter FY 2007
119 This Transmittal is rescinded and replaced by Transmittal 121
120 Accounts Receivable Trending Analysis Procedures
121 This Transmittal is rescinded and replaced by Transmittal 123
122 CMS Reporting Requirements With the Exception of MSP for Unsolicited/Voluntary Refunds
123 Contractor CROWD Form 5 Completion Changes
124 Treasury Collections on Non-Medicare Secondary Payer Debts
Collections
Background
Intra-governmental Payment and Collection System
Debt Collection System
Collection/Refund Spreadsheet
Financial Reporting for Collection/Refund Spreadsheet
Debt Paid in Full

Extended Repayment Schedule
Excess Collections
Applying Excess Collections
If the Debtor Has Other Outstanding Debt
If the Debtor Has No Other Outstanding Debt
Financial Reporting for Collections Received on Debts from Cross-Servicing
125 Instructions for Completion of the Contractor's Monthly Bank Reconciliation Worksheet

Medicare State Operations Manual
(CMS-Pub. 100-07)

25 New Number Series and State Codes for CMS Certification Numbers (formerly OSCAR Provider Numbers)
RO Assignment of CMS Certification Numbers

Medicare Program Integrity
(CMS-Pub. 100-08)

197 This Transmittal is rescinded and replaced by Transmittal 209
198 New Durable Medical Equipment Prosthetics, Orthotics, and Supplies Certificates of Medical Necessity and Durable Medical Equipment Information Forms for Claims Processing
199 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
200 Update Program Integrity Management Reporting (PIMR) System for Multi Carrier System to Recognize New "T" and "F" Codes and to Expand the Multi Carrier System Contractor Bill Type Code Table to Accommodate the New "T" and "F" Codes
201 Revise the Fiscal Intermediary Shared System to Expand Files to Include a National Provider Identifier for Each Legacy Provider Identifier
202 Medical Review Re-openings
203 Strategy Analysis Report
Medical Review Manager
Annual Medical Review Strategy
The Strategy Analysis Report
The Strategy Analysis Report Format
Executive Summary
Problem Specific Activities
Problem Specific Activity Definitions
Narrative
204 Comprehensive Error Rate Testing Program Changes

Contractor Communication With the Comprehensive Error Rate Testing Program
Overview of the Comprehensive Error Rate Testing Process
Comprehensive Error Rate Testing Process Requirements
Providing Sample Information to the Comprehensive Error Rate Testing Contractor
Providing Review Information to the Comprehensive Error Rate Testing Contractor
Providing Feedback Information to the Comprehensive Error Rate Testing Contractor
Disputing/Disagreeing With a Comprehensive Error Rate Testing Decision
Handling Overpayments and Underpayments Resulting From Comprehensive Error Rate Testing Findings
Handling Appeals Resulting From Comprehensive Error Rate Testing Initiated Denials
Disseminating Comprehensive Error Rate Testing Information
Error Rate Reduction Plan
Contacting Non-Responders
Late Documentation Received by the Comprehensive Error Rate Testing Contractor
Voluntary Refunds

205 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction

206 This Transmittal is rescinded and replaced by Transmittal 207

207 Discontinuance of the Unique Physician Identification Number Registry

208 Expand PSC Data Transfer Files to Include a National Provider Identifier for Each Legacy Provider Identifier

209 Revise the VIPS Medicare System (VMS) and Medicare Contractor System to Expand Files to Include a National Provider Identifier for Each Legacy Provider Identifier

210 High Risk Areas
Joint Operating Agreement
Designation of High Risk Areas
Actions Taken in High Rise Areas

211 Medicare Benefit Vulnerability Reporting
Vulnerability Report

212 Administrative Appeals for Provider Enrollment
Administrative Appeals

213 Various Benefit Integrity Revisions
Program Safeguard Contractor Benefit Integrity Unit
Procedural Requirements
Benefit Integrity Security Requirements

Medical Review for Benefit Integrity Purposes
Requests for Information From Outside Organizations
Production of Medical Records and Documentation for an Appeals Case File
Referral to Quality Improvement Organizations

214 Clarification of Provider Enrollment Revocations
Medicare Contractor Duties
Pre-Screening Process
CMS or Contractor Issued Deactivations
Contractor Issued Revocations
Program Safeguard Contractor Identified Revocations
CMS Satellite Office or Regional Office Identified Revocations

Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)

19 IOM Pub. 100-09, Chapters 3 – Provider Inquiries and Chapter 6 – Provider
Customer Service Program Updates
Availability of Telephone Services
Automated Services - Interactive Voice Response
Toll Free Network Services
Publication of Toll Free Numbers
Call Handling Requirements
Customer Service Assessment and Management System Reporting Requirements
Customer Service Representative Qualifications
Staff Development and Training9
Fraud and Abuse
Provider Contact Center User Group
Performance Improvements
Contractor guidelines for High Quality Responses to Telephone Inquiries
Quality Call Monitoring Program
Quality Call Monitoring Calibration
Quality Call Monitoring Performance Standards
Written Inquiries
Contractor Guidelines for High Quality Responses to Written Inquiries
Quality Written Correspondence Monitoring Program
Quality Written Correspondence Monitoring Calibration
Quality Written Correspondence Monitoring Performance Standards
Walk-In Inquiries
Guidelines for High Quality Walk-In Service
Surveys
Customer Service Operations Surveys

Provider Satisfaction Surveys
Contractor Activities Related to the Medicare Provider Satisfaction Survey
Provider Inquiry Reporting Standardization
Provider Transaction Access Number
Inquiry Types
Telephone Inquiries
Contractor Discretion Concerning Interactive Voice Response Information
Written Inquiries
Special Inquiry Topics
Overlapping Claims
Pending Claims
Requests for Information Available on the Interactive Voice Response
Requests for Information Available on the Remittance Advice Notice
Deceased Beneficiaries
Disclosure Desk Reference for Provider Contact Centers
Authentication of Provider Elements for Customer Service Representative Inquiries
Authentication of Provider Elements for Interactive Voice Response Inquiries
Authentication of Provider Elements for Written Inquiries
Authentication of Beneficiary Elements
Plan of Expenditures Goals
Error Rate Reduction Data
Error Rate Reduction Plan
Refunds/Credits for Cancellation of Events
Availability Requirements
Telephone Responses
Complex Beneficiary Inquiries
Interactive Voice Response System
Call Completion
Average Speed of Answer
General Inquiries Timeliness
Provider Inquiry Standardized Categories

Medicare Managed Care
(CMS-Pub. 100-16)

81 Updates to Chapter 1, "General Provisions"
82 Revision to Chapter 6, Relationships with Providers
83 Chapter 11, Medicare Advantage Application Procedures and Contract

Requirements
84 Revisions to Chapter 12, Effect of Change of Ownership
85 Revisions to Chapter 18, Subpart B Section 110, Determining Deductibles and Coinsurance
86 Revisions to Chapter 17, Subpart B, Section 220, Determining Deductibles and Coinsurance
87 Update of Chapter 4, "Benefits and Beneficiary Protections"

Medicare Business Partners Systems Security
(CMS-Pub. 100-17)

00 None

Demonstrations
(CMS-Pub. 100-19)

53 Method of Payment for Extended Stay Services under the Frontier Extended Stay Clinic Demonstration, Authorized by Section 434 of the Medicare Prescription Drug, Improvement, and Modernization Act

One Time Notification
(CMS-Pub. 100-20)

269 Instructions for Fiscal Intermediary Standard System and Multi-Carrier System Healthcare Integrated General Ledger Accounting System Changes
270 Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
271 Recovery Audit Contractor/Other Medicare Contractors Claims Mass Adjustment in VIPS Medicare System-Analysis and Design
272 Medicare Claims System Provider File Extract to the Railroad Retirement Board
273 Discontinuing the Application of Outpatient Frequency of Billing Edits to Roster Bills
274 Invalid Skilled Nursing Facility Informational Unsolicited Responses From Common Working File
275 New Contractor Workload Number for Cahaba Part A Iowa Data
276 New Contractor Number for Jurisdiction 3 Arizona Part A Workload
277 Physician Quality Reporting Initiative (PQRI) Coding & Reporting Principles
278 Department of Veterans Affairs Medicare-equivalent Remittance Advice Project: Continued Use of Part A Legacy Provider Numbers After National Provider Identifiers Are Fully Implemented
279 Continuation of Legacy Number Reporting on Outbound Claims for

Coordination of Benefits Agreement Process
280 Adding Three CMS Specialty Codes for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies
281 Revision on the Medicare Summary Notice Printing Cycle
282 Common Working File Informational Unsolicited Response--Analysis Only
283 Notifying Affected Parties Regarding Changes to the Mandatory Medigap ("Claim-Based") Crossover Process
284 Limiting Numbers of Letters Automatically Generated For Claims Suspended When There is No One-to-One Match of National Provider Identifier to Legacy Provider Number
285 Implement Changes to the Viable Medicare System Durable Medical Equipment Standard System to include SAFE Audit Records
286 Adding a CMS Specialty Code for Suppliers of Oxygen and/or Oxygen Related Equipment

Addendum IV—Regulation Documents Published in the Federal Register April Through June 2007

Publication Date	FR Vol. 72 Page Number	42 CFR Parts Affected	File Code	Title of Regulation
April 5, 2007	16794	----------	CMS-1270-RCN	Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies; Extension of Timeline for Publication of Final Rule.
April 6, 2007	17992	411 and 414	CMS-1270-F	Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Other Issues.
April 16, 2007	18909	405, 410, 411, 414, 415, and 424	CMS-1321-F2	Medicare Program; Revisions to Payment Policies, Five-Year Review of Work Relative Value Units, and Changes to the Practive Expense Methodology Under the Physician Fee Schedule, and Other Changes to Payment Under Part B; Correcting Amendment.
April 27, 2007	21025	----------	CMS-1387-N	Medicare Program; Meeting of the Practicing Physicians Advisory Council, May 21, 2007.

May 1, 2007	24116	418	CMS-1539-P	Medicare Program; Hospice Wage Index for Fiscal Year 2008.
May 3, 2007	24680	411, 412, 413, and 489	CMS-1533-P	Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates.
May 4, 2007	25602	----------	CMS-1479-N	Medicare Program; Inpatient Psychiactric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2007 (RY 2008).
May 4, 2007	25526	413	CMS-1545-P	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008.
May 4, 2007	25356	484	CMS-1541-P	Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008.
May 8, 2007	26230	412	CMS-1551-P	Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2008.
May 11, 2007	26870	412 and 413	CMS-1529-F	Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes.
May 11, 2007	26867	484	CMS-1541-P	Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008.
May 23, 2007	28930	438 and 447	CMS-2279-P	Medicaid Program; Graduate Medical Education.

May 25, 2007	29403	423	CMS-4130-P	Medicare Program; Policy and Technical Changes to the Medicare Prescription Drug Benefit.
May 25, 2007	29368	422 and 423	CMS-4124-P	Medicare Program; Revisions to the Medicare Advantage and Part D Prescription Drug Contract Determinations, Appeals, and Intermediate Sanctions Processes.
May 25, 2007	29331	----------	CMS-3172-N	Medicare Program; Meeting of the Medicare Coverage Advisory Committee—July 18, 2007.
May 25, 2007	29330	----------	CMS-1546-N	Medicare Program; Public Meeting in Calendar Year 2007 for New Clinical Laboratory Tests Payment Determinations.
May 25, 2007	29328	----------	CMS-1322-N	Medicare Program; Second Semi-Annual Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—September 5, 6, and 7.
May 25, 2007	29326	----------	CMS-6040-N2	Medicare Program; Approval of Deeming Authority for National Accreditation Organizations to Acrredit Durable Medical Equipment, Prostetics, Orthotics, and Supplies (DMEPOS) Suppliers.

May 25, 2007	29325	----------	CMS-3181-PN	Medicare Program; Application by the American Diabetes Association (ADA) for Continued Recognition as a National Accreditation Program for Accrediting Entities To Furnish Outpatient Diabetes Self-Management Training.
May 25, 2007	29323	----------	CMS-1274-NC	Medicare and Medicaid Programs; Announcement of Applications From Two Hospitals Requesting Waivers for Organ Procurement Service Areas.
May 25, 2007	29289	45 CFR Part 5b	CMS-0029-P	Exemption of Certain Systems of Records of the Privacy Act.
May 29, 2007	29748	433, 447, and 457	CMS-2258-FC	Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership.

May 29, 2007	29502	----------	CMS-2241-N	State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriations for Fiscal Year 2004 and Fiscal Year 2005 To Eliminate SCHIP Fiscal Year 2007 Funding Shortfalls; Provisions for Continued Authority for Qualifying States To Use a Portion of Certain SCHIP Funds for Medicaid Expenditures.
May 30, 2007	30011	----------	CMS-6060-N	HIPAA Administrative Simplification: National Plan and Provider Enumeration System Data Dissemination.
June 4, 2007	30706	136 and 489	CMS-2206-F	Section 506 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Limitation on Charges for Services Furnished by Medicare Participating Inpatient Hospitals to Individuals Eligible for Care Purchased by Indian Health Programs.
June 7, 2007	31507	411, 412, 413, and 489	CMS-1533-CN	Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates; Correction.

June 18, 2007	33425	484	CMS-1541-CN	Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008; Correction.
June 22, 2007	34508	----------	CMS-9040-N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January Through March 2007.
June 22, 2007	34425	405, 413, and 417	CMS-1727-RCN	Medicare Program; Provider Reimbursement Determinations and Appeals; Extension of Timeline for Publication of Final Rule.
June 29, 2007	35673	424, 488, and 489	CMS-2268-P	Establishment of Revisit User Fee Program for Medicare Survey and Certification Activites.

Addendum V—National Coverage Determinations [April Through June 2007]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at http://cms.hhs.gov/coverage.

National Coverage Determinations [April Through June 2007]

Title	NCDM Section	TN #	Issue Date	Effective Date
Percutaneous Transluminal Angioplasty (PTA)	20.7	R71NCD	6/29/07	4/30/07
Vagus Nerve Stimulation (VNS) for Resistant Depression	160.18	R70NCD	6/22/07	5/04/07
Bone Mass Measurements (BMMs)	150.3	R69NCD	5/11/07	1/01/07
Ventricular Assist Devices (VADs)	20.9	R68NCD	4/13/07	3/27/07
Blood Brain Barrier Osmotic Disruption (BBBD) for Treatment of Brain Tumors	110.20	R67NCD	4/06/07	3/20/07

Addendum VI
FDA-Approved Category B IDEs
[April Through June 2007]

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the second quarter, April through June 2007.

IDE	Category
B	G050262
B	G060057
B	G060130
B	G060147
B	G060150
B	G060198
B	G060254
B	G070013
B	G070033
B	G070039
B	G070040
B	G070041
B	G070045
B	G070046
B	G070050
B	G070052
B	G070060
B	G070061

B	G070062
B	G070063
B	G070064
B	G070065
B	G070066
B	G070067
B	G070068
B	G070069
B	G070072
B	G070073
B	G070078
B	G070079
B	G070080
B	G070082
B	G070086
B	G070089
B	G070092

Addendum VII
Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB Control Numbers	Approved CFR Sections in Title 42, Title 45, and Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
OMB NUMBER	Approved CFR Sections
0938-0008	Part 424, Subpart C
0938-0022	413.20, 413.24, 413.106
0938-0023	424.103
0938-0025	406.28, 407.27
0938-0027	486.100 - 486.110
0938-0033	405.807
0938-0034	405.821
0938-0035	407.40
0938-0037	413.20, 413.24
0938-0041	408.6, 408.202
0938-0042	410.40, 424.124
0938-0045	405.711
0938-0046	405.2133
0938-0050	413.20, 413.24
0938-0062	431.151, 435.151, 435.1009, 440.220, 440.250, 442.1, 442.10 - 442.16, 442.30, 442.40, 442.42, 442.100 - 442.119, 483.400 - 483.480, 488.332, 488.400, 498.3 - 498.5
0938-0065	485.701 - 485.729
0938-0074	491.1 - 491.11
0938-0080	406.7, 406.13
0938-0086	420.200 - 420.206, 455.100 - 455.106
0938-0101	430.30
0938-0102	413.20, 413.24

0938-0107	413.20, 413.24
0938-0146	431.800 - 431.865
0938-0147	431.800 - 431.865
0938-0151	493.1-493.2001
0938-0155	405.2470
0938-0193	430.10 - 430.20, 440.167
0938-0202	413.17, 413.20
0938-0214	411.25, 489.2, 489.20
0938-0236	413.20, 413.24
0938-0242	416.44, 418.100, 482.41, 483.270, 483.470
0938-0245	407.10, 407.11
0938-0251	406.7
0938-0266	416.1-416.150
0938-0267	485.56, 485.58, 485.60, 485.64, 485.66
0938-0269	412.116, 412.632, 413.64, 413.350, 484.245
0938-0270	405.376
0938-0272	440.180, 441.300 - 441.305
0938-0273	485.701 - 485.729
0938-0279	424.5
0938-0287	447.31
0938-0296	413.170, 413.184
0938-0301	413.20, 413.24, 415.60
0938-0302	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938-0313	489.11, 489.20
0938-0328	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631
0938-0334	491.9, 491.10
0938-0338	486.104, 486.106, 486.110
0938-0354	441.50
0938-0355	442.30, 488.26
0938-0358	488.26
0938-0359	412.40 - 412.52
0938-0360	488.60
0938-0365	484.10, 484.12, 484.14, 484.16, 484.18, , 484.36, 484.48, 484.52
0938-0372	414.330
0938-0378	482.60 - 482.62
0938-0379	442.30, 488.26
0938-0382	442.30, 488.26
0938-0386	405.2100 - 405.2171
0938-0391	488.18, 488.26, 488.28
0938-0426	480.104, 480.105, 480.116, 480.134

0938-0429	447.53
0938-0443	478.18, 478.34, 478.36, 478.42
0938-0444	1004.40, 1004.50, 1004.60, 1004.70
0938-0445	412.44, 412.46, 431.630, 476.71, 476.74, 476.78
0938-0447	405.2133
0938-0448	405.2133, **45 CFR** 5, 5b; **20 CFR** Parts 401, 422E
0938-0449	440.180, 441.300 - 441.310
0938-0454	424.20
0938-0456	412.105
0938-0463	413.20, 413.24, 413.106
0938-0467	431.17, 431.306, 435.910, 435.920, 435.940 - 435.960
0938-0469	417.126, 422.502, 422.516
0938-0470	417.143, 422.6
0938-0477	412.92
0938-0484	424.123
0938-0501	406.15
0938-0502	433.138
0938-0512	486.304, 486.306, 486.307
0938-0526	475.102, 475.103, 475.104, 475.105, 475.106
0938-0534	410.38, 424.5
0938-0544	493.1 - 493.2001
0938-0564	411.32
0938-0565	411.20 - 411.206
0938-0566	411.404, 411.406, 411.408
0938-0573	412.256
0938-0578	447.534
0938-0581	493.1 - 493.2001
0938-0599	493.1 - 493.2001
0938-0600	405.371, 405.378, 413.20
0938-0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 483.10, 484.10, 489.102
0938-0612	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493,1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 493.1299
0938-0618	433.68, 433.74, 447.272
0938-0653	493.1771, 493.1773, 493.1777
0938-0657	405.2110, 405.2112
0938-0658	405.2110, 405.2112
0938-0667	482.12, 488.18, 489.20, 489.24
0938-0686	493.551 - 493.557
0938-0688	486.301 - 486.325

0938-0691	412.106
0938-0692	466.78, 489.20, 489.27
0938-0701	422.152
0938-0702	**45 CFR** 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180
0938-0703	**45 CFR** 148.120, 148.122, 148.124, 148.126, 148.128
0938-0714	411.370 - 411.389
0938-0717	424.57
0938-0721	410.33
0938-0723	421.300 - 421.316
0938-0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938-0732	417.126, 417.470
0938-0734	**45 CFR** 5b
0938-0739	413.337, 413.343, 424.32, 483.20
0938-0749	424.57
0938-0753	422.000 - 422.700
0938-0754	441.151, 441.152
0938-0758	413.20, 413.24
0938-0760	484.55, 484.205, 484.245, 484.250
0938-0761	484.11, 484.20
0938-0763	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938-0770	410.2
0938-0778	422.111, 422.564
0938-0779	417.126, 417.470, 422.64, 422.210
0938-0781	411.404, 484.10
0938-0786	438.352, 438.360, 438.362, 438.364
0938-0790	460.12-460.210
0938-0792	491.8, 491.11
0938-0796	422.64
0938-0798	413.24, 413.65, 419.42
0938-0802	419.43
0938-0818	410.-141-410.146, 414.63
0938-0829	422.568
0938-0832	Parts 489 and 491
0938-0833	483.350 - 483.376
0938-0841	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180

0938-0842	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64
0938-0846	411.352 - 411.361
0938-0857	Part 419
0938-0860	Part 419
0938-0866	**45 CFR** Part 162
0938-0872	413.337, 483.20,
0938-0873	422.152
0938-0874	**45 CFR** Parts 160 and 162
0938-0878	Part 422 Subparts F and G
0938-0887	**45 CFR** 148.316, 148.318, 148.320
0938-0897	412.22, 412.533
0938-0907	412.230, 412.304, 413.65
0938-0910	422.620, 422.624, 422.626
0938-0911	426.400, 426.500
0938-0915	421.120, 421.122
0938-0916	483.16
0938-0920	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.604, 438.710, 438.722, 438.724, 438.810
0938-0921	414.804
0938-0931	**45 CFR** 142.408, 162.408, and 162.406
0938-0933	438.50
0938-0935	422 Subparts F and K
0938-0936	423
0938-0939	405.502
0938-0944	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938-0950	405.910
0938-0951	423.48
0938-0953	405.1200 and 405.1202
0938-0954	414.906, 414.908, 414.910, 414.914, 414.916
0938-0957	Part 423 Subpart R
0938-0964	403.460, 411.47
938-0975	423.562(a)
0938-0976	423.568
0938-0977	Part 423 Subpart R
0938-0978	423.464
0938-0982	422.310, 423.301, 423.322, 423.875, 423.888
0938-0990	423.56
0938-0992	423.505, 423.514

Addendum VIII
Medicare-Approved Carotid Stent Facilities
[April Through June 2007]

On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients.

Approved Carotid Artery Stenting Facilities
[April Through June 2007]

Facility	Provider Number	Effective Date	State	Additional Information
Doctors Medical Center 1441 Florida Avenue Modesto, CA 95352	050464	04/12/2007	CA	PO Box 4138
Oak Hill Hospital 11375 Cortez Boulevard Brooksville, FL 34613	100264	04/12/2007	FL	N/A
St. Mary's Health Care System 1230 Baxter Street Athens, GA 30606-3791	110006	04/12/2007	GA	N/A
Tift Regional Medical Center 901 East 18th Street Tifton, GA 31793	110095	04/12/2007	GA	PO Box 747

The Neurological and Orthopedic Institute of Chicago 4501 North Winchester Avenue Chicago, IL 60640	140303	04/12/2007	IL	N/A
The Regional Medical Center of Orangeburg and Calhoun Counties 3000 St. Matthews Road Orangeburg, SC 29118-1498	420068	04/26/2007	SC	N/A
Northern Westchester Hospital 400 East Main Street Mt. Kisco, NY 10549	330162	04/26/2007	NY	N/A
Laredo Medical Center 1700 E. Saunders Street Laredo, TX 78041	450029	04/26/2007	TX	N/A
Cookeville Regional Medical Center 142 West Fifth Street Cookeville, TN 38501	440059	05/03/2007	TN	N/A
Palisades Medical Center 7600 River Road North Bergen, NJ 07047	310003	05/03/2007	NJ	N/A
Monongahela Valley Hospital 1163 Country Club Road Monongahela, PA 15063	390147	05/03/2007	PA	N/A
The Heart Hospital Baylor Plano 1100 Allied Drive Plano, TX 75093	670025	05/03/2007	TX	N/A
Westlake Hospital 1223 West Lake Street Melrose Park, IL 60160	140240	05/07/2007	IL	N/A
Beverly Hospital 85 Herrick Street Beverly, MA 01915	220033	05/03/2007	MA	N/A
Bakersfield Heart Hospital 3001 Sillect Avenue. Bakersfield, CA 93308	050724	05/22/2007	CA	N/A
Baylor Medical Center at Garland 2300 Marie Curie	450280	05/22/2007	TX	N/A

Garland, TX 75042				
Bon Secours Baltimore Health System 2000 West Baltimore Street Baltimore, MD 21223	210013	05/22/2007	MD	N/A
St. Mary Mercy Hospital 36475 W. Five Mile Road Livonia, MI 48154	230002	05/22/2007	MI	N/A
Crittenton Hospital Medical Center 1101 West University Drive Rochester, MI 48307	230254	05/22/2007	MI	N/A
St. Vincent Medical Center 2131 W. Third Street Los Angeles, CA 90057-0992	050502	05/22/2007	CA	N/A
The Regional Medical Center at Memphis 877 Jefferson Avenue Memphis, TN 38103	440152	05/22/2007	TN	N/A
University General Hospital 7500 Fannin Street Houston, TX 77054	670019	05/22/2007	TX	N/A
Dakota Specialty Institute 3000 32nd Avenue SW Fargo, ND 58104	350070	06/05/2007	ND	d.b.a. Innovis Health
Johns Hopkins Bayview Medical Center 4940 Eastern Avenue Baltimore, MD 21224-2780	210029	06/05/2007	MD	N/A
Franciscan Skemp Healthcare 700 West Avenue South La Crosse, WI 54601-4796	520004	06/08/2007	WI	N/A
Wheeling Hospital 1 Medical Park Wheeling, WV 26003	510050	06/08/2007	WV	N/A
Intermountain Healthcare Dixie Regional Medical Center 1380 East Medical Center Drive St. George, UT 84790-2123	460021	06/27/2007	UT	N/A

Jane Phillips Medical Center 3500 SE Frank Phillips Blvd Bartlesville, OK 74006	370018	06/27/2007	OK	N/A
St. James Hospital and Health Centers 20201 S. Crawford Avenue Olympia Fields, IL 60461-1010	140172	06/27/2007	IL	N/A
Medical Center of the Rockies 2500 Rocky Mountain Avenue Loveland, CO 80538	060119	06/27/2007	CO	N/A
Westside Regional Medical Center 8201 W. Broward Boulevard Plantation, FL 33324	100228	06/27/2007	FL	N/A

Addendum IX
American College of Cardiology's National Cardiovascular Data Registry Sites
[April Through June 2007]

In order to obtain reimbursement, Medicare national coverage policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. This policy became effective January 27, 2005. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare National Coverage Determination (NCD) Manual, which is on the Centers for Medicare & Medicaid Services (CMS) Web site at http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961 .

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD registry. Therefore, in order for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry.

We maintain a list of facilities that have been enrolled in this registry. Addendum IX includes the facilities that have been designated in the quarter covered by this notice.

Facility Name	Address 1	Address 2	City	State	Zip
A. L. Lee Memorial Hospital	**510 South Fulton Street**		**Fulton**	**NY**	**13069**
Abbott Northwestern Hospital	800 East 28th Street (internal zip 33210)		Minneapolis	MN	55407
Abilene Regional Medical Center	6250 Highway 83/84		Abilene	TX	79606
Abington Memorial Hospital	1200 York Road		Abington	PA	19446
Advance Cath Imaging, L.P	609 Medical Center Drive		Decatur	TX	76234
Adventist Medical Center	10123 SE Market Street		Portland	OR	97216
Advocate Christ Medical Center	4440 West 95th Street #127NOB		Oak Lawn	IL	60453
Advocate Good Shepherd Hospital	450 W. Highway 22		Barrington	IL	60010
Advocate Illinos Masonic Medical Center	836 W. Wellington Avenue		Chicago	IL	60657
Advocate Lutheran General Hospital	1775 Dempster Street		Park Ridge	IL	60068
Advocate South Suburban Hospital	17800 S. Kedzie Avenue		Hazel Crest	IL	60429
Aiken Regional Medical Center	302 University Parkway		Aiken	SC	29802
Akron City Hospital	525 East Market Street		Akron	OH	44309-2090
Akron General Medical Center	400 Wabash Avenue		Akron	OH	44307
Alaska Regional Hospital	2801 Debarr Road		Anchorage	AK	99508
Albany Medical CenterDept of Med Div of Cardiology	43 New Scotland Aveune		Albany	NY	12208
Albert Einstein Medical Center	5501 Old York Road		Philadelphia	PA	19141
Alegent Health Bergan Mercy Medical Center	7500 Mercy Road		Omaha	NE	68124
Alegent Health Immanuel Medical Center	6828 N. 72 Street		Omaha	NE	68122-1709
Alegent Health-Mercy Hospital	6901 N. 72 Street	Sulte 3000 N	Omaha	NE	68122

Alexian Brothers Medical Center	800 Biesterfield Road		Elk Grove Village	IL	60007-3311
Allegheny General Hospital	320 East North Avenue		Pittsburgh	PA	15212
Allen Memorial Hospital	1825 Logan Avenue		Waterloo	IN	50703
Alliance Hospital	515 North Adams		Odessa	TX	79761
Alpena Regional Medical Center	1501 W. Chisholm Street		Alpena	MI	49707
Alta Bates Medical Center	2450 Ashby Avenue		Berkeley	CA	94705
Alta Bates Summit Medical Center	350 Hawthorne Avenue		Oakland	CA	94609
Alton Memorial Hospital	1 Memorial Drive		Alton	IL	62067
Altoona Hospital	620 Howard Avenue		Altoona	PA	16601
Altru Health System	1200 South Columbia Road		Grand Forks	ND	58206-6002
Alvarado Hospital Medical Center/SDRI	6655 Alvarado Road		San Diego	CA	92124
Anaheim Memorial Medical Center	1111 W. La Palma Avenue		Anaheim	CA	92801
AnMed Health	800 Fant Street		Anderson	SC	29621
Anna Jaques Hospital	25 Highland Avenue		Newburyport	MA	01950
Anne Arundel Medical Center	2001 Medical Parkway		Annapolis	MD	21401
Appleton Medical Center/Theda Clark Medical Center	1818 N. Meade Street/MOB-S/2nd Floor	Diagnostic Center-2nd Floor	Appleton	WI	54911
Arizona Heart Hospital	1930 East Thomas Road	1930 East Thomas Road	Phoenix	AZ	85016
Arkansas Heart Hospital	1701 S. Shackelford Road		Little Rock	AR	72202
Arlington Memorial Hospital	800 W. Randol Mill Road		Arlington	TX	76012-2504
Arnot-Ogden Medical Center	600 Roe Avenue		Elmira	NY	14905
Aspirus Wausau Hospital	333 Pine Ridge Boulevard		Wausau	WI	54401
Athens Regional Medical Center	1199 Prince Avenue		Athens	GA	30606
Atlanta Medical Center	303 Parkway Drive NE	Box 88	Atlanta	GA	30312
Atlanticare Regional Medical Center	2500 English Creek Avenue		Egg Habour Township	NJ	08234
Audrain Medical Center	620 East Monroe Street		Mexico	MO	65265
Aultman Hospital	2600 Sixth Street SW		Canton	OH	44710
Aurora Bay Care Medical Center	2845 Greenbrier Road		Green Bay	WI	54308

Aurora Sinai Medical Center	2900 West Oklahoma Avenue		Milwaukee	WI	53215
Aventura Hospital and Medical Center	20900 Biscayne Boulevard		Aventura	FL	33180
Avera Heart Hospital of South Dakota	4500 West 69th Street		Sioux Falls	SD	57108
Avera Sacred Heart Hospital	501 Summit Street		Yankton	SD	57078
Bakersfield Heart Hospital	3001 Sillect Avenue		Bakersfield	CA	93308
Bakersfield Memorial Hospital	420 34th Street	PO Box 1888	Bakersfield	CA	93303-1888
Ball Memorial Hospital	2401 University Avenue		Muncie	IN	47303
Banner Baywood Heart Hospital	6750 E. Baywood Avenue		Mesa	AZ	85206
Banner Desert Medical Center	Banner Desert Medical Center, Quality Management	1400 S. Dobson Road	Mesa	AZ	85202
Banner Estrella Medical Center	9201 W. Thomas Road		Phoenix	AZ	85037
Banner Good Samaritan Medical Center	1111 East McDowell Road		Phoenix	AZ	85006-2612
Banner Thunderbird Medical Center	5555 W. Thunderbird Road		Glendale	AZ	85306
Baptist Health Medical Center	9601 Interstate 630 Exit 7		Little Rock	AR	72205
Baptist Health Medical Center	3333 Springhill Drive		North Little Rock	AR	72117
Baptist Hospital	1000 W. Moreno Street		Pensacola	FL	32501
Baptist Hospital East	4000 Kresge Way		Louisville	KY	40207
Baptist Hospital of East Tennessee	137 Blount Avenue		Knoxville	TN	37920
Baptist Hospital of Miami	8900 SW 88th Street		Miami	FL	33176
Baptist Hospital West	137 Blount Avenue		Knoxville	TN	37920
Baptist Medical Center	2105 East South Boulevard		Montgomery	AL	36116
Baptist Medical Center	800 Prudential Drive		Jacksonville	FL	32207
Baptist Medical Center	111 Dallas Street		San Antonio	TX	78205
Baptist Memorial Hospital	6019 Walnut Grove Road		Memphis	TN	38120
Baptist Memorial Hospital Golden Triangle	2520 5th Street North P.O. Box 1307		Columbus	MS	39703
Baptist Memorial Hospital North Mississippi	2301 South Lamar Boulevard		Oxford	MS	38655

Baptist Memorial Hospital-Desoto	7601 Southcrest Parkway		Southaven	MS	38671
Baptist Memorial Hospital-Union City	1201 Bishop Street		Union City	TN	38261
Baptist St. Anthony's Health Systems	1600 Wallace Boulevard		Amarillo	TX	79106
Barberton Citizens Hospital	155 5th Street NE		Barberton	OH	44203
Barnes Jewish Hospital/Washington University	Barnes Jewish Hospital. Cardiovascular Procedure C	600 S. Taylor Avenue Mailstop 90-59-315	Saint Louis	MO	63110-9930
Barstow Community Hospital	555 South Seventh Street		Barstow	CA	92311
Bartow Regional Medical Center	PO Box 1050		Bartow	FL	33831-1050
Bassett Healthcare-(Mary Imogene Bassett Hospital)	One Atwell Road		Cooperstown	NY	13326
Baton Rouge General Medical Center	3600 Florida Boulevard		Baton Rouge	LA	70806
Battle Creek Health System	300 North Avenue		Battle Creek	MI	49016
Baxter Regional Medical CenterAttn: A/P	624 Hospital Drive		Mountain Home	AR	72653
Bay Medical Center	615 North Bonita Avenue		Panama City	FL	32401
Bay Regional Medical Center	1900 Columbus Avenue		Bay City	MI	48708
Bayfront Medical Center	701 Sixth Street South		St. Petersburg	FL	33701
Bayhealth Medical Center(KGH)	640 S. State Street		Dover	DE	19901
Baylor All Saints Medical Center	1400 Eighth Avenue		Fort Worth	TX	76104
Baylor Jack and Jane Hamilton Heart and Vascular Hospital	621 North Hall Street		Dallas	TX	75226
Baylor Medical Center at Garland	2300 Marie Curie Drive		Garland	TX	75042
Baylor Medical Center at Irving	1901 North MacArthur Boulevard		Irving	TX	75061
Baylor Regional Medical Center at Grapevine	1650 West College Street		Grapevine	TX	76051
Baylor Regional Medical Center at Plano	4700 Alliance Boulevard		Plano	TX	75093
Bayshore Medical Center	4000 Spencer Highway		Pasadena	TX	77504
Baystate Medical Center	759 Chestnut Street, S4553		Springfield	MA	01199

Bellevue Hospital Center	462 First Avenue		New York	NY	10016
Bellevue Hospital Center	462 First Avenue		New York	NY	10016
Bellin Memorial Hospital	744 S Webster Avenue	Cardlac Data Center 5th Floor	Green Bay	WI	54301
Benefis Healthcare	1101 26th Street South		Great Falls	MT	59405-5161
Bert Fish Medical Center	401 Palmetto Street		New Smyrna Beach	FL	32168
Beth Israel Deaconess Medical Center	185 Pilgrim Road		Boston	MA	02215
Bethesda Memorial Hospital	2815 S. Seacrest Boulevard		Boynton Beach	FL	33435
Bethesda North Hospitals	375 Dixmyth Avenue		Cincinnati	OH	45220-2489
Beverly Hospital	85 Herrick Street		Beverly	MA	01915
Bexar County Hospital District d.b.a. University Health System	4502 Medical Drive Stop 34-1 Room G-0128		San Antonio	TX	78229
Biloxi Regional Medical Center	150 Reynoir Street		Biloxi	MS	39530
Blanchard Valley Hospital	145 W. Wallace Street		Findlay	OH	45840-1299
Blessing Hospital	11th and Broadway		Quincy	IL	62301
Bloomington Hospital	601 W. Second Street		Bloomington	IN	47403
Blue Ridge HealthCare	2201 South Sterling Street		Morganton	NC	28655
Boca Raton Community Hospital	800 Meadows Road		Boca Raton	FL	33486
Bon Secours DePaul Medical Center	150 Kingsley Lane		Norfolk	VA	23505
Bon Secours Maryview Medical Center	3636 High Street		Portsmouth	VA	23707
Bon Secours- Memorial Regional Medical Center	8260 Atlee Road		Mechanicsville	VA	23116
Bon Secours St. Francis Medical Center	13701 Centerpointe Parkway		Midlothian	VA	23114
Bon Secours- St. Marys Hospital	5801 Bremo Road		Richmond	VA	23226
Boone Hospital Center	1600 E. Broadway		Columbia	MO	65201-

				5897
Borgess Medical Center	1521 Gull Road	Kalamazoo	MI	49048
Boston Medical Center	One Boston Medical Place	Boston	MA	02118
Botsford Hospital	28050 Grand River Avenue	Farmington Hills	MI	48336
Boulder Community Hospital	1100 Balsam Avenue	Boulder	CO	80304
Braddock Campus	900 Braddock Drive	Cumberland	MD	21502
Brandon Regional Hospital	119 Oakfield Drive	Brandon	FL	33511
Brandon Regional Hospital	119 Oakfield Drive, Attn: CCL	Brandon	FL	33511
Brandywine Hospital	201 Reeceville Road	Coatesville	PA	19320
Bridgeport Hospital	267 Grant Street	Bridgeport	CT	06610
Brigham & Womens Hospital	75 Francis Street	Boston	MA	02115
BroMenn Hospital	P.O. Box 2850	Bloomington	IL	61702-2850
Bronson Methodist Hospital	601 John Street	Kalamazoo	MI	49007-5348
Brookdale Hospital & Medical Center	1 Brookdale Plaza	Brooklyn	NY	11212
Brooklyn Hospital Center	121 Dekalb Avenue	Brooklyn	NY	11201
Brooksville regional Hospital	17240 Cortez Boulevard	Brooksville	FL	34601
Brookwood Medical Center	2010 Brookwood Medical Center	Birmingham	AL	35209
Brotman Medical Center	3828 Delmas Terrace	Culver City	CA	90231-2459
Broward General Medical Center	1600 S Andrews Avenue	Ft. Lauderdale	FL	33316
Bryan LGH Medical Center	1600 South 48th Street	Lincoln	NE	68526
Bryn Mawr Hospital	100 Lancaster Avenue	Wynnewood	PA	19096
Buffalo General Hospital Aaron Health Science Library 4D	100 High Street	Buffalo	NY	14203
Cabell Huntington Hospital	1340 Hal Greer Boulevard	Huntington	WV	25701
California Pacific Medical Center	2330 Clay Street, Elm Building,Room #103	San Francisco	CA	94115
CAMC Teays Valley Hospital	1400 Hospital Drive	Hurricane	WI	25526
Camden-Clark Memorial Hospital	800 Garfield Avenue	Parkersburg	WV	26101
Candler Hospital, Inc	5353 Reynolds Street	Savannah	GA	31405

Cape Canaveral Hospital	701 West Cocoa Beach Causeway		Cocoa Beach	FL	32931
Cape Cod Hospital	8 Park Street		Hyannis	MA	02601
Cape Fear Valley Health System	303 Wagoner Drive		Fayetteville	NC	28303-4646
Capital Regional Medical Center	barbara.scott3@hcahealthcare.com		Tallahassee	FL	32308
Capital Regional Medical Center	1125 Madison Street (PO Box 1128)		Jefferson City	MO	65102-1128
Cardiovascular Center of Puerto Rico	PO Box 366528		San Juan	PR	00936-6528
Carilion Roanoke Memorial Hosp	Att: Cardiac Cath Lab	PO Box 13367	Roanoke	VA	24033-3367
Caritas Norwood Hospital	800 Washington Street		Norwood	MA	02062
Caritas St. Elizabeths Med Center	736 Cambridge Street		Boston	MA	02135
Carle Foundation Hospital	611 W. Park Street		Urbana	IL	61801
Carolina Pines Regional Medical Center	1304 W. Bobo Newsome Highway		Hartsville	SC	29069
Carolinas Hospital System	805 Pamplico Highway		Florence	SC	29505
Carolinas Medical Center	P.O. Box 32861		Charlotte	NC	28232
Carolinas Medical Center-Mercy	2001 Vail Avenue		Charlotte	NC	28207
Carondelet Heart Institute at St. Joseph Medical Center	1000 Carondelet Drive		Kansas City	MO	64114
Carraway Methodist Medical Center	1600 Carraway Boulevard		Birmingham	AL	35234
Carson Tahoe Regional Medical Center	775 Fleischmann Way		Carson	NV	89703
Castleview Hospital	300 North Hospital Drive		Price	UT	84501
Catholic Medical Center	100 McGregor Street		Manchester	NH	03102-3770
Centennial Medical Center	2300 Patterson Street		Nashville	TN	37203
Centennial Medical Center	12505 Lebanon Road		Frisco	TX	75035
Centinela Hospital Medical Center	555 E. Hardy Street		Inglewood	CA	90301
Central Baptist Hospital	1800 Nicholasville Road, Suite 401		Lexington	KY	40503
Central DuPage Hospital	25 N Winfield Road		Winfield	IL	60190
Central Florida Regional Hospital	1401 W. Seminole Boulevard		Sandford	FL	32771

Central Maine Medical Center	300 Main Street		Lewiston	ME	04240
Central Minnesota Heart Center at St. Cloud Hospital	1406 Sixth Avenue North		St. Cloud	MN	56303
Central Mississippi Medical Center	1850 Chadwick Drive		Jackson	MS	39204
Chandler Regional Hospital	475 S. Dobson Road		Chandler	AZ	85224-5695
Charleston Area Medical Center	501 Morris Street		Charleston	WV	25301
Charlotte Regional Medical Center	809 East Marion Avenue		Punta Gorda	FL	33950
Charlton Memorial Hospital	363 Highland Avenue		Fall River	MA	02720-3700
Chattanooga-Hamilton County Hospital Authority/ER	975 E. Third Street		Chattanooga	TN	37403
Chesapeake General Hospital	736 Battlefield Boulevard North		Chesapeake	VA	23320
Cheshire Medical Center	580 Court Street		Keene	NH	3431
Chester County Hospital	701 East Marshall Street		West Chester	PA	19380
Chester River Hospital Center	100 Brown Street		Chestertown	MD	21620
Cheyenne Regional Medical Center	Cheyenne Regional Medical Center	214 E. 23rd Street	Cheyenne	WY	82001
Christian Hospital	11133 Dunn Road		St. Louis	MO	63136
Christiana Care Health System	4755 Ogletown-Stanton Road		Newark	DE	19718
Christus Hospital-St. Mary	3600 Gates Boulevard		Port Arthur	TX	77642
Christus Saint Elizabeth Hospital	2830 Calder Street		Beaumont	TX	77702
Christus Santa Rosa Hospital	333 N. Santa Rosa Street		San Antonio	TX	78207
Christus Spohn Hospital Corpus Christi - Shoreline	600 Elizabeth Street		Corpus Christi	TX	78404
Christus St. Michael Health Systen	2600 St. Michael Drive		Texarkana	TX	75501
Christus St. Patrick Hospital	524 South Ryan Street		Lake Charles	LA	70602-3401
Christus-Schumpert Highland Hospital	One St. Mary Place		Shreveport	LA	71101
Christus-St. Frances Cabrini Hospital	3330 Masonic Drive		Alexandria	LA	71301
Citrus Memorial Health System	502 W. Highland Boulevard		Inverness	FL	34452
CJW Medical Center	7101 Jahnke Road		Richmond	VA	23225-

					4044
Clarian Health Partners-Methodist Hospital campus	1701 N. Senate Boulevard	Room A1082	Indianapolis	IN	46202
Clark Memorial Hospital	1220 Missouri Avenue		Jeffersonville	IN	47130
Clear Lake Regional Medical Ceneter	500 Medical Center Boulevard		Webster	TX	77598
Cleveland Clinic Florida	3100 Weston Road		Weston	FL	33331
Cleveland Clinic Foundation	9500 Euclid Avenue		Cleveland	OH	44195
Coliseum Medical Centers	350 Hospital Drive		Macon	GA	31217
College Station Medical Center	1604 Rock Prairie Road		College Station	TX	77845
Columbia Independence Health Center	17203 East 23rd Street		Indenpendenc e	MO	64057
Columbia North Hills Hospital	4401 Booth Calloway Road		North Richland Hills	TX	76180
Columbia Regional Hospital	1 Hospital Drive		Columbia	MO	65212
Columbia St. Mary's Hospital Milwaukee	4425 North Port Washington Road		Milwaukee	WI	53212
Columbia St. Mary's Hospital Ozaukee	13111 North Port Washington Road		Mequon	WI	53097
Columbus Regional Hospital	2400 17th Street		Columbus	IN	47201
Comanche County Memorial Hospital	3401 W. Gore Boulevard		Lawton	OK	73505
Community Health Partners	3700 Kolbe Road		Lorain	OH	44053
Community Hospital	901 MacArthur Boulevard		Munster	IN	46321
Community Hospital	2615 E. High Street		Springfield	OH	45505
Community Hospital and Wellness Center	433 West High Street		Bryan	OH	43506
Community Hospital East	Cardiovascular Services	1500 North Ritter Avenue	Indianapolis	IN	46219
Community Hospital of the Monterey Peninsula	PO Box HH		Monterey	CA	93942-1085
Community Hospital South	1500 N. Ritter Avenue		Indianapolis	IN	46219-3027

Community Medical Center	2827 Fort Missoula Road		Missoula	MT	59804
Community Medical Center	99 Highway 37 West		Toms River	NJ	08775
Community Medical Center	1800 Mulberry Street		Scranton	PA	18510
Community Medical Center-Clovis	2755 Herndon Avenue		Clovis	CA	93611
Community Memorial Hospital	147 N. Brent Street		Ventura	CA	93003
Community Memorial Hospital	W180 N8085 Town Hall Road		Menomonee Falls	WI	53052
Concord Hospital	250 Pleasant Street		Concord	NH	03301
Condell Medical Center	801 S. Milwaukee Avenue		Libertyville	IL	60048
Conroe Regional Medical Center	504 Medical Center Boulevard		Conroe	TX	77304
Convenant Heart Institute	3615 19th Street		Lubbock	TX	79410
Conway Regional Medical Center	2302 College Avenue		Conway	AR	72032-6226
Cookeville Regional Medical Center	142 W. 5th Street		Cookeville	TN	38501-1760
Cooley Dickinson Hospital	30 Locust Street		North Hampton	MA	01060
Cooper University Hospital	One Cooper Plaza	D368B	Camden	NJ	08103
Coral Gables Hospital	3100 Douglas Road		Coral Gables	FL	33134
Corpus Christi Medical Center	1533 Brownlee Boulevard		Corpus Christi	TX	78412
County of Santa Clara	751 S. Bascom Avenue		San Jose	CA	95128
Covenant Healthcare	1447 N. Harrison Street		Saginaw	MI	48602
Cox Medical Center South	3801 S. National Avenue		Springfield	MO	65807
Craven Regional Medical Center	2000 Neuse Boulevard	PO Box 12157	New Bern	NC	28561
Creighton University Medical Center	601 N. 30th Street		Omaha	NE	68131
Crittenton Hospital Medical Center	1101 W. University Drive		Rochester	MI	48307-1831
Crouse Hospital	736 Irving Avenue		Syracuse	NY	13210
Crozer Chester Medical Center	1 Medical Center Boulevard		Chester	PA	19013-3995
CVPH Medical Center	75 Beekman Street		Plattsburgh	NY	12901
Dakota Clinic	3000 32nd Avenue SW		Fargo	ND	58104
Dameron Hospital	525 W. Acacia Street		Stockton	CA	95203

Danbury Hospital	24 Hospital Avenue	Danbury	CT	06810-6099
Davis Hospital	1600 west Antelope Drive	Layton	UT	84041
Davis Regional Medical Center	218 Old Mocksville Road	Statesville	NC	28625
Dayton Heart Hospital	707 S. Edwin C. Moses Boulevard	Dayton	OH	45408
DCH Regional Medical Center	809 University Boulevard East	Tuscaloosa	AL	35401-2029
Deaconess Hospital	600 Mary Street	Evansville	IN	47747
Deaconess Hospital	311 Straight Street	Cincinnati	OH	45219
Deaconess Hospital	5501 N. Portland Avenue	Oklahoma City	OK	73112
Deaconess Medical Center	W. 800 Fifth Avenue	Spokane	WA	99204
Deborah Heart & Lung Center	200 Trenton Road	Browns Mills	NJ	08015
Decatur General Hospital	1201 7th Street S.E.	Decatur	AL	35601
Degraff Memorial Hospital	100 High Street	Buffalo	NY	14203
Dekalb Regional Medical Center	200 Medical Center Drive	Fort Payne	AL	35968
Del Sol Medical Center	10301 Gateway West	El Paso	TX	79925
Delray Medical Center	5352 Linton Boulevard	Delray Beach	FL	33484
Denton Regional Medical Center	3535 South I-35E	Denton	TX	76205
Denver Health Medical Center	777 Bannock Street	Denver	CO	80204
DePaul Health Center	12303 DePaul Drive	Bridgeton	MO	63044
Des Peres Hospital	2345 Dougherty Ferry Road	St. Louis	MO	63122
Desert Regional Medical Center	1150 North Indian Canyon	Palm Springs	CA	92262
Desert Valley Hospital	16850 Bear Valley Road	Victorville	CA	92392
Dixie Regional Medical Center	1380 E. Medical Drive	St. George	UT	84790
Doctors Hospital	5000 University Drive	Miami	FL	33146
Doctors Hospital	5100 West Broad Street	Columbus	OH	43228
Doctors Hospital	9440 Poppy Drive	Dallas	TX	75218
Doctors Hospital at Renaissance	5501 S McColl Road	Edinburg	TX	78539
Doctors Hospital-Augusta	3651 Wheeler Drive	Augusta	GA	30909
Doctors Hospital of Laredo	10700 McPherson Road	Laredo	TX	78045
Doctors Hospital of Sarasota	5731 Bee Ridge Road	Sarasota	FL	34233
Doctors Hospital of Stark	400 Austin Avenue	Massillon	OH	44646
Doctors Medical Center	2000 Vale Road	San Pablo	CA	94806

Dominican Santa Cruz Hospital	1555 Soquel Drive		Santa Cruz	CA	95065
Downey Regional Medical Center	11500 Brookshire Avenue		Downey	CA	90241
Doylestown Hospital	595 West State Street		Doylestown	PA	18901
Duke Health Raleigh Hospital	DUMC Box 3973 (3400 Wake Forest Road)		Raleigh	NC	27609
Duke University Hospital	Erwin Road DUMC 3943		Durham	NC	27710
Dunn Memorial Hospital	1600 23rd Street		Bedford	ID	47421
Durham Regional Hospital	(3643N Roxboro Road) DUMC Box 3973		Durham	NC	27710
East Alalbama Medical Center	2000 Pepperell Parkway		Opelika	AL	36804
East Georgia Regional Medical Center	1499 Fair Road (PO Box 1048)		Statesboro	GA	30459
East Jefferson General Hospital	4200 Houma Boulevard	4200 Houma Boulevard	Metairie	LA	70006
East Ohio Regional Hospital	90 N. 4th Street		Martins Ferry	OH	43935
East Texas Medical Center	1000 South Beckham Avenue		Tyler	TX	75711
Eastern Idaho RMC	3100 Channing Way		Idaho Falls	ID	83404
Eastern Maine Medical Center	489 State Street		Bangor	ME	04401
Easton Hospital (Northampton Hospital Corp)	250 South 21st Street		Easton	PA	18042
Edward Hospital	120 Spalding Drive #205		Naperville	IL	60540
Eisenhower Medical Center	39000 Bob Hope Drive		Rancho Mirage	CA	92270
El Camino Hospital	2500 Grant Road		Mountain View	CA	94040
Eliza Coffee Memorial Hospital	205 Marengo Street		Florence	AL	35630
Elkhart General Hospital	600 East Boulevard	3 South Suites	Elkhart	IN	46514-2499
Elliot Hospital	1 Elliot Way		Manchester	NH	03103
Ellis Hospital	1101 Nott Street		Schenectady	NY	12308
Elmhurst Memorial Hospital Marquardt Memorial Library	200 Berteau Avenue		Elmhurst	IL	60126
EMH Regional Medical Center	630 East River Street		Elyria	OH	44035
Emory Crawford Long Hospital	550 Peachtree Street		Atlanta	GA	30308

Emory Dunwoody Medical Center	4575 North Shallowford Road	Atlanta	GA	30338
Emory Eastside Medical Center	1700 Medical Way (PO Box 587)	Snellville	GA	30078
Emory University Hospital	1364 Clifton Road, NE C408	Atlanta	GA	30322
Encino-Tarzana Regional Medical Center	18321 Clark Street	Tarzana	CA	91356-3501
Englewood Hospital & Medical Center	350 Engle Street	Englewood	NJ	07631
Enloe Medical Center	1600 Esplanade	Chico	CA	95926
Erie County Medical Center	462 Grider Street	Buffalo	NY	14215
Evanston Hospital	2650 Ridge Avenue	Evanston	IL	60626
Excela Health Westmoreland Hospital	532 West Pittsburgh Street	Greensburg	PA	15601
Exempla Good Samaritan Medical Center	200 Exempla Circle	Lafayette	CO	80026
Exempla Lutheran Medical Center	8300 W 38th Avenue	Wheat Ridge	CO	80033
Exempla Saint Joseph Hospital	2420 W 26th Avenue, Buidling D, Suite 140	Denver	CO	80211
Exeter Hospital	Exeter Hospital Cardiac Cath Lab 5 Alumni Drive	Exeter	NH	03833
F.E. Lajam, MD PC	140-04 58th Road	Flushing	NY	11355
Fairfield Cardiac Cath Labs	3000 Mack Road, Suite 200	Fairfield	OH	45014
Fairfield Medical Center	401 North Ewing Street	Lancaster	OH	43130
Fairview General Hospital	18101 Lorain Road	Cleveland	OH	44111
Fairview Park Hospital	200 Industrial Boulevard	Dublin	GA	31021
Fairview Southdale Hospital	6401 France Avenue South	Edina	MN	55435
Faith Regional Health Services	2700 W. Norfolk Avenue	Norfolk	NE	68701
Fawcett Memorial Hospital	21298 Olean Boulevard	Port Charlotte	FL	33949-4960
FirstHealth Moore Regional Hospital	155 Memorial Drive	Pinehurst	NC	28374
Fisher-Titus Medical Center	272 Benedict Avenue	Norwalk	OH	44857
Flagler Hospital	400 Health Park Boulevard	St. Augustine	FL	32086
Fletcher Allen Health Care	111 Colchester Avenue	Burlington	VT	05401
Florida Hospital	220 Winter Park Street	Orlando	FL	32803

Florida Hospital Zephyrhills	7050 Gall Boulevard		Zephyrhills	FL	33541
Florida Hospital Ormond Memorial	875 Sterthaus Avenue		Ormond Beach	FL	32174
Florida Hospital Waterman Inc	1000 Waterman Way		Tavares	FL	32778
Florida Medical Center	5000 W Oakland Park Boulevard		Fort Lauderdale	FL	33313-1585
Flowers Hospital	4370 West Main Street		Dothan	AL	36305
Floyd Medical Center	304 Turner McCall Boulevard		Rome	GA	30162
Floyd Memorial Hospital	1850 State Street		New Albany	IN	47150
Forrest General Hospital	6051 Highway 49 South		Hattiesburg	MS	39404-6389
Forsyth Medical Center	3333 Silas Creek Parkway		Winston-Salem	NC	27103
Fort Sanders Regional Med Center	1901 Clinch Avenue		Knoxville	TN	37916-2307
Fort Walton Beach Medical Center	1000 Mar Walt Drive		Fort Walton Beach	FL	32547
Forum Health-Northside Medical Center	500 Gypsy Lane		Youngstown	OH	44501-0240
Fountain Valley Regional Hosp	17100 Euclid Street		Fountain Valley	CA	92708-4004
Frankford Hospital	Red Lion & Knights Road		Philadelphia	PA	19114
Frankfort Regional Medical Center	299 Kings Daughter Drive		Frankfort	KY	40601
Franklin Square Hospital	9000 Franklin Square Drive		Baltimore	MD	21237
Freeman Hospital	1102 West 32nd Street	1102 West 32nd Street	Joplin	MO	64804
Freeport Health Network	1045 W. Stephenson Street		Freeport	IL	61032
Fremont Area Medical Center	450 East 23rd Street		Fremont	NE	68025
French Hospital Medical Center	1911 Johnson Avenue		San Luis Obispo	CA	93401
Fresno Community Hospital and Medical Center	110 N. Valeria Street #103		Fresno	CA	93710
Fresno Heart Hospital	15 East Audubon Drive		Fresno	CA	93720
Froedtert Hospital	9200 W. Wisconsin Avenue		Milwaukee	WI	53226
Frye Regional Medical Center	420 N. Center Street		Hickory	NC	28601

Gadsden Regional Medical Center	1007 Goodyear Avenue		Gadsden	AL	35903
Galichia Heart Hospital	2610 N. Woodlawn Street		Wichita	KS	67220
Garden City Hospital	6245 Inkster Road		Garden City	MI	48135
Garden Grove Hospital	12601 Garden Grove Boulevard		Garden Grove	CA	92843
Gaston Memorial Hospital	2525 Court Drive		Gastonia	NC	28054
Gateway Medical Center Gateway Health System	1771 Madison Street		Clarksville	TN	37043
Gateway Regional Medical Cehter	2100 Madison Avenue		Granite City	IL	62040
Geisinger Medical Center	100 North Academy Avenue		Danville	PA	17822-2160
Geisinger Wyoming Valley Medical Center	100 North Academy Avenue		Danville	PA	17822-2160
Genesis Medical Center	1236 East Rusholme Street	Suite 190	Davenport	IA	52803-2459
Genesis Medical Center	801 Illini Drive		Silvis	IL	61282
Genesys Regional Medical Center	One Genesys Parkway		Grand Blanc	MI	48439
Georgetown University Hospital	3800 Reservoir Road NW		Washington	DC	20007
Gerald Champion Regional Medical	2669 North Scenic Drive		Alamogordo	NM	88310
Glenbrook Hospital	2100 Pfingsten Road		Evanston	IL	60026
Glendale Adventist Medical Center	1509 Wilson Terrace		Glendale	CA	91206
Glendale Memorial Hospital and Health Center	1420 S. Central Avenue		Glendale	CA	91204-2594
Glens Falls Hospital	100 Park Street		Glens Falls	NY	12801
Glenwood Regional Medical Center	503 McMillian Road		West Monroe	LA	71291
Good Samaritan Heart Center	520 South 7th Street		Vincennes	IN	47591
Good Samaritan Hospital & Health Center	2222 Philadelphia Drive		Dayton	OH	45406
Good Samaritan Hospital	1225 Wilshire Boulevard		Los Angeles	CA	90017
Good Samaritan Hospital	2425 Samaritan Drive	2425 Samaritan Drive	San Jose	CA	95124
Good Samaritan Hospital	605 N. 12th Street		Mount Vernon	IL	62864
Good Samaritan Hospital	3815 Highland Avenue		Downers	IL	60515

		Grove		
Good Samaritan Hospital	10 East 31st Street, PO Box 1990	Kearney	NE	68848
Good Samaritan Hospital	255 Lafayette Avenue	Suffern	NY	10901
Good Samaritan Hospital	375 Dixmyth Avenue	Cincinnati	OH	45220-2489
Good Samaritan Hospital Cardiology	1000 Montauk Highway	West Islip	NY	11795
Good Samaritan Hospital of Maryland	5601 Loch Raven Boulevard	Baltimore	MD	21239
Good Samaritan Regional Medical Center	3600 NW Samaritan Drive	Corvallis	OR	97330
Good Shepherd Medical Center	700 E. Marshall Avenue	Longview	TX	75601
Governor Juan F. Luis Hospital & Medical Center	4007 Estate Diamond Ruby	Christiansted	VT	00820
Graduate Hospital	1800 Lombard Street	Philadelphia	PA	19146
Grady Memorial Hospital	561 West Central Avenue	Delaware	OH	43015-1489
Grand View Hospital	700 Lawn Avenue	Sellersville	PA	18960
Grandview Medical Center	405 Grand Avenue	Dayton	OH	45405
Grant Medical Center	111 S. Grant Avenue	Columbus	OH	43215
Gratiot Medical Center	300 East Warwick Drive	Alma	MI	48801
Great Plains Regional Medical Center	Box 2339	Elk City	OK	73648
Greater Baltimore Medical Center	6701 N. Charles Street	Baltimore	MD	21204
Greenville Memorial Hospital	701 Grove Road	Greenville	SC	29605
Greenwich Hospital	5 Perryridge Road	Greenwich	CT	06830
Gulf Coast Medical Center	449 W. 23rd Street	Panama City	FL	32406-5309
Gulf Coast Medical Center	1400 Highway 59	Wharton	TX	77488
Gundersen Lutheran Medical Center, Inc.	1910 South Avenue	LaCrosse	WI	54601
Gwinnett Hospital System	1000 Medical Center Boulevard	Lawrenceville	GA	30045
Hackensack University Medical Center	30 Prospect Avenue	Hackensack	NJ	07601

Hackley HospitalGeneral Fund	1700 Clinton Street		Muskegon	MI	49443
Hahnemann University Hospital	230 N. Broad Street		Philadelphia	PA	19102
Halifax Medical Center	303 N Clyde Morris Boulevard		Daytona Beach	FL	32114-2732
Halifax Regional Hospital	2204 Wilborn Avenue		South Boston	VA	24592
Hamilton Medical Center	1200 Memorial Drive		Dalton	GA	30720
Hamot Medical Center	201 State Street		Erie	PA	16550
Hannibal Regional Hospital	6000 Hospital Drive		Hannibal	MO	63401
Harbor Hospital Center	3001 S. Hanover Street		Baltimore	MD	21225
Hardin Memorial Hospital	913 N Dixie Avenue		Elizabethtown	KY	42701-2599
Harlingen Medical Center	5501 South Expressway 77		Harlingen	TX	78550
Harper University Hospital	3990 John R. Street		Detroit	MI	48201
Harris Methodist Fort Worth	1301 Pennsylvania Avenue		Fort Worth	TX	76104
Harris Methodist HEB	1600 Hospital Parkway		Bedford	TX	76022
Harrison Medical Center	2520 Cherry Avenue		Bremerton	WA	98310
Hartford Hospital	80 Seymour Street		Hartford	CT	06102
Harton Regional Medical Center	1801 N Jackson Street		Tullahoma	TN	37388
Havasu Regional Medical Center	101 Civic Center Lane		Lake Havasu City	AZ	86403
Hawaii Medical Center East, LLC	2230 Liliha Street		Honolulu	HI	96817
Hays Medical Center	2220 Canterbury Drive		Hays	KS	67601
Hazard ARH Regional Medical Center	100 Medical Center Drive		Hazard	KY	41701
Heart and Lung Clinic	900 East Broadway Box 5510		Bismarck	ND	58502
Heart Center of Indiana	8333 Nabb Road, Suite 330	Suite 330	Indianapolis	IN	46290
Heart Hospital of Austin	3801 N. Lamar Boulevard		Austin	TX	78756
Heart Hospital of Lafayette	1105 Kaliste Saloom Road		Lafayette	LA	70508
Heart Hospital of New Mexico	504 Elm Street NE		Albuqerque	NM	87102
Heart of Florida Regional Medical Center	40100 Highway 27		Davenport	FL	33837
Heart of Lancaster Regional Medical Center	250 College Avenue		Lancaster	PA	17604

Heartland Regional Medical Center	3333 W. Deyoung Street		Marion	IL	62959
Heartland Regional Medical Center	The Heart Center-Cardiac Cath Lab	5325 Faraon Street	Saint Joseph	MO	64506-3373
Helen Ellis Memorial	1395 South Pinella Avenue		Tarpon Springs	FL	34689
Helen Keller Hospital	1300 South Montgomery Avenue		Sheffield	AL	35660
Hendrick Medical Center	1900 Pine Street		Abilene	TX	79601
Hennepin County Medical Center	701 Park Avenue		Minneapolis	MN	55415-1829
Henrico Doctors Hospital	1602 Skipwith Drive		Richmond	VA	23229
Henry Ford Hospital	2799 West Grand Boulevard		Detroit	MI	48202
Henry Ford Macomb Hospital-Warren Campus	13355 East Ten Mile Road		Warren	MI	48089
Henry Mayo Newhall Memorial Hospital	23845 McBean Parkway		Valencia	CA	91355
Henry Medical Center, Inc.	1133 Eagles Landing Parkway		Stockbridge	GA	30281
Hialeah Hospital	651 East 25th Street		Hialeah	FL	33013
High Point Regional Hospital	High Point Regional Hospital		High Point	NC	27261
Highland Park Hospital	718 Glenview Avenue		Highland Park	IL	60035
Highlands Regional Medical	3600 S. Highlands Avenue		Sebring	FL	33870
Highlands Regional Medical Center	5000 US 321		Prestonsburg	KY	41653
Hillcrest Baptist Medical Center	3000 Herring Avenue		Waco	TX	76708
Hillcrest Hospital	6780 Mayfield Road		Mayfield Heights	OH	44124
Hillcrest Medical Center	1120 South Utica		Tulsa	OK	74104
Hilton Head Regional Medical Center	25 Hospital Center Boulevard		Hilton Head	SC	29925
Hinsdale Hospital	120 N. Oak Street		Hinsdale	IL	60521
HMA-Physician Management, Inc.	6101 Pine Ridge Road		Naples	FL	34119
Hoag Memorial Hospital Presbyterian	One Hoag Drive		Newport Beach	CA	92658
Hollywood Medical Center	3600 Washington Street		Hollywood	FL	33021
Holmes Regional Medical Center	1355 South Hickory Street Suite 203		Melbourne	FL	32901

Holy Cross Hospital	4725 N. Federal Highway		Ft. Lauderdale	FL	33308
Holy Cross Hospital	2701 W. 68th Street		Chicago	IL	60629
Holy Cross Hospital/Medical Library	1500 Forest Glen Road		Silver Spring	MD	20910
Holy Spirit Health System	503 N. 21st Street	Heart Center Administration	Camp Hill	PA	17011-2204
Hospital Auxilio Mutuo	PO Box 191227		San Juan	PR	00919
Hospital of St. Raphael	Section of Cardiology Pvt 207, 1450 Chapel Street		New Haven	CT	06511
Hospital of the University of Pennsylvania	9011 E. Gates 3400 Spruce Street		Philadelphia	PA	19104
Houston Northwest Medical Center Accounts Payable	710 Farm 1960 West Road		Houston	TX	77090
Howard County General Hospital	5755 Cedar Lane		Columbia	MD	21044
Howard Regional Health System	3500 South Lafountain Street		Kokomo	IN	46904-9011
Howard University Hospital	2041 Georgia Avenue		Washington	DC	20060
Huguley Memorial Medical Center	11801 S. Freeway		Ft. Worth	TX	76115
Huntington Hospital	100 W. California Boulevard		Pasadena	CA	91109
Huntington Hospital	270 Park Avenue		Huntington	NY	11743
Huntsville Hospital	Huntsville Hospital		Huntsville	AL	35801
Hutchinson Hospital	1701 E. 23rd Avenue		Hutchinson	KS	67502
Iberia Medical Center	2315 East Main Street		New Iberia	LA	70560
Immanuel-St. Joseph's Hospital	1025 Marsh Street		Mankato	MN	56002
Indian River Memorial Hospital	1000 36th Street		Vero Beach	FL	32960
Indiana Regional Medical Center Cardiology Department	835 Hospital Road		Indiana	PA	15701
Ingalls Hospital	1 Ingalls Drive		Harvey	IL	60426
Ingham Regional Medical Center	401 W. Greenlawn Avenue		Lansing	MI	48910
Inland Valley Medical Center	36485 Inland Valley		Wildomar	CA	92595
Inova Alexandria Hospital	4320 Seminary Road		Alexandria	VA	22304
Inova Fairfax Hospital/Inova Heart & Vascular Institute	Inova Heart and Vascular Center	3300 Gallows Road	Falls Church	VA	22042-3300

Inova Loudoun Hospital	44035 Riverside Parkway	Suite 120	Leesburg	VA	20176
Integris Baptist Medical Center	3300 NW Expressway, 100-4282		Oklahoma City	OK	73112
Integris Health	600 S. Monroe Street		Enid	OK	73701
Integris Southwest Medical Center	4401 S. Western Avenue		Oklahoma City	OK	73109
Iowa Lutheran Hospital	1200 Pleasant Street		Des Moines	IA	50309
Iowa Methodist Medical Center	1200 Pleasant Street, Suite 300A		Des Moines	IA	50309
Iredell Memorial Hospital	557 Brookdale Drive		Statesville	NC	28687
Iroquois Memorial Hospital	200 Fairman Avenue		Watseka	IL	60970
Irvine Regional Hospital & Medical Center	16200 Sand Canyon Avenue		Irvine	CA	92618-3701
Jackson Hospital and Clinic	1725 Pine Street		Montgomery	AL	36106
Jackson Madison General Hospital	708 West Forrest Avenue		Jackson	TN	38301
Jackson Memorial Hospital	1611 NW 12th Avenue		Miami	FL	33136
Jane Phillips Memorial Medical Center	3500 Frank Phillips Boulevard		Bartlesville	OK	74006
Jeanes Hospital	7600 Central Avenue		Philadelphia	PA	19111
Jeff Anderson Regional Medical Center	2124 14th Street		Meridian	MS	39301
Jefferson Memorial Hospital	PO Box 350		Crystal City	MO	63019
Jefferson Regional Medical Center	565 Coal Valley Road		Pittsburgh	PA	15236-0119
Jennie Edmundson Memorial Hospital	933 E. Pierce Street		Council Bluffs	IA	51503
Jersey City Medical Center	355 Grand Street		Jersey City	NJ	07307
Jersey Shore University Medical Center	1945 State Route 33		Neptune	NJ	07753
Jewish Hospital	200 Abraham Flexner Way		Louisville	KY	40202
JFK Medical Center	5631 Glencrest Boulevard		Tampa	FL	33625-1008
John C Lincoln Hospital-Deer Valley	19829 N. 27th Avenue		Phoenix	AZ	85027-4002
John C Lincoln Hospital-North Mountain	250 E. Dunlap Avenue		Phoenix	AZ	85020-2871
John F. Kennedy Memorial Hospital	47-111 Monroe Street		Indio	CA	92201

John Muir –Concord	2540 East Street		Concord	CA	94520
John Muir –Walnut Creek	1601 Ygnacio Valley Road		Walnut Creek	CA	94550
Johns Hopkins Bayview Medical Center	4940 Eastern Avenue		Baltimore	MD	21224
Johns Hopkins Hospital	600 North Wolfe Street		Baltimore	MD	21287
Johnson City Medical Center Hosp	400 N. State of Franklin		Johnson City	TN	37604
Jordan Valley Hospital	3580 W. 9000 Street		West Jordan	UT	84088
Kadlec Medical Center	888 Swift Boulevard		Richland	WA	99352
Kaiser Foundation Hospital	1526 Edgemont Street		Los Angeles	CA	90027
Kaiser Foundation Hospital	6600 Bruceville Road		Sacramento	CA	95823
Kaiser Permanente	4647 Zion Avenue		San Diego	CA	92120
Kaiser Permanente-Moanalua Medical Center	3288 Moanalua Road		Honolulu	HI	96819
Kaiser Permanente Medical Center-Santa Clara	700 Lawrence Expressway		Santa Clara	CA	95051
Kaiser Permanente Medical CenterHealth Sciences Library	9400 E. Rosecrans Avenue		Bellflower	CA	90706
Kaiser Sunnyside Medical Center	10180 SE Sunnyside Road		Clackamas	OR	97015
Kansas Heart Hospital	3601 N. Webb Road		Wichita	KS	67226
Kansas Heart Hospital	3601 N. Webb Road		Wichita	KS	67226
Kansas University Hospital Authority	3901 Rainbow Boulevard		Kansas City	KS	66160
Kapi'olani Medical Center Pali Momi	98-1079 Moanalua Road		Aiea	HI	96701
Katherine Shaw Bethea Hospital	403 E. First Street		Dixon	IL	61021
Kaweah Delta Hospital District	Kaweah Delta Hospital District	400 W. Mineral King Avenue	Visalia	CA	93291
Kenmore Mercy Hospital	2950 Elmwood Avenue		Kenmore	NY	14217
Kennestone Hospital	677 Church Street		Marietta	GA	30066
Kershaw County Medical Center	1315 Roberts Street		Camden	SC	29020
Kettering Medical Center	35235 Southern Boulevard		Kettering	OH	45429
Kingman Regional Medical Center	3269 Stockton Hill Road		Kingman	AZ	86401
Kings Daughters Medical Center	2201 Lexington Avenue		Ashland	KY	41101

Kingwood Medical Center	22999 Highway 59 North		Kingwood	TX	77339
Kootenai Medical Center	2003 Lincoln Way		Coeur d' Alene	ID	83814
Kuakini Medical Center	347 North Kuakini Street	Cardiac Cath Lab	Honolulu	HI	96817
Labette County Medical center	1920 S. US Highway 59 , PO Box 956		Parson	KS	67357
Lafayette General Medical Center	1214 Coolidge Avenue		Lafayette	LA	70505
LaGrange Memorial Hospital	120 North Oak Street		Hinsdale	IL	60521
Lahey Clinic	41 Mall Road		Burlington	MA	01805
Lake Charles Memorial Hospital	1701 Oak Park Boulevard		Lake Charles	LA	70601
Lake Hospital System	36000 Euclid Avenue		Willoughby	OH	44094
Lake Norman Regional Medical Center	171 Fairview Road		Mooresville	NC	28117
Lake Pointe Medical Center	6800 Scenic Drive		Rowlett	TX	75088
Lake Regional Health System	54 Hospital Drive		Osage Beach	MO	65065
Lakeland Hospital	1234 Napier Avenue		Saint Joseph	MI	49085-2112
Lakeland Regional Medical Center	1324 Lakeland Hills Boulevard		Lakeland	FL	33805-4500
Lakeside Hospital	6901 N. 72nd Street, Suite 3300		Omaha	NE	68122
Lakeview Regional Medical Center	95 East Fairway Drive		Covington	LA	70433-7500
Lakewood Hospital	14519 Detroit Avenue		Lakewood	OH	44107
Lakewood Regional Medical Center	3700 E. South Street		Lakewood	CA	90712
Lancaster Community Hospital	43830 North 10th Street West		Lancaster	CA	93534
Lancaster General Hospital	555 North Duke Street		Lancaster	PA	17604-3555
Lancaster Regional Medical Center	250 College Avenue		Lancaster	PA	17604
Landmark Medical Center	115 Cass Avenue		Woonsocket	RI	02895
Lane Regional Medical Center	6300 Main Street		Zachary	LA	70791
Lankenau Hospital	100 Lancaster Avenue	Lankenau Hospital	Wynnewood	PA	19096
Laredo Medical Center	1720 Bustamante Street		Laredo	TX	78044
Largo Medical Center	201 14th Street SW		Largo	FL	33770
Las Colinas Medical Center	Las Colinas Medical Center		Irving	TX	75039

Las Palmas Medical Center	1801 N. Oregon Street	El Paso	TX	79902
Lawrence & Memorial Hospital	365 Montauk Avenue	New London	CT	06375
Lawrence Hospital	55 Palmer Avenue	Broxville	NY	10708-3491
LDS Hospital	8th Avenue and C Street	Salt Lake City	UT	84143
Lee Memorial Health System-Cape Coral Hospital	276 Cleveland Avenue	Fort Myers	FL	33901
Lee Memorial Health System-Health Park Medical Center	276 Cleveland Avenue	Fort Myers	FL	33901
Leesburg Regional Medical Center	600 East Dixie Avenue	Leesburg	FL	34748
Legacy Emanuel Hospital	1919 NW Lovejoy Street	Portland	OR	97209
Legacy Good Samaritan	1919 NW Lovejoy Street	Portland	OR	97209
Legacy Meridian Park	19300 SW 65th Street	Tualatin	OR	97062
Legacy Salmon Creek Hospital	1919 NW Lovejoy Street	Portland	OR	97209
Lehigh Regional Medical Center	1500 Lee Boulevard	Lehigh Acres	FL	33963
Lehigh Valley Hospital	1200 S. Cedar Crest Boulevard	Allentown	PA	18105
Lehigh Valley Hospital/Muhlenberg	2545 Schoenersville Road	Bethlehem	PA	18017
Lenox Hill Heart and Vascular Institute of New York	100 East 77th Street	New York	NY	10021
Lewis Gale Medical Center	1900 Electric Road	Salem	VA	24153
Lexington Medical Center	2720 Sunset Boulevard	West Columbia	SC	29169
Liberty Hospital	2525 Glenn Hendren Drive	Liberty	MO	64068
Lima Memorial Hospital	1001 Bellefontaine Avenue	Lima	OH	45804
Lincoln County Medical Center	1000 E. Cherry Street	Troy	MO	63379
Little Company of Mary Hospital	4101 Torrance Boulevard	Torrance	CA	90503
Little Company of Mary Hospital	2800 W. 95th Street	Evergreen Park	IL	60805
Logan General Hospital, LLC	20 Hospital Drive	Logan	WV	25601
Loma Linda University Medical Center	11234 Anderson Street Room 2431	Loma Linda	CA	92354
Long Beach Memorial Medical Center	2801 Atlantic Avenue	Long Beach	CA	90806

Long Island College Hospital	339 Hicks Street	Brooklyn	NY	11201
Long Island Jewish Medical Center	270-05 76th Avenue	New Hyde Park	NY	11040
Longmont United Hospital	1950 Mountain View Avenue	Longmont	CO	80501
Longview Regional Medical Center	PO Box 14000	Longview	TX	75607
Los Alamitos Medical Center	3751 Katella Avenue	Los Alamitos	CA	90720
Los Robles Hospital & Medical Center	215 W. Janss Raod	Thousand Oaks	CA	91360-1899
Louisiana Heart Hospital	64030 Louisiana Highway 434	Lacombe	LA	70445
Lourdes Hospital	1530 Lone Oak Road	Paducah	KY	42003
Lovelace Medical Center	5400 Gibson Boulevard SE	Albuquerque	NM	87108
Lowell General Hospital	295 Varnum Avenue	Lowell	MA	01854
Lower Bucks Hospital	501 Bath Road	Bristol	PA	19007
Lower Keys Medical Center	5900 College Road	Key West	FL	33040
LSUHSC-Cath Lab	1501 Kings Highway	Shreveport	LA	71130
Lubbock Heart Hospital	4810 N. Loop 289	Lubbock	TX	79416
Luther Hospital	1221 Whipple Street	Eau Claire	WI	54703
Lutheran Hospital of Indiana	7950 W. Jefferson Boulevard	Ft. Wayne	IN	46804
Lynchburg General Hospital	1901 Tate Springs Road	Lynchburg	VA	24501-1167
MacNeal Hospital	3249 S. Oak Park Avenue	Berwyn	IL	60402
Magnolia Regional Health Center	611 Alcorn Drive	Corinth	MS	38834
Maimonides Medical Center Division of Cardiology	4802 10th Avenue	Brooklyn	NY	11219
Maine Medical Center	22 Bramhall Street	Portland	ME	04102
Manatee Memorial Hospital	206 2nd Street East	Bradenton	FL	34208
Marian Medical Center	1400 East Church Street	Santa Maria	CA	93454
Maricopa Medical Center	2601 East Roosevelt Street	Phoenix	AZ	85008
Marin General Hospital	250 Bon Air Road	Greenbrae	CA	94904
Marion General Hospital	441 N. Wabash Avenue	Marion	IN	46952
Marion General Hospital	1000 McKinley Park Drive	Marion	OH	43302-6397
Marquette General Hospital	580 W. College Avenue	Marquette	MI	49855

System				
Marshall University School of Medicine	420 West Magnetic Street	Huntington	WV	25701
Martha Jefferson Hospital	459 Locust Avenue	Charlottesville	VA	22902
Martin Memorial Medical Center	300 SE Hospital Avenue	Stuart	FL	34994
Mary Black Hospital	1700 Skylyn Drive	Spartanburg	SC	29307
Mary Greeley Medical Center	1111 Duff Avenue	Ames	IA	50010
Mary Hitchcock Memorial Hospital	One Medical Center Drive	Lebanon	NH	03756
Mary Rutan Hospital	205 Palmer Avenue	Bellefontaine	OH	43311
Mary Washington Hospital	1001 Sam Perry Boulevard	Fredericksburg	VA	22401
Marymount Medical Center	310 East 9th Street	London	KY	40741
Massachusetts General Hospital	55 Fruit Street	Boston	MA	02114
Maury Regional Hospital	1224 Trotwood Avenue	Columbia	TN	38401
Mayo Clinic Arizona	5777 E. Mayo Boulevard	Phoenix	AZ	85054
Mayo Clinic-St. Mary's Hospital	200 First Street SW	Rochester	MN	55905
Mcalester Regional Health Center	1 Clark Bass Boulevard	McAlester	OK	74501
McAllen Medical Center	301 W. Expressway 83	McAllen	TX	78503
MCG Health, Inc.	1120 15th Street, BA-4407	Augusta	GA	30912
McKay-Dee Hospital Center	4401 Harrison Boulevard	Ogden	UT	84405
McKee Medical Center	2000 Boise Avenue	Loveland	CO	80538
Mclaren Regional Medical Center	401 S. Ballenger Highway	Flint	MI	48532
McLeod Regional Medical Center	555 E. Chaves Street	Florence	SC	29501
Mease Countryside Hospital	3231 McCullen Booth Road	Safety Harbor	FL	34695
Mease Dunedin Hospital	207 Jeffords Street, MS 142	Clearwater	FL	33756
MedCentral/Mansfield Hospital	335 Glessner Avenue	Mansfield	OH	44903
Medcenter One	300 North 7th Street	Bismarck	ND	58501
Medical Center at Bowling Green	250 Park Street	Bowling Green	KY	42101
Medical Center East	50 Medical Park East Drive	Birmingham	AL	35235-3499
Medical Center Hospital	500 W. 4th Street	Odessa	TX	79760
Medical Center of Arlington	3301 Matlock Road	Arlington	TX	76015
Medical Center of Aurora	1501 S. Potomac Street	Aurora	CO	80012

Medical Center of Central Georgia	777 Hemlock Street HB 53		Macon	GA	31208
Medical Center of Lewisville	500 West Main Street		Lewisville	TX	75057
Medical Center of Louisiana	1541 Tulane Avenue, Room #203, Butterworth Building		New Orleans	LA	70112
Medical Center of Mckinney	4500 Medical Center Drive		McKinney	TX	75069
Medical Center of Mesquite	1011 N. Galloway Avenue		Mesquite	TX	75149
Medical Center of Plano	3901 W 15th Street		Plano	TX	75075-7738
Medical Center of South Arkansas, LLC	700 West Grove Street		El Dorado	AR	71730
Medical Center of the Rockies	2500 Rocky Mountain Avenue		Loveland	CO	80538
Medical City Dallas Hospital	7777 Forrest Lane		Dallas	TX	75230
Medical University of South Carolina	326 Calhoun Street -Suite 239		Charleston	SC	29401
Memorial Health System	1400 E. Boulder Street		Colorado Springs	CO	80909-5599
Memorial Health University Medical Center	Cardiac Cath Lab, Memorial Health University Medical Center	4700 Waters Avenue	Savannah	GA	31404
Memorial Hermann Hospital	6411 Fannin Street		Houston	TX	77030
Memorial Hermann HVI South West	7787 Southwest Freeway		Houston	TX	77074
Memorial Hermann Texas Medical Center	6411 Fannin Street		Houston	TX	77030
Memorial Hermann the Woodlands Hospital	9250 Pinecroft		The Woodlands	TX	77380
Memorial Hospital	2525 Desales Avenue		Chattanooga	TN	37404-1102
Memorial Hospital at Gulfport	4500 13th Street	PO Box 1810	Gulfport	MS	39502
Memorial Hospital Carbondale	405 W. Jackson Street		Carbondale	IL	65902
Memorial Hospital Miramar	1901 SW 172 Avenue		Miramar	FL	33029
Memorial Hospital of Martinsville	320 Hospital Drive		Martinsville	VA	24112
Memorial Hospital of Rhode Island Brown University	111 Brewster Street		Pawtucket	RI	02860
Memorial Hospital of South Bend	615 N. Michigan Street		South Bend	IN	46601-

					1033
Memorial Hospital of Tampa	2901 W Swann Avenue		Tampa	FL	33609
Memorial Hospital Pembroke/South Broward Hospital	7800 Sheridan Street		Pembroke Pines	FL	33024
Memorial Hospital West/ South Broward Hospital District	703 North Flamingo Road		Pembroke Pines	FL	33028
Memorial Hospital-Jacksonville	3625 University Boulevard South		Jacksonville	FL	32216
Memorial Hospitals Association	1700 Coffee Road		Modesto	CA	95355
Memorial Medical Center	701 N. First Street		Springfield	IL	62781
Memorial Medical Center	2450 S. Telshor Boulevard		Las Cruces	NM	88011
Memorial Medical Center	1086 Franklin Street		Johnstown	PA	15905-4398
Memorial Regional Hospital/South Broward Hospital	703 North Flamingo Road		Pembroke Pines	FL	33028
Memphis Hospital (Germantown Campus)	1265 Union Avenue		Memphis	TN	38104-3499
Memphis Hospital (North Campus)	1265 Union Avenue		Memphis	TN	38104-3499
Memphis Hospital (South Campus)	1265 Union Avenue		Memphis	TN	38104-3499
Memphis Hospital (University Campus)	1265 Union Avenue		Memphis	TN	38104-3499
Menorah Medical Center	5721 West 119th Street		Overland Park	KS	66209
Mercy Fitgerald Hospital	1500 Lansdowne Avenue		Darby	PA	19023
Mercy General Health Partners	1500 East Sherman Boulevard		Muskegon	MI	49444
Mercy General Hospital - Sacramento	3939 J Street	Suite 215	Sacramento	CA	95819
Mercy Gilbert Medical Center	3555 South Val Vista Drive	Attn: Cardiac Cath Lab	Gilbert	AZ	85296
Mercy Health System of Northwestern Arkansas	1200 West Walnut Street		Rogers	AR	72756
Mercy Hospital	144 State Street		Portland	ME	04101
Mercy Hospital-Scranton	746 Jefferson Avenue		Scranton	PA	18510
Mercy Hospital & Medical Center	2525 S. Michigan Avenue		Chicago	IL	60616

Mercy Hospital Attn: Accounts Payable	3663 South Miami Avenue		Miami	FL	33133
Mercy Hospital of Buffalo	565 Abbott Road		Buffalo	NY	14220
Mercy Hospital of Pittsburgh	1400 Locust Street		Pittsburgh	PA	15219
Mercy Hospital Attn: A/P	271 Carew Street, PO Box 9012		Springfield	MA	01102
Mercy Iowa City	500 E. Market Street	Cardiac Cath Lab	Iowa City	IA	52245
Mercy Medical Center	701 10th Street SE		Cedar Rapids	IA	52403
Mercy Medical Center	801 5th Street		Sioux City	IA	51101
Mercy Medical Center	1111 6th Street		Des Moines	IA	50314-2611
Mercy Medical Center	301 St Paul Place		Baltimore	MD	21202
Mercy Medical Center	1000 North Village Avenue		Rockville Centre	NY	11571
Mercy Medical Center	1320 Mercy Drive NW	Attn: SCU	Canton	OH	44708
Mercy Medical Center	1343 North Fountain Boulevard		Springfield	OH	45503
Mercy Medical Center	2700 Steward Parkway		Roseburg	OR	97470
Mercy Medical Center	500 S. Oakwood Road		Oshkosh	WI	54904
Mercy Medical Center Merced	301 E. 13th Street		Merced	CA	95340
Mercy Medical Center Redding	2175 Rosaline Avenue	PO Box 496009	Redding	CA	96049-6009
Mercy Medical Center-North Iowa	1000 4th Street SW		Mason City	IA	50401
Mercy Regional Medical Center	1010 Three Springs Boulevard		Durango	CO	81301
Mercy San Juan Hospital	3941 J Street	c/o Mercy General Hospital Administration	Sacramento	CA	95819
MeritCare Hospital	MeritCare Hospital/Heart Services Data/Research - Route 108		Fargo	ND	58122
Meriter Hospital	202 South Park Street	10 Tower Heart Center	Madison	WI	53715
Mesa General Hospital	515 N. Mesa Drive		Mesa	AZ	85201
Mesquite Community Hospital	3500 I-30		Mesquite	TX	75150
Methodist Health System	PO Box 655999		Dallas	TX	75203
Methodist Hospital	6500 Excelsior Building, 2nd floor HVC		St. Louis Park	MN	55426

Methodist Hospital	7700 Floyd Curl Drive		San Antonio	TX	78229
Methodist Hospital of South CA	300 W. Huntington Drive		Arcadia	CA	91007-3402
Methodist Hospital Northlake Campus	600 Grant Street		Gary	IN	46402
Methodist Hospital Southlake Campus	8701 Broadway		Merrillville	IN	46410-7035
Methodist Medical Center	280 Fort Sanders Boulevard, Building 4, Suite 218		Knoxville	TN	37922
Methodist Medical Center of Illinois	221 NE Glen Oak Avenue		Peoria	IL	61636
Methodist Speciality and Transplant Hospital	7700 Floyd Curl Drive		San Antonio	TX	78229
Methodist Sugar Land Hospital	16655 Southwest Freeway		Sugar Land	TX	77479
Metro Health Hospital	1919 Boston Street SE		Grand Rapids	MI	49546
MetroHealth Medical Center	2500 MetroHealth Drive		Cleveland	OH	44109
Metroplex Hospital	2201 South Clear Creek Road		Killeen	TX	76549
MetroWest Medical Center	115 Lincoln Street		Framingham	MA	01702-6327
Miami Valley Hospital	One Wyoming Street		Dayton	OH	45409
Michael Reese Hospital	2929 S. Ellis Avenue		Chicago	IL	60616
Mid America Heart Institute	St. Lukes Hospital	4401 Wornall Road	Kanasas City	MO	64111
Middletown Regional Hospital	105 McKnight Drive		Middletown	OH	45044-4838
Midland Memorial Hospital	2200 W. Illinois Ave c/o Heart Institute		Midland	TX	79701
Midlands Community Hospital	6901 N. 72nd Street		Omaha	NE	68122
MidMichigan Medical Center-Midland	4005 Orchard Drive		Midland	MI	48670
Midwest Regional Medical Center	2825 Parklawn Drive		Midwest City	OK	73110
Milford Regional Medical Center	14 Prospect Street		Milford	MA	01568
Millard Fillmore Hospital	100 High Street		Buffalo	NY	14203
Millard Fillmore Suburban	100 High Street		Buffalo	NY	14203
Mills-Peninsula Hospital	1783 El Camino Real		Burlingame	CA	94010
Mission Hospital Regional Medical Center	27700 Medical Center Road		Mission Viejo	CA	92691-6426

Mission Hospitals, Inc.	509 Biltmore Avenue		Asheville	NC	28801-4690
Mission Regional Medical Center	900 S. Bryan Road		Mission	TX	78572
Mississippi Baptist Medical Center	1225 N. State Street		Jackson	MS	39202-2097
Missouri Baptist Medical Center	3015 N. Ballas Road	3105 N. Ballas Road	Saint Louis	MO	63131-2374
Moberly Regional Medical Center	1515 Union Avenue		Moberly	MO	65270
Mobile Infirmary Medical Center	PO Box 21445 Mobile Infirmary Circle		Mobile	AL	36652
Monongalia General Hospital	1200 JD Anderson Drive		Morgantown	WV	26505
Montefiore Medical Center	111 East 210th Street		Bronx	NY	10467-2490
Montgomery General Hospital	18101 Prince Phillip Drive		Olney	MD	20832
Morris Hospital	150 West High Street		Morris	IL	60450
Morristown Memorial Hospital	100 Madison Avenue		Morristown	NJ	07962
Morton Plant Hospital	207 Jeffords Street, MS 142		Clearwater	FL	33756
Morton Plant North Bay Hospital	6600 Madison Street		New Port Richey	FL	34652
Moses Cone Health System	1200 N. Elm Street		Greensboro	NC	27401
Mother Frances Hospital	800 E. Dawson Street		Tyler	TX	75701
Mount Auburn Hospital	330 Mount Auburn Street	South 2 Administration	Cambridge	MA	02138
Mount Carmel East	6150 East Broad Street		Columbus	OH	42313
Mount Carmel St. Anns Hospital	6150 East Broad Street		Columbus	OH	43213
Mount Carmel West	6150 East Broad Street	Suite 505A	Columbus	OH	43213
Mount Clemens General Hospital	1000 Harrington Street		Mount Clemens	MI	48043-2992
Mount Sinai Medical Center	4300 Alton Road		Miami Beach	FL	33140
Mount St Mary's Hospital	5300 Military Road		Lewiston	NY	14092
Mountainview Hospital	3100 N. Tenaya Way		Las Vegas	NV	89128
Munroe Regional Medical Center	1500 SW 1st Avenue PO Box 6000		Ocala	FL	34478
Munson Medical Center	1105 Sixth Street		Traverse City	MI	49684-2386
Muskogee Regional Medical	300 Rockefeller Drive		Muskogee	OK	74401

Center				
Nacogdoches Medical Center	4920 NE Stallings Drive	Nocogdoches	TX	75965
Naples Community Hospital	350 7th Street South	Naples	FL	34102
Nashoba Valley Medical Center	200 Groton Road	Ayer	MA	01432
Natchez Community Hospital	129 Jefferson Davis Boulevard	Natchez	MS	39120
Natchez Regional Medical Center	54 Sgt. Prentiss Drive	Natchez	MS	39120
Navapaches Regional Medical Center	2200 East Show Low Lake Road	Show Low	AZ	85901
Nebraska Heart Hospital	7500 South 91st Street	Lincoln	NE	68526
Nebraska Methodist Hospital	8303 Dodge Street	Omaha	NE	68114
New Hanover Regional Medical Center	2131 S. 17th Street	Wilmington	NC	28402
New York Community Hospital	2525 Kings Highway	Brooklyn	NY	11229
New York Hospital Medical Center of Queens Health Education Library	56-45 Main Street EP Lab/3rd Floor	Flushing	NY	11355
New York Methodist Hospital	506 6th Street, Brooklyn	New York City	NY	11215
New York Presbyterian Hospital	622 West 168th Street	New York	NY	10032
Newark Beth Israel Medical Center	201 Lyons Avenue at Osborne Terrace	Newark	NJ	07112
Niagara Falls Memorial Medical Center	621 Tenth Street	Niagara Falls	NY	14092
Nicholas H. Noyes Memorial Hospital	111 Clara Barton Street	Dansville	NY	14437
Nix Healthcare System	414 Navarro Street	San Antonio	TX	78205
Norman Regional Health System	PO Box 1308	Norman	OK	73070-1308
North Austin Medical Center	12221 MoPac Expressway North	Austin	TX	78758
North Bay Medical Center	1200 B. Gale Wilson Boulevard	Fairfield	CA	94533
North Broward Hospital District	1600 S. Andrews Avenue	Ft. Lauderdale	FL	33316
North Broward Medical Center	201 E. Sample Road	PomPano Beach	FL	33064
North Carolina Baptist Hospital	Medical Center Boulevard	Winston-Salem	NC	27157

North Central Baptist Hospital	520 Madison Oak Drive		San Antonio	TX	78258
North Colorado Medical Center	1801 16th Street		Greeley	CO	80631
North Florida Regional Medical Center	6500 Newberry Road		Gainesville	FL	32605
North Kansas City Hospital	2800 Clay Edwards Drive		North Kansas City	MO	64116
North Memorial Medical Center	3300 Oakdale Avenue N.		Robbinsdale	MN	55422
North Mississippi Medical Center	830 S. Gloster Street		Tupelo	MS	38801
North Oaks Medical Center	15790 Paul Vega MD Drive		Hammond	LA	70403
North Ridge Medical Center	5757 N. Dixie Highway		Fort Lauderdale	FL	33334
North Shore Medical Center	1100 NW 95th Street		Miami	FL	33150
North Shore Medical Center-Salem Hospital	81 Highland Avenue	Davenport 5	Salem	MA	01970
North Shore University Hospital	300 Community Drive		Manhasset	NY	11030
North Suburban Medical Center	9191 Grant Street		Denver	CO	80229
North Vista Hospital	1409 E. Lake Mead Boulevard		North Las Vegas	NV	89030
Northbay VacaValley Hospital	1200 B. Gale Wilson Boulevard		Fairfield	CA	94533
Northeast Baptist Hospital	8811 Village Drive		San Antonio	TX	78217
Northeast Georgia Medical Center	743 Spring Street		Gainesville	GA	30501
NorthEast Medical Center	920 Church Street North		Concord	NC	28025
Northeast Methodist Hospital	12412 Judson Road		Live Oak	TX	78233
Northern Illinois Medical Center	dwittkamp@centegra.com		McHenry	IL	60050
Northern Michigan Hospital	416 Connable Avenue		Petoskey	MI	49770
Northern Nevada Medical Center	2375 E Prater Way		Sparks	NV	89434
Northlake Medical Center	1455 Montreal Road		Tucker	GA	30084
Northridge Hospital Medical Center	18300 Roscoe Avenue		Northridge	CA	91325
Northshore Regional Medical Center	100 Medical Center Drive		Slidell	LA	70461
Northside Hospital	6000 49th Street N		Pinellas Park	FL	33709
Northside Hospital	1000 Johnson Ferry Road		Atlanta	GA	30342

Northside Hospital-Forsyth	1200 Northside Forsyth Drive		Cumming	GA	30041
Northwest Community Hospital	800 W. Central Raod		Arlington Heights	IL	60005
Northwest Hospital	1550 North 115th Street		Seattle	WA	98113
Northwest Medical Center	2801 N. State Road 7		Margate	FL	33063
Northwest Medical Center-Bentonville	3000 Medical Center Parkway		Bentonville	AR	72712
Northwest Medical Center-Springdale	609 West Maple Street		Springdale	AR	72764
Northwest Mississippi Regional Medical Center	1970 Hospital Drive		Clarksdale	MS	38614
Northwest Texas Surgical Hospital	3501 Soncy Road Suite 118		Amarillo	TX	79119
Northwestern Memorial Hospital	676 North St Clair Suite 1700		Chicago	IL	60611
Norton Audubon	P.O. Box 35070		Louisville	KY	40232
Norton Hospital	P.O. Box 35070		Louisville	KY	40232
Norwalk Hospital	24 Stevens Street		Norwalk	CT	06856
NYU Medical Center	560 First Avenue, TCH 576 Cath Lab		New York	NY	10016
Oak Hill Hospital	11375 Cortez Boulevard		Brooksville	FL	34613
Oakwood Hospital & Medical Center	18101 Oakwood Boulevard, Suite 124		Dearborn	MI	48124
Obici Hospital	2800 Godwin Boulevard		Suffolk	VA	23434
Ocala Regional Medical Center	1431 SW First Avenue		Ocala	FL	34474
Ocean Springs Hospital	3109 Bienville Boulevard		Oceansprings	MS	39564
Ochsner Medical Center-Baton Rouge	17000 Medical Center Drive		Baton Rouge	LA	70816
Ochsner Medical Center-West Bank	2500 Belle Chasse Highway		Gretna	LA	70056
Ochsner Medical Center-Kenner (Kenner Regional Medical Center)	180 West Esplanade Avenue		Kenner	LA	70065
Ochsner Medical Foundation	1514 Jefferson Highway		New Orleans	LA	70121
O'Connor Hospital	2105 Forest Avenue		San Jose	CA	95128
Odessa Regional Hospital	520 East Sixth Street		Odessa	TX	79760
Ogden Regional Medical Center	5475 South 500 East		Ogden	UT	84403
Ohio State University Medical	410 W. 10th Avenuel	1420 Doan Hal	Columbus	OH	43210-

Center				1228
Ohio Valley Medical Center	2000 Eoff Street	Wheeling	WV	26003
Oklahoma Heart Hospital	4050 W. Memorial Road	Oklahoma City	OK	73120
Oklahoma State University Medical Center	744 W. 9th Street	Tulsa	OK	74127
Olathe Medical Center	20333 W. 151 Street	Olathe	KS	66061-7211
Opelousas General Health System	539 E. Prudhomme Street	Opelousas	LA	70570
Orange Coast Memorial Medical Center	9920 Talbert Avenue	Fountain Valley	CA	92708
Orange Regional Medical Center	60 Prospect Avenue	Middletown	NY	10940
Oregon Health & Science University	3181 SW Sam Jackson Road	Portland	OR	97239
Orlando Regional Medical Center	1414 Kuhl Avenue	Orlando	FL	32806
Osceola Regional Medical Center	700 W. Oak Street	Kissimmee	FL	34745
OSF Saint Anthony Medical Center	5666 East State Street	Rockford	IL	61108
OSF Saint Joseph Medical Center	2200 E. Washington Street	Bloomington	IL	61701
OSF Saint Francis Medical Center	53Q NE Glen Oak Avenue	Peoria	IL	61637
OU Medical Center	700 NE 13th Street	Oklahoma City	OK	73104
Our Lady of Lourdes Medical Center	1600 Haddon Avenue	Camden	NJ	08103
Our Lady of Lourdes Regional Medical Center	611 St Landry (PO Box 4027)	Lafayette	LA	70506
Our Lady of The Lake Regional Medical Center	5000 Hennessy Boulevard	Baton Rouge	LA	70808-4350
Our Lady of the Resurrection Medical Center	5645 W. Addison Street	Chicago	IL	60634
Overlake Hospital Medical Center	1035 -116th Avenue NE	Bellevue	WA	98004
Overland Park Regional Medical Center/Health Midwest	10500 Quivira Road	Overland Park	KS	66215
Owensboro Medical Health System	811 E. Parrish Avenue	Owensboro	KY	42303
Ozarks Medical Center	1100 Kentucky Avenue	West Plains	MO	65775
P and S Surgical Hospital	312 Grammont Street	Monroe	LA	71201
Palm Beach Gardens Medical	3360 Burns Road	Palm Beach	FL	33410

Center		Gardens		
Palmetto General Hospital	2001 West 68th Street	Hialeah	FL	33016
Palmetto Health Heart Hospital	5 Richland Medical Park Drive	Columbia	SC	29203
Palomar Medical Center	555 East Valley Parkway	Escondido	CA	92025
Palos Community Hospital	12251 S. 80th Avenue	Palos Heights	IL	60463-0930
Paoli Hospital	100 Lancaster Avenue	Wynnewood	PA	19096
Paradise Valley Hospital	3929 E. Bell Road	Phoenix	AZ	85023
Paradise Valley Hospital	2400 E. Fourth Street	National City	CA	91950
Paris Regional Medical Center	820 Clarksville Street	Paris	TX	75460
Park Plaza Hospital	1313 Hermann Drive	Houston	TX	77004
Parkridge Medical Center	2333 McCallie Avenue	Chattanooga	TN	37404
Parkview Hospital	2200 Randallia Drive	Fort Wayne	IN	46805
Parkview Hospital	1726 Shawano Avenue	Green Bay	WI	54303-3282
Parkview Medical Center	400 West 16th Street	Pueblo	CO	81003
Parkway Regional Medical Center	160 N.W. 170th Street	North Miami	FL	33169
Parkwest Medical Center	9352 Parkwest Boulevard	Knoxville	TN	37932
Parma Community General Hospital	7007 Powers Boulevard	Parma	OH	44129
Parrish Medical Center	951 N. Washington Avenue	Titusville	FL	32796
Pasco Regional Medical Center	13000 100 Fort King Road	Dade City	FL	33525
PBI Regional Medical Center	350 Boulevard	Passaic	NJ	07055
Peace River Regional Medical	2500 Harbor Boulevard	Port Charlotte	FL	33952
Peninsula Regional Medical Center	100 East Carroll Street	Salisbury	MD	21801
Penn Presbyterian Medical Center	39th & Market Streets	Philadelphia	PA	19104
Penn State Hershey Medical Center	PO Box 850 H139	Hershey	PA	17033
Pennsylvania Hospital	800 Spruce Street	Philadelphia	PA	19107-6192
Penrose-St. Francis Health Services	2222 North Nevada, #220	Colorado Springs	CO	80907
Phelps County Regional Medical Center	1000 W. 10th Street	Rolla	MI	65401

Phoenix Baptist Hospital	2000 W. Bethany Home Road		Phoenix	AZ	85015
Phoenixville Hospital	140 Nutt Road		Phoenixville	PA	19460-3906
Piedmont Hospital	95 Collier Road Suite 5005		Atlanta	GA	30309
Piedmont Medical Center	222 S. Herlong Avenue		Rock Hill	SC	29732
Pikeville Medical Center	911 Bypass Road		Pikeville	KY	41501
Pinnacle Health Invasive Cardiology	111 South Front Street		Harrisburg	PA	17101-2099
Pioneer Valley Hospital	3590 West 9000 South, Suite 315		West Jordan,	UT	84088
Pitt County Memorial Hospital	2100 Stantonsburg Road		Greenville	NC	27834-2832
Plantation General Hospital	401 NW 42nd Avenue		Plantation	FL	33317
Plaza Medical Center of Fort Worth	900 Eighth Avenue		Fort Worth	TX	76104
Pomona Valley Hospital Medical Center	1798 N. Garey Avenue		Pomona	CA	91722
Pontiac Osteopathic Hospital	50 North Perry Street		Pontiac	MI	48342
Poplar Bluff Regional Medical Center	2620 N. Westwood Boulevard		Poplar Bluff	MO	63901
Port Huron Hospital	1221 Pine Grove Avenue		Port Huron	MI	48060
Porter Adventist Hospital	2525 S Downing Street - Mailstop 33F		Denver	CO	80210-5817
Porter Valparaiso Hospital Campus	814 Laporte Avenue		Valparaiso	IN	46383
Portneuf Medical Center	651 Memorial Drive		Pocatello	ID	83201
Portsmouth Regional Hospital	333 Borthwick Avenue		Portsmouth	NH	03801
Poudre Valley Hospital	2500 Rocky Mountain Avenue		Loveland	CO	80538
Prairie Lakes Healthcare	401 9th Avenue NW	Box 1210	Watertown	SD	57201
Presbyterian Healthcare Services	PO Box 26666		Albuqerque	NM	87125
Presbyterian Hospital	200 Hawthorne Lane		Charlotte	NC	28204
Presbyterian Hospital of Dallas	Presbyterian Hospital	8200 Walnut Hill Lane	Dallas	TX	75231
Presbyterian Hospital of Plano	6200 West Parker Road		Plano	TX	75093-7914
Presbyterian Intercommunity	12401 Washington Boulevard		Whittier	CA	90602

Hospital					
Presbyterian/St.Lukes Medical Center	1719 E. 19th Avenue - CV Registry		Denver	CO	80218-1235
Prince George's Hospital Center	3001 Hospital Drive		Cheverly	MD	20785
Princeton Baptist Medical Center	701 Princeton Avenue		Birmingham	AL	35211-1399
Proctor Hospital	5409 N. Knoxville Avenue		Peoria	IL	61614
Protestant Memorial Medical Center	4500 Memorial Drive		Belleville	IL	62226
Provena Covenant Medical Center	1400 West Park Street		Urbana	IL	61801-9901
Provena Mercy Medical Center	1325 North Highland Avenue		Aurora	IL	60506
Provena Saint Joseph Medical Center	333 N. Madison Street		Joliet	IL	60435
Provena Saint Marys Hospital	500 West Court Street		Kankakee	IL	60901
Providence Alaska Medical Center	3200 Providence Drive		Anchorage	AK	99508-4662
Providence Everett Medical Center	1321 Coby Avenue	PO Box 1147	Everett	WA	98206-1147
Providence Health Center	6901 Medical Parkway		Waco	TX	76712
Providence Holy Cross Medical Center	15031 Rinaldi Street		Mission Hills	CA	91346
Providence Hospital	6801 Airport Boulevard		Mobile	AL	36608
Providence Hospital	2435 Forest Drive		Columbia	SC	29204
Providence Medical Center	8929 Parallel Parkway		Kansas City	KS	66112-1689
Providence Memorial Hospital	2001 North Oregon		El Paso	TX	79902
Providence Portland Medical Center	9205 SW Barnes Road	9205 SW Barnes Road	Portland	OR	97225
Providence Saint Joseph Medical Center	501 South Buena Vista		Burbank	CA	91505
Providence Saint Vincent Medical Center	Regional Heart Data Services	9205 South West Barnes Road #33	Portland	OR	97225
Providence St. Peter Hospital	413 N. Lilly Road		Olympia	WA	98506
Queen of the Valley Medical	1000 Trancas Street		Napa	CA	94558

Center					
Queens Medical Center	1301 Punchbowl Street		Honolulu	HI	96813
Rancho Spring Medical Center	36485 Inland Valley		Wildomar	CA	92595
Rankin Medical Center	350 Crossgates Boulevard		Brandon	MS	39042
Rapid City Regional Hospital	353 Fairmont Boulevard		Rapid City	SD	57702
Rapides Regional Medical Center	211 4th Street (Box 30101)		Alexandria	LA	71301
Redmond Regional Medical Center	501 Redmond Road		Rome	GA	30165
Regents of the University of Michigan	2929 Plymouth Rd Suite 210		Ann Arbor	MI	48105
Regional Hospital of Jackson	367 Hospital Boulevard		Jackson	TN	38305
Regional Medical Center	400 East 10th Street		Anniston	AL	36202
Regional Medical Center	225 N. Jackson Street		San Jose	CA	95116
Regional Medical Center	900 Hospital Drive		Madisonville	KY	42431-1644
Regional Medical Center	3000 St. Matthews Road		Orangeburg	SC	29118
Regional Medical Center Bayonet Point	1400 Fivay Road		Hudson	FL	34667
Regions Hospital	640 Jackson Street		St. Paul	MN	55101
Reid Hospital & Healthcare Services	1401 Chester Boulevard		Richmond	IN	47374
Renown Regional Medical Center	1155 Mill Street	R 11	Reno	NV	89502
Research Medical Center	2316 East Meyer Boulevard		Kansas City	MO	64132
Reston Hospital Center	1850 Town Center Parkway		Reston	VA	20190
Resurrection Medical Center	7435 W. Talcott Avenue		Chicago	IL	60631
Rex Hospital	4420 Lake Boone Trail		Raleigh	NC	27607
Rhode Island Hospital	593 Eddy Street		Providence	RI	02903
Richmond University Medical Center	355 Bard Avenue		Staten Island	NY	10310
Rideout Memorial Hospital	726 4th Street		Maryville	CA	95901
Ridgecrest Regional Hospital	1081 N. China Lake Boulevard		Ridgecrest	CA	93555
Riley Hospital	1102 Constitution Avenue		Meridian	MS	39301
Rio Grande Regional Hospital	101 E. Ridge Road		McAllen	TX	78503
River Oaks Hospital	1030 River Oaks Drive		Jackson	MS	39232

River Region Medical Center	2100 Highway 61 North	Vicksburg	MS	39180
Riverside Community Hospital	4445 Magnolia Avenue	Riverside	CA	92501
Riverside Methodist Hospital	3535 Olentangy River Road	Columbus	OH	43214
Riverside Regional Medical Center	500 J Clyde Morris Boulevard	Newport News	VA	23601
Riverview Hospital	395 Westfield Road	Noblesville	IN	46060
Riverview Regional Medical Center	600 South Third Street	Gadsden	AL	35901
Robert Packer Hospital	1 Guthrie Square	Sayre	PA	18840
Robinson Memorial Hospital	6847 N. Chestnut Street	Ravenna	OH	44266
Rochester General Hospital	1425 Portland Avenue	Rochester	NY	14621
Rockford Memorial Hospital	2400 N. Rockton Avenue	Rockford	IL	61103
Rogue Valley Medical Center	2825 E. Barnett Road	Medford	OR	97504
Roper Hospital	316 Calhoun Street	Charleston	SC	29401
Rose Medical Center	4567 E. 9th Avenue	Denver	CO	80220-3941
Round Rock Medical Center	2400 Round Rock Avenue	Round Rock	TX	78681
Rush Hospital	1314 19th Avenue	Meridian	MS	39301
Rush North Shore Medical Center	9600 Gross Point Road	Skokie	IL	60076
Rush University Medical Center	1653 West Congress Parkway	Chicago	IL	60612
Rush-Copley Medical Center Attn: Health Science Lib	2000 Ogden Avenue	Aurora	IL	60504
Russell Medical Center	3316 Highway 280 (P.O. Box 939)	Alexander City	AL	35011
Russellville Hospital	15155 Highway 43	Russellville	AL	35653
Rutland Regional Medical Center	160 Allen Street	Rutland	VT	05701
Sacred Heart Hospital of Pensacola	5151 North 9th Avenue	Pensacola	FL	32504
Sacred Heart Hospital Attn: A/P	900 W. Clairemont Avenue	Eau Claire	WI	54701
Sacred Heart Medical Center	1155 Hilyard Street	Eugene	OR	97401
Sacred Heart Medical Center	101 W. Eighth Avenue	Spokane	WA	99204
Saddleback Memorial Medical Center	24451 Health Center Drive	Laguna Hills	CA	92653
Saint Agnes Medical Center	1303 East Herndon Avenue	Fresno	CA	93720
Saint Anthony Central Hospital	4231 W. 16th Avenue	Denver	CO	80204-1335

Saint Anthony Medical Center	1201 S. Main Street		Crown Point	IN	46307
Saint Anthonys Medical Center	10010 Kennerly Road		Saint Louis	MO	63128-2106
Saint Bernadine Medical Center	2101 N. Waterman Avenue	2101 N. Waterman Avenue	San Bernardino	CA	92404-4836
Saint Clare's Hospital	611 St. Joseph's Avenue		Marshfield	WI	54449
Saint Elizabeth Health Center	1044 Belmont Avenue		Youngstown	OH	44501
Saint Elizabeth Hospital	1611 S. Madison Street		Appleton	WI	54915
Saint Elizabeth Medical Center-South	1 Medical Village Drive		Edgewood	KY	41017
Saint Elizabeth Regional Medical Center	555 S. 70th Street		Lincoln	NE	68510-2462
Saint Elizabeths Hospital	211 South 3rd Street		Belleville	IL	62220-1915
Saint Francis Heart Hospital	10501 E. 91st Street South		Tulsa	OK	74133
Saint Francis Hospital	2122 Manchester Expressway		Columbus	GA	31904
Saint Francis Hospital	6161 S. Yale Avenue		Tulsa	OK	74136
Saint Francis Hospital	5959 Park Ave		Memphis	TN	38119
Saint Francis Hospital & Health Center	8111 S. Emerson Avenue		Indianapolis	IN	46237
Saint Francis Hospital & Medical Center	118 Woodland Street		Hartford	CT	06105
Saint Francis Hospital and Health Center	12935 Gregory Street		Blue Island	IL	60406-2470
Saint Francis Hospital of Evanston	355 Ridge Avenue		Evanston	IL	60202
Saint John Hospital & Medical Center	22151 Moross Road	Professional Building #1, #126	Detroit	MI	48236-2148
Saint John Macomb Hospital	11800 E. 12 Mile Road	Room #2510	Warren	MI	48093
Saint Johns Health Center	1328 Twenty Second Street		Santa Monica	CA	90404
Saint Johns Mercy Medical Center	615 S. New Ballas Road		Saint Louis	MO	63141-8221
Saint Joseph Hospital	St Josephs Hospital & Medical Center	350 West Thomas Road	Phoenix	AZ	85013
Saint Joseph Hospital	2700 Dolbeer Street		Eureka	CA	95501-4799

Saint Joseph Hospital	1100 West Stewart Drive		Orange	CA	92868
Saint Joseph Hospital	3001 W. Martin Luther King Boulevard		Tampa	FL	33607
Saint Joseph Hospital	2900 N. Lake Shore Drive		Chicago	IL	60657-6274
Saint Joseph Hospital (Provena)	77 North Airlite Street		Elgin	IL	60123-4912
Saint Joseph Medical Center	1717 South J Street		Tacoma	WA	98405-4933
Saint Joseph Regional Health Center	2801 Franciscan Street		Bryan	TX	77802-2544
Saint Josephs Hospital	1824 Murdoch Avenue		Parkersburg	WV	26102-0327
Saint Josephs Hospital/Marshfield Clinic	611 St. Joseph Avenue		Marshfield	WI	54449-1832
Saint Josephs Hospital of Atlanta	5665 Peachtree Dunwoody Road		Atlanta	GA	30342
Saint Louis University Hospital	3635 Vista at Grand		Saint Louis	MO	63110
Saint Lukes Hospital	1026 A Avenue; North East		Cedar Rapids	IA	52406-3026
Saint Lukes Hospital	232 S. Woods Mill Road	Heart Failure Center	Chesterfield	MO	63017-3417
Saint Luke's Hospital	4401 Wornall Road (MAHI 5th Floor)		Kansas City	MO	64111
Saint Lukes Regional Medical Center	190 E. Bannock Street		Boise	ID	83712-6241
Saint Margaret Mercy	5454 S. Hohman Avenue		Hammond	IN	46320
Saint Mary Corwin Medical Center	1008 Minnequa Avenue		Pueblo	CO	81004-3798
Saint Mary Mercy Hospital	36475 West Five Mile Road		Livonia	MI	48154
Saint Mary's Hospital	56 Franklin Street		Waterbury	CT	06706
Saint Marys Hospital and Regional Medical Center	2635 N. 7th Street		Grand Junction	CO	81501-8209
Saint Marys Medical Center	3700 Washington Avenue		Evansville	IN	47750
Saint Marys Medical Center	2900 First Avenue		Huntington	WV	25702
Saint Mary's Medical Center	450 Stanyan Street		San Francisco	CA	94117
Saint Mary's Regional Medical Center	235 W. Sixth Street		Reno	NV	89503

Saint Peter's Hospital	315 South Manning Boulevard	Albany	NY	12208
Saint Ritas Medical Center	730 West Market Street	Lima	OH	45801-4602
Saint Thomas Health Care Services	4220 Harding Road	Nashville	TN	37202-0380
Saint Vincent Health Center	232 West 25th Street	Erie	PA	16544
Saint Vincent Hospital	123 Summer Street	Worcester	MA	01608
Saint Vincent Hospital Manhattan	170 W. 12th Street	New York	NY	10011
Saint Vincent Medical Center/Health Center	2 St. Vincent Circle	Little Rock	AR	72205
Saint Vincents Medical Center	2800 Main Street	Bridgeport	CT	06606
Salem Hospital (Regional Health Services)	665 Winter Street, SE	Salem	OR	97309-5014
Salina Regional Health Center	400 S. Santa Fe Avenue	Salina	KS	67401
Salinas Valley Memorial Hospital	450 E Romie Lane	Salinas	CA	93901-4098
Salt Lake Regional Medical Center	1050 East South Temple	Salt Lake	UT	84102
San Antonio Community Hospital	999 San Bernardino Road	Upland	CA	91786
San Francisco Heart and Vascular Institute	1900 Sullivan Avenue	Daly City	CA	94015
San Jacinto Methodist Hospital	4401 Garth Road	Baytown	TX	77521
San Joaquin Community Hospital	2615 Eye Street	Bakersfield	CA	93301
San Juan Regional Medical Center	801 West Maple	Farmington	NM	87401
San Ramon Regional Medical Center	6001 Norris Canyon Road	San Ramon	CA	94583
Sand Lake Hospital	1414 Kuhl Avenue	Orlando	FL	32806
Sanford USD Medical Center	1305 West 18th Street	Sioux Falls	SD	57117
Santa Barbara Cottage Hospital	PO Box 689	Santa Barbara	CA	93102-0689
Santa Rosa Memorial Hospital	1165 Montgomery Drive PO Box 522	Santa Rosa	CA	95402
Santa Teresa Community Hospital	250 Hospital Parkway, 1st Floor Cath Office	San Jose	CA	95119
Sarasota Memorial Hospital	1700 S. Tamiami Trail	Sarasota	FL	34239

Satilla Heart Center	410 Darling Avenue		Waycross	GA	31501
Scott and White Clinic and Hospital	2401 S. 31 Street, Alexander Building, 218-E		Temple	TX	76508
Scottsdale Healthcare Osborn	7400 E. Osborn Road		Scottsdale	AZ	85260
Scottsdale Healthcare Shea	9003 E. Shea Boulevard-Administration		Scottsdale	AZ	85260
Scripps Green Hospital-La Jolla	10666 North Torrey Pines Road		La Jolla	CA	92037
Scripps Memorial Hospital Encinitas	354 Santa Fe Drive		Encinitas	CA	92024
Scripps Memorial Hospital-La Jolla	9888 Genesee Avenue LJ101		La Jolla	CA	92037
Scripps Mercy Hospital-San Diego	4077 5th Avenue, MER 74		San Diego	CA	92103
Scripps Mercy Hosptial-Chula Vista	435 H Street		Chula Vista	CA	91910
Sebastian River Medical Center	13695 US Highway 1		Sebastian	FL	32962
Self Regional Healthcare	1325 Spring Street		Greenwood	SC	29646
Sentara Norfolk General Hospital	600 Gresham Drive		Norfolk	VA	23507
Sentara Obici Hospital	2800 Goodwin Boulevard		Suffolk	VA	23434
Sentara Virginia Beach General Hospital	1060 First Colonial Road		Virginia Beach	VA	23454-0685
Sequoia Hospital	Whipple & Alameda Avenues	170 Alameda de Las Pulgas	Redwood City	CA	94062
Seton Medical Center	1201 W. 38th Street		Austin	TX	78705
Shady Grove Adventist Hospital	9901 Medical Center Drive		Rockville	MD	20850
Shands at AGH	801 SW 2nd Avenue		Gainesville	FL	32601
Shands Jacksonville Medical Center	2000 Jefferson Street		Jacksonville	FL	32209-6511
Sharp Chula Vista Medical Center	8695 Spectrum Center Court		San Diego	CA	92123
Sharp Grossmont	5555 Grossmont Center Drive		La Mesa	CA	91942
Sharp Memorial Hospital	7901 Frost Street		San Diego	CA	92123
Shasta Regional Medical Center	1100 Butte Street		Redding	CA	96001
Shawnee Mission Medical Center	9100 West 74th Street		Shawnee Mission	KS	66204-4004
Shelby Baptist Medical Center	1000 First Street North		Alabaster	AL	35007
Sherman Hospital	934 Center Street	Decision Support	Elgin	IL	60120

Shore Health System of Maryland	219 South Washington Street	Easton	MD	21601
Sid Peterson Memorial Hospital	710 Water Street	Kerrville	VA	78028
Sierra Medical Center	1625 Medical Center Drive	El Paso	TX	79902
Sierra View District Hospital	465 W. Putnam Avenue	Porterville	CA	93257
Sierra Vista Regional Medical Center	1010 S. Murray Avenue	San Luis Obispo	CA	93405
Silver Cross Hospital	1200 Maple Road	Joliet	IL	60432
Simi Valley Hospital & Health Care Services	2975 North Sycamore Drive	Simi Valley	CA	93065
Sinai-Grace Hospital	6071 W. Outer Drive	Detroit	MI	48235
Sinai Hospital of Baltimore	2401 West Belvedere Avenue	Baltimore	MD	21215-5271
Singing River Hospital	2809 Denny Avenue	Pascagoula	MS	39567
Sisters of Charity Hospital	2157 Main Street	Buffalo	NY	14120
Skaggs Community Health Center	PO Box 650	Branson	MO	65615-0650
Sky Ridge Medical Center	10101 Ridgegate Parkway	Lone Tree	CO	80124
Skyline Medical Center/ HTI Memorial Hospital Corp	3441 Dickerson Pike	Nashville	TN	37207
Smith of Georgia, LLC d.b.a. Smith Northview Hopsital	PO Box 10010	Valdosta	GA	31604
Sound Shore Medical Center	16 Guion Place	New Rochelle	NY	10801
South Austin Hospital	901 W. Ben White Boulevard	Austin	TX	78704
South Crest Hospital	8801 S. 101 Street E Avenue	Tulsa	OK	74133
South Fulton Medical Center	1170 Cleveland Avenue	East Point	GA	30344
South GA Medical Center	PO Box 1727	Valdosta	GA	31603-1727
South Miami Hospital	6200 SW 73rd Street	Miami	FL	33143-4989
South Nassau Communities Hospital	One Healthy Way	Oceanside	NY	11572
South Shore Hospital	55 Fogg Road	South Weymouth	MA	02190-2432
Southampton Hospital	240 Meeting House Lane	Southhampton	NY	11968

Southeast Alabama Medical Center	1108 Ross Clark Circle		Dothan	AL	36301
Southeast Baptist Hospital	4214 E. Southcross		San Antonio	TX	78222
Southeast Missouri Hospital	1701 Lacey Street		Cape Girardeau	MO	63701
Southern Hills Hospital	9300 West Sunset Road		Las Vegas	NV	89148
Southern New Hampshire Medical Center	8 Prospect Street		Nashua	NH	3060
Southern Ohio Medical Center	1805 27th Street		Portsmouth	OH	45662
Southern Regional Medical Center	11 Upper Riverdale Road		Riverdale	GA	30274
Southlake Hospital	1099 Citrus Tower Boulevard		Clermont	FL	34711
Southside Hospital	301 East Main Street		Bayshore	NY	11706
Southwest Florida Regional	636 Del Prado Boulevard, Suite 104		Cape Coral	FL	33990
Southwest General Health Center	18697 Bagley Road		Middleburg Heights	OH	44130-3417
Southwest General Hospital	7400 Barlite Boulevard		San Antonio	TX	78224
Southwest Medical Center	2810 Ambassador Caffery Parkway		Lafayette	LA	70506
Southwest MS Regional Medical Center	215 Marion Avenue		McComb	MS	39648
Southwest Washington Medical Center	600 NE 92nd Avenue		Vancouver	WA	98664
Southwestern Medical Center	5602 SW Lee Boulevard		Lawton	OK	73505
Spalding Regional Medical Center	601 South 8th Street		Griffin	GA	30224
Sparks Regional Medical Center	PO Box 17006		Fort Smith	AR	72917-7006
Sparrow Health System	1210 W. Saginaw Highway		Lansing	MI	48915
Spartanburg Regional Medical Center	101 East Wood Street	3rd Floor Heart Center	Spartanburg	SC	29303
Spectrum Health	100 Michigan Street NE		Grand Rapids	MI	49503-2560
Springhill Memorial Hospital	3719 Dauphin Street		Mobile	AL	36608
Springs Memorial Hospital	800 West Meeting Street		Lancaster	SC	29720

SSM St. Joseph Health Center	300 First Captiol Drive	St. Charles	MO	63301
St James Hospital and Health Centers	20201 S. Crawford Avenue	Olympia Fields	IL	60461
St. John's Hospital	69 W. Exchange Street	St. Paul	MN	55102
St. Joseph Hospital	700 Broadway Street	Fort Wayne	IN	46802
St. Joseph Hospital-Oakland	44405 Woodward Avenue	Pontiac	MI	48341-5023
St. Josephs Hospital	69 W. Exchange Street	St. Paul	MN	55102
St. Josephs Hospital Health Center	301 Prospect Avenue	Syracuse	NY	13203
St. Lukes's Cornwall Hospital	70 Dubois Street	Newburgh	NY	12550
St. Mary's Health Care Systems	1230 Baxter Street	Athens	GA	30606
St. Mary's Hospital	400 North Pleasant	Centralia	IL	62801
St. Mary's Regional Medical Center	305 S. 5th Street	Enid	OK	73701
St. Vincent Mercy Medical Center	2213 Cherry Street	Toledo	OH	43608
St. Agnes Hospital	900 Caton Avenue	Baltimore	MD	21229
St. Alexius Medical Center	1555 Barrington Road	Hoffman Estates	IL	60194-1018
St. Alphonsus Regional Medical Center	1055 N. Curtis Road	Boise	ID	83706
St. Anthony Hospital	1000 N. Lee Avenue	Oklahoma City	OK	73102
St. Anthony's Health Care	1200 7th Avenue North	St. Petersburg	FL	33705
St. Barnabas Medical Center	94 Old Short Hills Road	Livingston	NJ	07039
St. Bernards Medical Center	225 E. Jackson Avenue	Jonesboro	AR	72401
St. Catherine Hospital E Chicago	1500 South Lake Park Avenue	Hobart	IN	46342
St. Catherine of Siena	50 Route 25A	Smithtown	NY	11787
St. Charles Hospital	200 Belle Terre Road	Port Jefferson	NY	11777
St. Charles Medical Center	2500 North East Neff Road	Bend	OR	97701-6015
St. Clair Memorial Hospital	1000 Bower Hill Road	Pittsburgh	PA	15243
St. Cloud Regional Medical Center	2906 17th Street	St. Cloud	FL	34769
St. David's Medical Center	919 East 32nd	Austin	TX	78765
St. Dominic-Jackson Memorial Hospital	969 Lakeland Drive	Jackson	MS	39216

St. Edwards Mercy Medical Center	7301 Rogers Avenue		Ft. Smith	AR	72917-7000
St. Elizabeth Hospital	2233 W. Division		Chicago	IL	60622
St. Elizabeth Medical Center	2209 Genesee Street		Utica	NY	13501
St. Francis Health Center	1700 SW 7th Street		Topeka	KS	66605
St. Francis Hospital	701 N. Clayton Street		Wilmington	DE	19805
St. Francis Hospital	100 Port Washington Boulevard		Roslyn	NY	11576-1348
St. Francis Hospital	One St. Francis Drive		Greenville	SC	29601
St. Francis Hospital	333 Laidley Street	PO Box 44 Culloden, WV 25510	Charleston	WV	25322
St. Francis Medical Center	3630 Imperal Highway		Lynwood	CA	90265
St. Francis Medical Center	309 Jackson Street		Monore	LA	71210
St. Francis Medical Center	211 Saint Francis Drive		Cape Girardeau	MO	63703-5049
St. Francis Medical Center	601 Hamilton Avenue		Trenton	NJ	08629
St. Francis North Hospital	309 Jackson Street		Monroe	LA	71201
St. Helena Hospital	10 Woodland Road		St. Helena	CA	94574
St. James Health Care	400 South Clark Street		Butte	MT	59701
St. John Hospital & Medical Center	22151 Moross Road		Detroit	MI	48236-2148
St. John Medical Center	1923 S. Utica Avenue		Tulsa	OK	74104
St. John Medical Center	1615 Delaware Street		Longview	WA	98632
St. John Providence Hospital	16001 W. Nine Mile Road		Southfield	MI	48075
St. John West Shore Hospital	29000 Center Ridge Road		Westlake	OH	44145
St. John's Hospital	800 E. Carpenter Street		Springfield	IL	62769
St. John's Hospital	1235 E. Cherokee Street		Springfield	MO	65804
St. John's Pleasant Valley Hospital	2309 Antonio Avenue		Camarillo	CA	93010
St. John's Queens Hospital	90-02 Queens Boulevard		Elmhurst	NY	11373
St. Johns Regional Medical Center	1600 N. Rose Avenue		Oxnard	CA	93030-3722
St. Johns Regional Medical Center	2727 McClelland Boulevard		Joplin	MO	64804
St. Joseph Hospital	1 Saint Joseph Drive		Lexington	KY	40504

St. Joseph Hospital	360 Broadway		Bangor	ME	04401
St. Joseph Hospital	172 Kinsley Street		Nashua	NH	03060
St. Joseph Hospital	2901 Squalicum Parkway		Bellingham	WA	98225
St. Joseph Intercommunity Hospital	2605 Harlem Road		Cheektowaga	NY	14225
St. Joseph Medical Center	2200 E. Washington Street		Bloomington	IL	61701
St. Joseph Medical Center	7601 Osler Drive		Towson	MD	21204
St. Joseph Medical Center	12th & Walnut Street		Reading	PA	19603
St. Joseph Mercy Hospital	5325 Elliot Drive		Ann Arbor	MI	48106
St. Joseph Regional Medical Center	801 E. Lasalle Avenue		South Bend	IN	46617
St. Joseph Regional Medical Center	703 Main Street		Paterson	NJ	07503
St. Joseph's Healthcare	15855 Nineteen Mile Road		Clinton Township	MI	48038
St. Joseph's Hospital	11705 Mercy Boulevard		Savannah	GA	31419
St. Joseph's Medical Center	127 South Broadway		Yonkers	NY	10701
St. Josephs Medical Center of Stockton	1805 North California Street	Suite #303	Stockton	CA	95204
St. Josephs Mercy Health Center	300 Werner Drive		Hot Springs	AR	71913
St. Jude Medical Center	101 East Valencia Mesa		Fullerton	CA	92838
St. Luke Hospital East.	85 N. Grand Avenue		Ft. Thomas	KY	41075
St. Luke Hospital West	7380 Turfway Road		Florence	KY	41042
St. Luke's Baptist Hospital	7830 Floyd Curl Drive		San Antonio	TX	78229
St. Luke's Community Medical Center (The Woodlands)	17200 St. Luke's Way		The Woodlands	TX	77384
St. Luke's Episcopal Hospital	6720 Bertner Avenue		Houston	TX	77030
St. Lukes Hospital	363 Highland Avenue		Falls River	MA	02720
St. Lukes Hospital	5901 Monclova Road		Maumee	OH	43537
St. Luke's Hospital	915 E. First Street		Duluth	MN	55805
St. Lukes Hospital & Health Network	801 Ostrum Street		Bethlehem	PA	18088
St. Luke's Hospital-Mayo Clinic	4201 Belfort Road		Jacksonville	FL	32216

St. Lukes Medical Center	2901 West Oklahoma Avenue		Milwaukee	WI	53215-4330
St. Luke's Medical Center	1800 East Van Buren		Phoenix	AZ	85006
St. Luke's-Roosevelt Hospital Center	1111 Amsterdam Avenue		New York City	NY	10025
ST. Marks Hospital/Northern Utah Healthcare Corp.	1200 East 3900 South		Salt Lake City	UT	84124
St. Mary Hospital	1201 Langhorne Newtown Road		Langhorne	PA	19047
St. Mary Medical Center	18300 Highway 18		Apple Valley	CA	92307
St. Mary Medical Center	1050 Linden Avenue		Long Beach	CA	90813-3321
St. Mary Medical Center	1500 South Lake Park Avenue		Hobart	ID	46342
St. Mary of Nazareth Hospital Center	2233 W. Division Street		Chicago	IL	60622
St. Mary's Health Center	6420 Clayton Road		St. Louis	MO	63117
St. Mary's Hospital	1800 East Lake Shore Drive		Decatur	IL	62521
St. Mary's Hospital	707 S. Mills Street		Madison	WI	53715-1849
St. Mary's Medical Center	901 45th Street		West Palm Beach	FL	33407
St. Mary's Medical Center	407 East Third Street		Duluth	MN	55805
St. Mary's Medical Center	900 Oak Hill Avenue		Knoxville	TN	37917-4556
St. Mary's of Michigan	800 S. Washington Avenue		Saginaw	MI	48601
St. Mary's Regional Medical Center	PO Box 291 Campus Avenue		Lewiston	ME	04243-0291
St. Michael's Medical Center	111 Central Avenue		Newark	NJ	07102
St. Nicholas Hospital	3100 Superior Avenue		Sheboygan	WI	53081
St. Patrick Hospital and Health Sciences Center	500 W. Broadway		Missoula	MT	59802
St. Rose Hospital	27200 Calaroga Avenue		Hayward	CA	94539
St. Tammany Parish Hospital	1202 S. Tyler Street		Covington	LA	70433
St. Vincent Charity Hospital	2351 E. 22nd Street		Cleveland	OH	44115

St. Vincent Healthcare	1233 N. 30th Street	Billings	MT	59101
St. Vincent Hospital	810 St. Vincents Drive	Birmingham	AL	35205
St. Vincent Medical Center	2131 W. 3rd Street	Los Angeles	CA	90703
St. Vincent's Medical Center	1800 Barrs Street	Jacksonville	FL	32204
Stacia Hansen	45 Reade Place	Poughkeepsie	NY	12601
Stanford Hospital and Clinics	Falk Building 2nd Floor, 300 Pasteur Drive	Stanford	CA	94305
Stony Brook University Medical Center	3 Technology Drive	East Setauket	NY	11733-4073
Stormont-Vail Regional Medical Center	1500 SW 10th Avenue	Topeka	KS	66604
Straub Clinic & Hospital: Cath Lab	888 S King Street - Makai, 2nd Floor #22	Honolulu	HI	96813
Stringfellow Memorial Hospital	301 East 18th Street	Anniston	AL	36202
Suburban Hospital	8600 Old Georgetown Road	Bethesda	MD	20814
Summerlin Hospital Medical Center	657 Town Center Drive	Las Vegas	WI	89144
Summit Medical Center	East Main & South 20th Street	Van Buren	AR	72956
Sun Coast Hospital	2025 Indian Rocks Road	Largo	FL	33774
Sun Health Boswell Hospital	10401 West Thunderbird Boulevard	Sun City	AZ	85351
Sunrise Hospital and Medical Center	3186 S. Maryland Parkway	Las Vegas	NV	89109
Sutter Delta Medical Center	3901 Lone Tree Way	Antioch	CA	94509
Sutter Medical Center - Sacramento	PO Box 160727	Sacramento	CA	95819
Sutter Medical Center of Santa Rosa	3325 Chanate Road	Santa Rosa	CA	95404
Swedish American Hospital	1401 E. State Street	Rockford	IL	61104
Swedish Covenant Hospital	5145 N. California Avenue	Chicago	IL	60625
Swedish Heatlh Services	747 Broadway	Seattle	WA	98122
Swedish Medical Center	501 East Hampden Avenue	Englewood	CO	80113
T. J. Samson Community Hospital	1301 North Race Street	Glasgow	KY	42141
Tacoma General Hospital(Multicare Health System)	315 Martin Luther King Jr. Way	Tacoma	WA	98415

Tahlequah City Hospital	1400 East Downing Street	Tahlequah	OK	74465
Tallahassee Memorial Hospital	1310 N. Magnolia Drive	Tallahassee	FL	32308
Tampa General Hospital	PO Box 1289	Tampa	FL	33601
Temple University Hospital	3401 North Broad Street	Philadelphia	PA	19140
Terre Haute Regional Hospital	3901 South 7th Street	Terre Haute	IN	47802
Terrebonne General Medical Center	8166 Main Street	Houma	LA	70360
Texoma Medical Center	1000 Memorial Drive	Denison	TX	75020
TexsAn Heart Hospital	6700 IH-10 West	San Antonio	TX	78201
The Christ Hospital	2139 Auburn Avenue	Cincinnati	OH	45219
The George Washington University Hospital	900 23rd Street NW	Washington	DC	20037
The Heart Hospital of Northwest Texas	1501 S. Coulter Street	Amarillo	TX	79106
The Hospital at Westlake Medical Center	5656 Bee Caves Road, M-302	Austin	TX	78746
The Hospital of Central Connecticut	100 Grand Street PO Box 100	New Britain	CT	06050
The Indiana Heart Hospital	8075 North Shadeland Avenue	Indianapolis	ID	46250
The Medical Center (TMC)	1000 Dutch Ridge Road	Beaver	PA	15009
The Medical Center Of Southeast Texas	2555 Jimmy Johnson Boulevard	Port Arthur	TX	77640
The Methodist DeBakey Heart Center	6565 Fannin Street	Houston	TX	77030
The Monroe Clinic	515 22nd Avenue	Monroe	WI	53566
The Mount Sinai Hospital of Queens	25-11 30th Avenue	Long Island City	NY	11102
The Mount Sinai Medical Center	Mountt Sinai Medical Center	New York	NY	10029
The Nebraska Medical Center	987551 Nebraska Medical Center	Omaha	NE	68198
The Outpatient Cath Lab-BRCC	5000 Hennessy Boulevard	Baton Rouge	LA	70808
The Outpatient Cath Lab-LCA	5000 Hennessy Boulevard	Baton Rouge	LA	70808
The Reading Hospital and Medical Center	Sixth Avenue and Spruce Street	West Reading	PA	19611
The Toledo Hospital	2142 North Cove Boulevard	Toledo	OH	43606

The Valley Hospital	223 North Van Dien Avenue		Ridgewood	NJ	07450
The Village Regional Hospital	1451 El Camino Real		The Villages	FL	32159
The Western Pennsylvania Hospital	4800 Friendship Avenue		Pittsburgh	PA	15224
Thomas Jefferson University Hospital	TJUH	111 S. 11th Street Gibbon Building	Philadelphia	PA	19107
Tift Regional Medical Center	PO Box 747		Tifton	GA	31794
Timpanogos Regional Hospital	750 W. 800 North		Orem	UT	84057
Tobey Hospital	363 Highland Avenue		Fall River	MA	02720
Tomball Regional Hospital	605 Holderrieth Street		Tomball	TX	77375
Torrance Memorial Medical Center	3330 Lomita Boulevard		Torrance	CA	90505
Touro Infirmary Medical Center	1401 Foucher Street		New Orleans	LA	70115
Tri-City Medical Center	4002 Vista Way		Oceanside	CA	92056
Trinity Hospitals	PO Box 5020		Minot	ND	58702-5020
Trinity Medical Center	800 Montclair Road		Birmingham	AL	35213
Trinity Medical Center	4602 3rd Street		Moline	IL	61265
Trinity Medical Center West	4000 Johnson Road		Steubenville	OH	43952
Trinity Regional Medical Center	802 Kenyon Road		Fort Dodge	IA	50501
Trinity Regional Medical Center	4602 3rd Street		Moline	IL	61265
Trover FoundationRegional Medical Center	900 Hospital Drive		Madisonville	KY	42431
Tucson Heart Hospital	4888 North Stone Avenue		Tucson	AZ	85704
Tufts-New England Medical Center	750 Washington Street		Boston	MA	02111
Tulane University Hospital and Clinic	1415 Tulane Avenue		New Orleans	LA	70112
Tulare District Hospital	869 Cherry Street		Tulare	CA	93274
Tuomey Healthcare System/Tuomey Regional Medical Center	129 N. Washington Street		Sumter	SC	29150
Twelve Oaks Medical Center	4200 Twelve Oaks Drive		Houston	TX	77027
UC San Diego Medical Center	200 W. Arbor Drive		San Diego	CA	92103
UMASS Memorial Medical Center	55 Lake Avenue North		Worcester	MA	01655-0002

Union Hospital	1606 N. 7th Street	Terre Haute	IN	47804
Union Memorial Hospital	201 E. University Parkway	Baltimore	MD	21218-2891
United Health Services Hospitals/Wilson Regional Medical Center	33 - 57 Harrison Street	Johnson City	NY	13790
United Hospital	333 Smith Avenue, North	Minneapolis	MN	55102
United Hospital Center, Inc.	PO Box 1680	Clarksburg	WV	26302-1680
United Hospital System	6308 8th Avenue	Kenosha	WI	53143
United Regional Healthcare System	1600 11th Street	Wichita Falls	TX	76301
Unity Hospital	550 Osbourne Road NE	Minneapolis	MN	55432
Unity Hospital	1555 Long Pond Road	Rochester	NY	14626
University Community Hospital	3100 Fletcher Avenue	Tampa	FL	33613
University Hospital	620 19th Street South	Birmingham	AL	35249
University Hospital	1350 Walton Way	Augusta	GA	30901
University Hospital	234 Goodman Street	Cincinnati	OH	45219
University Hospitals Bedford Medical Center	44 Blaine Avenue	Bedford	OH	44146
University Hospitals Case Medical Center	11100 Euclid Avenue	Cleveland	OH	44106
University Hospitals Geauga Medical Center	13207 Ravenna Road	Chardon	OH	44024
University Hospitals Richmond Medical Center	27100 Chardon Road	Richmond Heights	OH	44143
University Hospital UMDNJ	150 Bergen Street	Newark	NJ	07101
University Medical Center	1501 N. Campbell Avenue	Tucson	AZ	85724
University Medical Center	1411 Baddour Parkway	Lebanon	TN	37087
University Medical Center	602 Indiana Avenue	Lubbock	TX	79410
University Medical Center LSU	2390 W. Congress Street	Lafayette	IA	70506
University Medical Center of Las Vegas	1800 W. Charleston Boulevard	Las Vegas	NV	89102
University of Arkansas Medical Sciences Physician R	4301 West Markham Street, Suite 532	Little Rock	AR	72205

University of California Irvine/Division of Cardiology	101 The City Drive		Orange	CA	92868-3298
University of California (UCLA)	10833 Le Conte Avenue		Los Angeles	CA	90095
University Of California Davis	2315 Stockton Boulevard, Main Hospital, Room 6312		Sacramento	CA	95817
University of California San Francisco Medical Center	513 Parnassus Avenue, Room S-1164-E		San Francisco	CA	94143-0047
University of Chicago Hospitals	5841 S. Maryland Avenue		Chicago	IL	60637
University of Colorado Hospital Authority	16205 E. 16th Avenue	Box 132	Aurora	CO	80045
University of CT Health Center/John Dempsey Hospital	263 Farmington Avenue		Farmington	CT	06030
University of Florida (Shands) College of Medicine	1600 SW Archer Road		Gainesville	FL	32610
University of Illinois Medical Center at Chicago	1740 W. Taylor Street, Building 949 Room 21		Chicago	IL	60610
University of Iowa Hospitals and Clinics	200 Hawkins Drive		Iowa City	IA	52242
University of Kentucky	800 Rose Street		Lexington	KY	40536
University of Maryland Medical Center Cardiology	22 S. Greene Street		Baltimore	MD	21201-1544
University of Mississippi Medical Center	2500 N. State Street		Jackson	MS	39216
University of Missouri Hospital and Clinics	1 Hospital Drive		Columbia	MO	65212
University of North Carolina Hospitals	UNC Hospitals	101 Manning Drive CB#7075	Chapel Hill	NC	27514
University of Rochester Medical Center	601 Elmwood Avenue		Rochester	NY	14642
University of South Alabama Cardiology Dept.	2451 Fillingim Street		Mobile	AL	36617
University of Tennessee Medical Center	1924 Alcoa Highway		Knoxville	TN	37920-6999

University of Texas Medical Branch at Galveston	301 University Boulevard		Galveston	TX	77555-0294
University of Texas Southwestern-University Hospital	5323 Harry Hines Boulevard		Dallas	TX	75390-9013
University of Toledo Medical Center	3065 Arlington Avenue	DH2261	Toledo	OH	43614
University of Utah Hospital and Clinic Division of	50 North Medical Drive		Salt Lake City	UT	84132
University of Virginia Medical Center	PO Box 800679		Charlottesville	VA	22908-0679
University of Washington Medical Center	1959 NE Pacific Street		Seattle	WA	98195-6422
University of Wisconsin Hospital & Clinics	600 Highland Avenue MC 3204		Madison	WI	53792
UPMC Passavant Hospital	9100 Babcock Boulevard		Pittsburgh	PA	15237
UPMC Presbyterian Hospital	200 Lothrop Street		Pittsburgh	PA	15213
UPMC Shadyside Hospital	5230 Centre Avenue		Pittsburgh	PA	15232
Upper Chesapeake Medical Center, Inc.	500 Upper Chesapeake Drive		Bel Air	MD	21014
Upstate Medical University(SUNY)	750 East Adams Street		Syracuse	NY	13120
USC University Hospital	1500 San Pablo Street		Los Angeles	CA	90033
Utah Valley Regional Medical Center	1034 North 500 West		Provo	UT	84604
Val Verde Regional Medical Center	801 Bedell Avenue		Del Rio	TX	78840
Valley Baptist Medical Center	2101 Pease Street		Harlingen	TX	78550
Valley Baptist Medical Center-Brownsville	1040 W. Jefferson Street		Brownsville	TX	78540
Valley Care Medical Center	1111 East Stanley Boulevard		Livermore	CA	94550
Valley Hospital Medical Center	620 Shadow Lane		Las Vegas	NV	89106
Valley Medical Center	400 South 43rd Street		Renton	WA	98058
Valley Presbyterian Hospital	15107 Vanowen Street		Van Nuys	CA	91405
Valley Regional Medical Center	100 Unit A East Alton Gloor Boulevard		Brownsville	TX	78526
Vanderbilt Heart Institute	1215 21st Avenue	MCE 5th Floor	Nashville	TN	37235

Vaughan Regional Medical Center	1015 Medical Center Parkway		Selma	AL	36701
VCU-Medical College Of Virginia	PO Box 980036		Richmond	VA	23298
Venice Regional Medical Center	540 The Rialto		Venice	FL	34285
Verdugo Hills Hospital	1812 Verdugo Boulevard		Glendale	CA	91208
Via Christi Wichita Health Network	929 N. St. Francis Street		Wichita	KS	67214
Virginia Hospital Center	1701 N. George Mason Drive		Arlington	VA	22205-3698
Virginia Mason Medical Center	1100 Ninth Avenue	X3-CVL	Seattle	WA	98111
W.A. Foote Memorial Hospital	205 N. East Avenue		Jackson	MI	49201
Wadley Regional Medical Center	1000 Pine Street		Texarkana	TX	75501
WakeMed Cary Hospital	3128 Smoketree Boulevard		Raleigh	NC	27518
WakeMed Raleigh Campus	3000 New Bern Avenue		Raleigh	NC	27610
Walker Regional Medical Center	3400 Highway 78 E		Jasper	AL	35501
Washington Adventist Hospital	7600 Carroll Avenue		Takoma Park	MD	20912
Washington County Hospital Wroth Memorial Library	251 East Antietam Street		Hagerstown	MD	21740
Washington Hospital	2000-Mowry Avenue		Fremont	CA	94538
Washington Hospital Center	110 Irving Street, NW Room 5A14		Washington	DC	20010
Washington Regional Medical Center	1125 N College Avenue		Fayetteville	AR	72703-1994
Waterbury Hospital	PO Box 2153		Waterbury	CT	06722
Watsonville Community Hospital	75 Nielson Street		Watsonville	CA	95076
Waukesha Memorial Hospital	725 American Avenue		Waukesha	WI	53188
Weiss Memorial Hospital	4646 N. Marine Drive		Chicago	IL	60640
Wellmont Holston Valley Medical Center	130 W. Ravine Street		Kingsport	TN	37664
Wellstar Cobb Hospital	531 Roselane Street		Marietta	GA	30060
Wesley Medical Center	550 N. Hillside Street		Wichita	KS	67214
Wesley Medical Center	5001 Hardy Street		Hattiesburg	MS	39402
West Florida Hospital	8383 N. Davis Highway		Pensacola	FL	32514
West Hills Hospital	7300 Medical Center Drive		West Hills	CA	91307
West Houston Medical Center	12141 Richmond Avenue		Houston	TX	77082
West Jefferson Medical Center	1101 Medical Center Boulevard		Marrero	LA	70072

West Suburban Medical Center	3 Erie Court		Oak Park	IL	60302
West Virginia University Hospitals Inc	Box 8003	Medical Center Drive	Morgantown	WV	26506-8003
Westchester County Medical Center	95 Grasslands Road, Suite 114		Valhalla	NY	10595
Western Arizona Regional Medical Center	2735 Silver Creek Road		Bullhead City	AZ	86442
Western Baptist Hospital	2501 Kentucky Avenue		Paducah	KY	42003
Western Medical Center Anaheim	1025 South Anaheim Boulevard		Anaheim	CA	92805
Western Medical Center Santa Ana	1001 North Tustin Avenue		Santa Ana	CA	92705
Western Plains Medical Center	3001 Avenue A		Dodge City	KS	67801
Westside Regional Medical Center	8201 West Broward Boulevard		Plantation	FL	33324
Wheaton Franciscan Healthcare-All Saints, Inc.	WFH Clinical Data, 5000 West Chambers Street, M229	5000 West Chambers Street, M229	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-St. Francis, Inc.	WFH Clinical Data, 5000 West Chambers Street, M229	5000 West Chambers Street, M229	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-St. Joseph, Inc.	WFH Clinical Data 5000 West Chambers Street, M229	5000 West Chambers Street, M229	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-The WI Heart Hospital	WFH Clinical Data, 5000 West Chambers Street, M229	5000 West Chambers Street, M229	Milwaukee	WI	53210
Wheeling Hospital	1 Medical Park		Wheeling	WV	26003
White County Medical Center	3214 E. Race Avenue		Searcy	AR	72143-4810
White Memorial Medical Center	1720 Cesar Chavez Avenue		Los Angeles	CA	90033
White River Medical Center	1710 Harrison Street		Batesville	AR	72501
William Beaumont Hospital	3601 West Thirteen Mile Road		Royal Oak	MI	48073
William Beaumont Hospital	44201 Dequindre Road		Troy	MI	48085
William W. Backus Hospital	326 Washington Street		Norwich	CT	06360
Williamsport Hospital and Medical Center	777 Rural Avenue		Williamsport	PA	17701

Willis-Knighton Medical Center	2600 Greenwood Road		Shreveport	LA	71103
Wilson Memorial Hospital	915 West Michigan Street		Sidney	OH	45365
Wilson N. Jones Medical Center	500 N. Highland Avenue		Sherman	TX	75092
Winchester Medical Center, Inc.	220 Campus Boulevard	Suite 313	Winchester	VA	22601
Winter Haven Hospital	20005 Avenue F Northeast		Winter Haven	FL	33881
Winthrop University Hospital	259 First Street		Mineola	NY	11501
Wishard Health Services Attn: A/P	1001 W. 10th Street		Indianapolis	IN	46202
Woman's Christian Assoc. Hospital	207 Foote Avenue		Jamestown	NY	14701
Woodland Heights Medical Center	505 S. John Redditt Drive		Lufkin	TX	75904
Wuesthoff Health System	110 Longwood Avenue		Rockledge	FL	32956-5002
Wyckoff Heights Medical Center	374 Stockholm Street		Brooklyn	NY	11237
Wyoming Medical Center	1233 East 2nd Street		Casper	WY	82601-2988
Wyoming Valley Health Care System	575 North River Street		Wilkes-Barre	PA	18764
Yakima Regional Medical Center/Cardiac Center	110 South Ninth Avenue		Yakima	WA	98902
Yakima Valley Memorial Hospital	2811 Tieton Drive		Yakima	WA	98902
Yale New Haven Hospital	20 York Street		New Haven	CT	65104
Yavapai Regional Medical Center	1003 Willow Creek Road		Prescott	AZ	86301
York Hospital	15 Hospital Drive		York	ME	03909
York Hospital	1001 South George Street		York	PA	17405
Yuma Regional Medical Center	2400 S. Avenue A		Yuma	AZ	85364

Addendum X
Active CMS Coverage-Related Guidance Documents
[April Through June 2007]

On September 24, 2004, we published a notice in the **Federal Register** (69 FR 57325), in which we explained how we would develop coverage-related guidance documents. These guidance documents are required under section 731 of the MMA. In our notice, we committed to the public that, "At regular intervals, we will update a list of all guidance documents in the **Federal Register**."

Addendum X includes a list of active CMS guidance documents as of the ending date of the period covered by this notice. To obtain full-text copies of these documents, visit the CMS Coverage Web site at http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcd_1.

Document Name: Factors CMS Considers in Commissioning External Technology Assessments
Date of Issuance: April 11, 2006

Document Name: Factors CMS Considers in Opening a National Coverage Determination
Date of Issuance: April 11, 2006

Document Name: (Draft) Factors CMS Considers in Referring Topics to the Medicare Coverage Advisory Committee
Date of Issuance: March 9, 2005

Document Name: National Coverage Determinations with Data Collection as a Condition of Coverage: Coverage With Evidence Development
Date of Issuance: July 12, 2006

Addendum XI
List of Special One-Time Notices Regarding National Coverage Provisions
[April Through June 2007]

As medical technologies, the contexts under which they are delivered, and the health needs of Medicare beneficiaries grow increasingly complex, our national coverage determination (NCD) process must adapt to accommodate these complexities. As part of this adaptation, our national coverage decisions often include multi-faceted coverage determinations, which may place conditions on the patient populations eligible for coverage of a particular item or service, the providers who deliver a particular service, or the methods in which data are collected to supplement the delivery of the item or service (such as participation in a clinical trial).

We outline these conditions as we release new or revised NCDs. However, details surrounding these conditions may need to be shared with the public as "one-time notices" in the **Federal Register**. For example, we may require that a particular medical service may be delivered only in the context of a CMS-recognized clinical research study, which was not named in the NCD itself. We would then use Addendum XI of this notice, along with our coverage Web site at http://www.cms.hhs.gov/coverage, to provide the public with information about the clinical research study that it ultimately recognizes.

Addendum XI includes any additional information we may need to share about the conditions under which an NCD was issued as of the ending date of the period covered by this notice.

There were no Special One-Time Notices Regarding National Coverage Provisions published this quarter.

Addendum XII-National Oncologic PET Registry (NOPR)

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the Registry. The following facilities have met the CMS's requirements for performing PET scans under National Coverage Determination CAG-00181N.

Facility Name	Provider Number	Date Approved	State	Other Information
Barnes-Jewish Hospital Barnes-Jewish Plaza Mailstop # 90-72-374 St. Louis, MO 63110	E40080o	03/07/2006	MO	
Duke University Medical Center PET Facility Room 0402 Duke So. Durham, NC 27710	34003	03/07/2006	NC	Yellow Zone Box 3949
VCU Health System-Molecular Imaging Center Dept of Nuclear Medicine -North Hospital 7th Floor Richmond, VA 23298	490032	03/07/2006	VA	1300 East Marshall-PO Box 980001
Acadiana Oncologic Imaging 2311 Kaliste Saloom Lafayette, LA 70508	5CA64	03/06/2006	LA	

Adler Institute for Advanced Imaging 261 Old York Road Suite 106 Jenkintown, PA 19046		03/07/2006	PA	
Advanced Medical Imaging San Saba 215 N San Saba Suite 107 San Antonio, TX 78207	00BC90	03/07/2006	TX	
Advanced Medical Imaging Stone Oak 540 Oak Centre Suite 100 San Antonio, TX 78258	00BC90	03/07/2006	TX	
Advanced Radiological PET Imaging, PC 2334 30th Avenue Astoria, NY 11102	05677	03/07/2006	NY	Lower Level
Akron Regional PET Scan, LLC 3009 Smith Road Suite 350 Akron, OH 44333	AKID01691	03/07/2006	OH	
American Radiology Services-Owings Mills 21 Crossroads Drive, Suite 100 Owings Mills, MD 21117	434L	03/07/2006	MD	

American Radiology Services-Bethesda 6430 Rockledge Drive, Suite 100 Bethesda, MD 20817	G00000	03/07/2006	MD	
American Radiology Services-Waldorf 3510 Old Washington Road Suite 101 Waldorf, MD 20602	435L	03/07/2006	MD	
American Radiology Services-Columbia 8820 Columbia Parkway 100 Columbia, MD 21045	434L	03/07/2006	MD	
American Radiology Services-Frederick 141 Thomas Johnson Drive Suite 170 Frederick, MD 21702	435L	03/07/2006	MD	
American Radiology Services-Timonium 2080 York Road Suite 160 Timonium, MD 21093	434L	03/07/2006	MD	
Angel Williamson Imaging Center-Ft. Walton Beach 1013-D Mar-Walt Drive Ft. Walton Beach, FL 32547	39953A	03/07/2006	FL	

Angel Williamson Imaging Center-Pensacola 5120 Bayou Boulevard Suite 9 Pensacola, FL 32503	39953	03/07/2006	FL	
Edison Imaging Center 3900 Park Avenue Suite 107 Edison, NJ 08820	AS008835	03/07/2006	NJ	
Avon Medical Diagnostic Center 1480 Center Road Suite C Avon, OH 44011	MC4039571	03/07/2006	OH	
Baltimore Imaging Centers 3708 Mountain Road Pasadena, MD 21122	H476	03/07/2006	MD	
Baptist Hospital PET/CT 1000 West Moreno Street Pensacola, FL 32501	100093	03/07/2006	FL	
Bethesda Health City 2623 S Seacrest Boulevard Boynton Beach, FL 33435	40237	03/07/2006	FL	
PET/CT Imaging at White Marsh 9900 Franklin Square Drive Suite D Nottingham, MD 21236	FMNX01	03/07/2006	MD	

Biomedical Research Foundation PET Imaging Center 1505 Kings Highway Shreveport, LA 71103	5D914	03/07/2006	LA	
BodyScan of Louisville LLC 807 Shelbyville Road Suite 201 Louisville, KY 40222	9372701	03/07/2006	KY	
Bradley Regional PET Imaging Cleveland, TN 37311	3373976	03/07/2006	TN	2305 Chambliss Ave NW
PET Imaging Institute of NJ 1608 Rte 88 West Suite 302 Brick, NJ 08724	070684	03/07/2006	NJ	
Broward PET Imaging Center, LLC 4850 W. Oakland Park Boulevard Suite A Fort Lauderdale, FL 33313	E5709	03/07/2006	FL	
Camelback Imaging 15215 S. 48th Street, #110 Phoenix, AZ 85044	100488	03/07/2006	AZ	

California Imaging and Treatment Center 3000 Oak Road, #111 Walnut Creek, CA 95497	ZZZ27175Z	03/07/2006	CA	
Cancer Care Centers of Brevard 1430 S Pine Street Melbourne, FL 32901	39835	03/07/2006	FL	
Center for Medical Imaging-Florida Hospital. 1922 Salk Avenue Tavares, FL 32778	100057	03/07/2006	FL	
Cancer Center of Colorado Springs 320 E. Fontanero Suite 200 Colorado Springs, CO 80907	79804	03/07/2006	CO	
Centro Sononuclear de Rio Piedras 1028 Los Angeles Street. San Juan, PR 00926	83910	03/07/2006	PR	

Chattanooga Imaging East 1710 Gunbarrel Road Chattanooga, TN 37421	3716643	03/07/2006	TN	
Chester County PET Associates 701 East Chester Marshall Street West Chester, PA 19380	085698	03/07/2006	PA	
Cincinnati PET Scan, LLC-Kenwood 7730 Montgomery Road Suite 120 Cincinnati, OH 45236	311754291	03/07/2006	OH	
Cincinnati PET Scan, LLC Monfort Heights 5575 Cheviot Road Cincinnati, OH 45247	311754291	03/07/2006	OH	
Clinical PET of Hernando 4003 Mariner Boulevard Spring Hill, FL 34609	L13228	03/07/2006	FL	
Clinical PET of Citrus 6140 W Corporate Oaks Drive Crystal River, FL 34429	U0121	03/07/2006	FL	

Clinical PET of Lake City 484 SW Commerce Drive Suite 145 Lake City, FL 32025	V2683	03/07/2006	FL	
Clinical PET of Ocala 3143 SW 32nd Avenue, Suite 100 Ocala, FL 34474	E7179	03/07/2006	FL	
Columbus Regional Hospital 2400 East 17th Street Columbus, IN 47201	150112	03/07/2006	IN	
Concord Imaging 18802 Meisner Drive San Antonio, TX 78258	00126Z	03/07/2006	TX	
Dartmouth Hitchcock Medical Center One Medical Center Drive. Lebanon, NH 03756		03/07/2006	NH	
Dedicated PET Imaging 2315 Sunset Boulevard, Suite E Steubenville, OH 43952	01181	03/07/2006	OH	

Diablo Valley Oncology & Hematology Medical Group 3000 Oak Road, #111 Walnut Creek, CA 94597	ZZZ26796Z	03/07/2006	CA	
Diagnostic Imaging at Baywalk 129 1st Avenue N St. Petersburg, FL 33701	00022	03/07/2006	FL	
DMS Imaging 2101 N. University Drive Fargo, ND 58109		03/07/2006	ND	PO Box 8070
Doylestown PET Associates 599 W. State Street Doylestown, PA 18901	059536	03/07/2006	PA	Suite 202
East Bay Medical Oncology-Hematology Assoc., Inc 3000 Oak Road, #111 Walnut Creek, CA 94597	ZZZ267792	03/07/2006	CA	
East River Medical Imaging 519 East 72 Street Suite 103 New York, NY 10021	W11781	03/07/2006	NY	

El Camino Imaging Center 8020 Constitution Place NE Albequerque, NM 87110	237150	03/07/2006	NM	
Elite Imaging, LLC 2845 Aventura Boulevard Suite 145 Aventura, FL 33180	K3535	03/07/2006	FL	
EPIC Imaging Center 233 NE 102nd Avenue Portland, OR 97220	0000WCGNQ	03/07/2006	OR	
Evergreen Radia 11521 NE 128th Street Kirkland, WA 98034	GAB39931	03/07/2006	WA	
Excel Diagnostics Imaging Clinics 9701 Richmond Avenue, Suite 122 Houston, TX 77042	FTA109	03/07/2006	TX	
First Imaging of the Carolinas 30 Memorial Drive Pinehurst, NC 29374	2346997	03/07/2006	NC	
Florida Hospital Advanced Nuclear Imaging PET 328 Spruce Street Orlando, FL 32804	100007	03/07/2006	FL	

Fort Jesse Imaging Center, LLC 2200 Fort Jesse Road Suite 120 Normal, IL 61761	209824	03/07/2006	IL	
Fox Chase Cancer Center 333 Cotman Avenue Philadelphia, PA 19111	390196	03/07/2006	PA	
Frederick Imaging Centers 46B Thomas Johnson Drive Frederick, MD 21702	H476	03/07/2006	MD	
Fusion Diagnostic Group, LLC 1700 California Street Suite 260 San Francisco, CA 94109	00G366470	03/07/2006	CA	
Fusion Imaging Institute 2419 E. Commercial Boulevard Suite 101 Ft. Lauderdale, FL 33308	18281	03/07/2006	FL	
Future Diagnostics Group 254 N. Republic Avenue Joliet, IL 60435	200825	03/07/2006	IL	

Greater Niagra PET, LLC 1 Columbia Drive Suite 3 Niagra Falls, NY 14305	BA0213	03/07/2006	NY	Witmer Park Medical Center
Hematology Oncology Associates of Baton Rouge 4950 Essen Lane Baton Rouge, LA 70809	5C696	03/07/2006	LA	
Gulf Coast Cancer & Diagnostic of Southeast 12811 Beamer Road Houston, TX 77089	149949301	03/07/2006	TX	
Henry Ford, Department of Radiology 2799 W. Grand Boulevard Detroit, MI 48202	230053	03/07/2006	MI	
High Point Regional Health System 601 N. Elm Street High Point, NC 27262	3400040	03/07/2006	NC	
Highlands Oncology Group 3232 N. North Hills Boulevard Fayetteville, AR 27203	5B823	03/07/2006	AR	
Holy Name Hospital 718 Teaneck Road Teaneck, NJ 07666	310008	03/07/2006	NJ	PET/CT Center

Holy Family Memorial Medical Center PO Box 1450 Manitowoc, WI 54221	520107	03/07/2006	WI	2300 Western Ave
Hospital of Saint Raphael 1450 Chapel Street New Haven, CT 05611	070001	03/07/2006	CT	
San Patricio MRI & CT Center 1508 Roosevelt Avenue, Suite 103 San Juan, PR 00920	84997	03/07/2006	PR	
Imaging Center of Hartford Hospital 80 Seymour Street PO Box 5037 Hartford, CT 06102	070025	03/07/2006	CT	
Indian Wells PET/CT Center 74785 Highway 111, #101 Indian Wells, CA 92210	1264523891	03/07/2006	CA	
Imaging Technology Associates 3800 Reservoir Road NW Washington, DC 20007	FDNCX1	03/07/2006	DC	Gorman 2043, PET Scan
San Francisco Magnetic Resonance Center 1180 Post Street San Francisco, CA 94109	ZZZ27498Z	03/07/2006	CA	

Intermountain Medical Imaging 2929 E Magic View Drive Meridian, ID 83642	82-05144-22	03/07/2006	ID	
Jefferson Center City Imaging 850 Walnut Street Philadelphia, PA 19107	66277	03/07/2006	PA	
Kansas City Cancer Center-Kansas 12200 W. 110th Street Overland Park, KS 66210	5650000D	03/07/2006	KS	
Kansas City Cancer Center-Missouri 4881 Goodview Circle Lee's Summit, MO 66064	5650000E	03/07/2006	MO	
Kreitchman PET Center 180 Ft. Washington Avenue, HP3-315 New York, NY 10032	WEM661	03/07/2006	NY	
LakePointe PET 10914 Hefner Pointe Drive Suite 100 Oklahoma City, OK 73120	700522143	03/07/2006	OK	
Lakeshore PET Imaging, LLC 4932 W 95th Street Oak Lawn, IL 60453	200108	03/07/2006	IL	

Larchmont Imaging Associates, LLC 210 Ark Road Mt. Laurel, NJ 08054	517216	03/07/2006	NJ	
Las Cruces PET/CT Imaging 1121 Mall Drive Suite D Las Cruces, NM 88011	300521065	03/07/2006	NM	
Lehigh Valley Diagnostic Imaging PET/CT 1230 S. Cedar Crest Boulevard Suite 104 Allentown, PA 18103	563802	03/07/2006	PA	
LifeScan Louisville, LLC 4046 Dutchmans Lane Louisville, KY 40207	9365601	03/07/2006	KY	
Limerick PET Associates 420 W. Linfield-Trappe Road Limerick, PA 19468	075015	03/07/2006	PA	Suite 3400, Third Floor, Rear

LifeScan Minnesota 6525 France Avenue S Suite 225 Edina, MN 55435	470000014	03/07/2006	MN	
Louisiana PET Imaging of Alexandra, LLC 5419 A Jackson Street Exit Alexandria, LA 71303	5C743	03/07/2006	LA	
LMR PET 12600 Creekside Lane Ft. Meyers, FL 33919	E5725	03/07/2006	FL	
Louisiana PET Imaging of Lake Charles, LLC 1750 Ryan Street Lake Charles, LA 70601	5C905	03/07/2006	LA	
Insight Diagnostic Center-Forest Lane 11617 N. Central Expressway, #132 Dallas, TX 75243	FTA016	03/07/2006	TX	
MDI of Thousand Oaks 300 Lombard Street Thousand Oaks, CA 91360	W14186	03/07/2006	CA	
Meadowbrook PET Associates 1695 Huntington Pike Meadowbrook, PA 19046	064866	03/08/2006	PA	

Medical Imaging of Baltimore 6715 N. Charles Street Baltimore, MD 21204	258L	03/08/2006	MD	
Metabolic Imaging of Laredo 2344 Laguna Del Mar Suites 5 & 6 Laredo, TX 78045	FTN029	03/08/2006	TX	
Methodist Hospital PET Imaging Center 301 W. Huntington Drive Suite 120 Arcadia, CA 91007	9511643336	03/08/2006	CA	
Metro Region PET Center at Chevy Chase 5454 Wisconsin Avenue Suite 810 Chevy Chase, MD 20815	724811	03/08/2006	MD	
Clinical PET of St. Charles County 1475 Kisker Road St. Charles, MO 63304	000047047	03/08/2006	MO	
Metro Region PET Center at Woodburn Nuclear Medicine 3289 Woodburn Road Annandale, VA 22003	724811	03/08/2006	VA	

Michiana Hematology-Oncology, PC 100 Navarre Place Suite 5550 South Bend, IN 46601	216950	03/08/2006	IN	
Michigan State University-Radiology 184 Radiology Building East Lansing, MI 48824	OC36350	03/08/2006	MI	
Clinical PET of West County 450 N. New Ballas Road Creve Coeur, MO 63141	000093043	03/08/2006	MO	
Modality Integration Services, Inc. 1854 SW Greenway Circle West Linn, OR 97068		03/08/2006	OR	
Molecular Imaging Center 1733 Curie Drive Suite 305 El Paso, TX 79912	00315U	03/08/2006	TX	
Molecular Imaging of Suburban Chicago, LLC 908 N. Elm Street Suite 110 Hinsdale, IL 60521	212300	03/08/2006	IL	

Montclair Road Imaging LLC 924 Montclair Road Suite 108 Birmingham, AL 35213	000056277	03/08/2006	AL	
Montefiore Medical Center 1695A Eastchester Road Bronx, NY 10461	W06552	03/08/2006	NY	
Neurodiagnostics, PSC 1725 Harrodsburg Road Suite 100 Lexington, KY 40504	0406	03/08/2006	KY	
New Century Imaging 555 Kinderkamack Road Oradel, NJ 07649	085146	03/08/2006	NJ	
Newport Diagnostic Center 1605 Avocado Avenue Newport Beach, CA 92660	W13396	03/08/2006	CA	
Next Generation Radiology PET/CT 560 Northern Boulevard Suite 111 Great Neck, NY 11021	WR6091	03/08/2006	NY	
North Valley MRI and CT 1638 Esplanade Chico, CA 95926	ZZZ247802	03/08/2006	CA	

Northwest Alabama Cancer Center Radiology Services 302 W. Dr. Hicks Boulevard Florence, AL 35630	051552219	03/08/2006	AL	
Northern Kentucky PET Scan, LLC 651 Centre View Boulevard Crestview Hills, KY 41017	311754291	03/08/2006	KY	
Northwest Cancer Center 17323 Red Oak Drive Houston, TX 77090	00D29C	03/08/2006	TX	
Northwestern Memorial Hospital 251 East Huron Street Chicago, IL 60611	140281	03/08/2006	IL	Galter 8-113
Northern Shared Medical Services-Atlantic, IA 1501 East Tenth Street Atlantic, IA 50022	I16068	03/08/2006	IA	Cass County Memorial Hospital
Northern Shared Medical Services-Audubon, IA 515 Pacific Street Audubon, Iowa 50025	I16068	03/08/2006	IA	Audobon County Memorial Hospital
Northern Shared Medical Services-Beloit, KS 400 West Eighth Beloit, KS 67420	130618	03/10/2006	KS	Mitchell County Hospital

Northern Shared Medical Services-Bloomfield, IA 507 North Madison Street Bloomfield, IA 52537	I16068	03/10/2006	KS	Davis County Hospital
Northern Shared Medical Services-Carrollton, MO 1502 North Jefferson Carrollton, MO 64633	000047013	03/10/2006	MO	Carroll County Memorial Hospital
Northern Shared Medical Services-Centerville, IA 1st St. Joseph Drive Centerville, IA 52544	I16068	03/10/2006	IA	Mercy Medical Center
Northern Shared Medical Services-Carthage, IL 160 S. Adams Street Carthage, IL 62321	208196	03/10/2006	IL	Memorial Hospital
Northern Shared Medical Services-Clarinda, IA 823 S. 17th Street Clarinda, IA 51632	I16068	03/10/2006	IA	Clarinda Regional Health Center
Northern Shared Medical Services-Chanute, KS 629 South Plummer Chanute, KS 66720	130618	03/10/2006	KS	Neosho Memorial Regional Medical Center

Northern Shared Medical Services-Edwardsville, IL 1121 University Drive Edwardsville, IL 62025	208196	03/10/2006	IL	Edwardsville Health Center
Northern Shared Medical Services-El Dorado, AR 700 West Grove Street. El Dorado, AR 71730	5F168	03/10/2006	AR	Medical Center of South Arkansas
Northern Shared Medical Services-Farmington, MO 1212 Weber Road Farmington, MO 63640	000047013	03/10/2006	MO	Mineral Area Regional Medical Center
Northern Shared Medical Services-Janesville, WI 1321 Creston Park Drive Janesville, WI 53545	000092420	03/10/2006	WI	Janesville Occupational Health & Medical Center
Northern Shared Medical Services-Hiawatha, KS 300 Utah Street Hiawatha, KS 66434	130618	03/10/2006	KS	Hiawatha Community Hospital
Northern Shared Medical Services-Keokuk, IA 1600 Morgan Street Keokuk, IA 52632	I16068	03/10/2006	IA	Keokuk Area Hospital

Northern Shared Medical Services-Macomb, IL 525 East Grant Street Macomb, IL 61455	208196	03/10/2006	IL	McDonough District Hospital
Northern Shared Medical Services-Mexico, MO 620 East Monroe Street Mexico, MO 65265	000047013	03/10/2006	MO	Audrain Medical Center
Northern Shared Medical Services-Moberly, MO 1515 Union Avenue Moberly, MO 65270	000047013	03/10/2006	MO	Moberly Regional Medical Center
Northern Shared Medical Services-Mountain Home, AR 899 Burnett Drive Mountain Home, AR 72653	5F168	03/10/2006	AR	Cogburn Cancer Clinic
Northern Shared Medical Services-Poplar Bluff, MO 221 Physicians Park Drive Poplar Bluff, MO 63901	000047013	03/10/2006	MO	Poplar Bluff Medical Partners

Northern Shared Medical Services-Perryville, MO 434 North West Street Perryville, MO 63775	000047013	03/10/2006	MO	Perry County Memorial Hospital
Northern Shared Medical Services-Rolla, MO 1000 West Tenth Street Rolla, MO 65401	000047013	03/10/2006	MO	Phelps Co Regional Medical Center
Northern Shared Medical Services-Virginia, MN 901 Ninth Street North Virginia, MN 55792	470000057	03/10/2006	MN	Virginia Regional Medical Center
Northern Shared Medical Services-Russellville, AR 2504 West Main Street Russellville, AR 72801	5F168	03/10/2006	AR	Russellville Land Co
Northern Shared Medical Services-West Plains, MO 1100 Kentucky Avenue West Plains, MO 65775	000047013	03/10/2006	MO	Ozarks Medical Center
Oakwood Hospital Medical Center 18101 Oakwood Boulevard Dearborn, MI 48124	230020	03/10/2006	MI	

Oakwood Southshore Medical Center 5450 Fort Street Trenton, MI 48183	230176	03/10/2006	MI	
Ocean Medical Imaging Center 21 Stockton Drive Toms River, NJ 08755	158432	03/10/2006	NJ	
Orange County Regional PET Center, LLC 16300 Sand Canyon Avenue Suite 103 Irvine, CA 92618	TP018	03/10/2006	CA	
Orange Advanced Imaging Center 230 Main Street, #101 Orange, CA 92868	TP016A	03/10/2006	CA	
Pacific Coast Imaging-Irvine 250 E Yale Loop Suite A Irvine, CA 92604	WG87478B	03/10/2006	CA	
Pacific Coast Imaging-Newport 3300 West Coast Highway Newport Beach, CA 92663	WG87478	03/10/2006	CA	
Pacific Imaging and Treatment Center 5395 Ruffin Road Suite 202 San Diego, CA 92123	TP126	03/10/2006	CA	

Palm Beach Cancer Institute 1395 State Road 7 Suite 310 Wellington, FL 33414	34754	03/10/2006	FL	
Pennsylvania PET Associates 800 Spruce Street Philadelphia, PA 19107	066282	03/10/2006	PA	Second Floor, Widener Building
PET Center of Western NY 127 North Street Batavia, NY 14020	187140	03/10/2006	NY	
Pet Imaging at CDR 7600 N 15th Street, Suite 102 Phoenix, AZ 85020	WCFDG	03/10/2006	AZ	
PET Imaging at the Lake 5000 Hennessy Boulevard Baton Rouge, LA 70809	5C868	03/10/2006	LA	
PET Imaging Center at Harford County 602 S Atwood Road Suite 201 Bel Air, MD 21014	FMN006	03/10/2006	MD	
PET Imaging Institute of South Florida- East 150 N 35th Avenue, 665 Hollywood, FL 33021	E3783	03/10/2006	FL	

PET Imaging Institute of South Florida-West 603 N Flamingo Road S-155 Pembroke Pines, FL 33028	E3783	03/10/2006	FL	
PET Scan Arizona-Peoria 13460 N 94th Drive Suite J1 Peoria, AZ 85381	75400	03/10/2006	AZ	
PET Scan Arizona-Phoenix 6036 N 19th Avenue Suite 305 Phoenix, AZ 85015	66860	03/10/2006	AZ	
PET/CT Diagnostic Medical Imaging, PC 1200 Waters Place Suite M108 Bronx, NY 10461	W31091	03/10/2006	NY	
Precision Imaging 4416 East West Highway Suite 410 Bethesda, MD 20814	FMN005	03/10/2006	MD	
Preferred PET Imaging of Kansas, LLC 928 N. St. Francis Street Wichita, KS 67214	110693	03/10/2006	KS	

Premium Diagnostics Center 5319 Hoag Drive Suite 130 Elyria, OH 44035	ID01851	03/10/2006	OH	
PET Center Ft. Worth 800 W. Magnolia Avenue Fort Worth, TX 76104	0J062	03/10/2006	TX	Suite 100
Radiology Associates, LLP 6001 S. Staples Street Corpus Christi, TX 78413	00E816	03/10/2006	TX	
S. Arlington Imaging Center 4601 Matlock Road Arlington, TX 76018	0J062	03/10/2006	TX	
Radiology Group Imaging Center, LLC 1970 E. 53rd Street Davenport, IA 52807	16031	03/10/2006	IA	
PET/CT Scan Center Pembroke 11325 Pembroke Square Suite 116 Waldorf, MD 20603	521454775	03/10/2006	MD	
New York MedScan 751 Second Avenue New York, NY 10017	978701	03/10/2006	NY	

Rex Healthcare 4420 Lake Boone Trail Raleigh, NC 27607	340114	03/10/2006	NC	
San Fernando Regional PET Center 6855 Noble Avenue Van Nuys, CA 91405	TP078	03/10/2006	CA	
PET/CT Imaging Center of Northwest Florida 5149 North 9th Avenue Suite 124 Pensacola, FL 32504	U4696	03/10/2006	FL	
Saint Joseph's Hospital-Nuclear Medicine 611 St. Joseph Avenue Marshfield, WI 54449	520037	03/10/2006	WI	
Shared PET Imaging, LLC-Brooklyn NY 6300 Eight Avenue Brooklyn, NY 11220	97Z661	03/10/2006	NY	
SC Cancer Specialists 25 Hospital Center Boulevard #301 Hilton Head Island, SC 29926	1285633289	03/10/2006	SC	
Shared PET Imaging, LLC-Granger IN 6901 N. Main Street Granger, IN 46530	232800	03/10/2006	IN	

University Hospital-Cincinnati Eden Avenue & Albert Sabin Way Cincinnati, OH 45219		03/10/2006	OH	
Shared PET Imaging, LLC - Marion OH 1050 Delaware Avenue Marion, OH 43302	ID01511	03/10/2006	OH	
Shared PET Imaging, LLC-Terre Haute IN 3702 South Fourth Street Terre Haute, IN 47802	201320	03/10/2006	IN	
South Jersey Radiology Associates, PA 100 Carnie Boulevard Suite B5 Voorhees, NJ 08043	S0429966	03/10/2006	NJ	
Southwest PET/CT Institute-Tucson 3503 N. Campbell Suite 155 Tucson, AZ 85719	1396736922	03/10/2006	AZ	
Southwest PET/CT Institute-Yuma 1951 W. 25th Street Suite G Yuma, AZ 85364	06077	03/10/2006	AZ	
St. Francis Health Center 1700 SW 7th Street Topeka, KS 66606	17-0016	03/10/2006	KS	

Southwoods PET Scan, LLC 250 Debartolo Place Building B Youngstown, OH 44512	PCN05210036	03/10/2006	OH	
St. Louis PET Centers, LLC 12637 Olive Boulevard Creve Coeur, MO 63376	1861470734	03/10/2006	MO	
St. Vincent's PET Center, LLC 2660 10th Avenue S, POBI Suite 104 Birmingham, AL 35205	051555054	03/10/2006	AL	
Sun Molecular Imaging -Peoria 13090 N. 94th Drive #103 Peoria, AZ 85381	71585	03/10/2006	AZ	
Sun Molecular Imaging -Sun City West 13909 W Camino Del Sol, #101 Sun City West, AZ 85375	71585	03/10/2006	AZ	
Tarzana Advanced Imaging 5536 Reseda Boulevard Tarzana, CA 91356	TP051A	03/10/2006	CA	

The Methodist Hospital PET Center 6565 Fannin Street MBI-066 Houston, TX 77030	450358	03/10/2006	TX	
Texarkana PET Imaging Institute, LP 1929 Moores Lane Texarkana, TX 75503	FTN008	03/10/2006	TX	
The PET/CT Center of North Florida 5742 Booth Road Jacksonville, FL 32207	K7038P	03/10/2006	FL	
The Washington Hospital 155 Wilson Ave Washington, PA 15301	390042	03/10/2006	PA	
The PET/CT Scanning Center 235 18th Street, SE Hickory, NC 28602	2881788	03/10/2006	NC	
Thompson Cancer Survival Center PET Imaging Center 9711 Sherrill Boulevard Knoxville, TN 37923	3791106	03/10/2006	TN	
Thunderbird MRI and PET Center 6591 W. Thunderbird Road Suite A-1 Glendale, AZ 85306	79467	03/10/2006	AZ	

Tower Imaging Roxsan 465 N. Roxbury Drive Suite 101 Beverly Hills, CA 90210	TP114	03/10/2006	CA	
Tower Hematology Oncology Medical Group 9090 Wilshire Boulevard Suite 200 Beverly Hills, CA 90211	W11793	03/10/2006	CA	
TRA Medical Imaging 2202 S Cedar Suite 200 Tacoma, WA 98405	001055600	03/10/2006	WA	
Trident PET of Fayette 1275 Highway 54 West Suite 102 Fayetteville, GA 30214	47BBBJJ	03/10/2006	GA	
Trident PET of Gwinnett 545 Old Norcross Road Lawrenceville, GA 30045	47BBBGX	03/10/2006	GA	Suite 200
Trident PET of Savannah 7135 Hodgson Memorial Drive Savannah, GA 31406	47BBBKP	03/10/2006	GA	Suite 10A

Tristan Associates 4520 Union Deposit Road Harrisburg, PA 17111	112344	03/10/2006	PA	
Union Square Diagnostic Imaging 144 Fourth Avenue New York, NY 10003	WR7502	03/10/2006	NY	
UCLA–Dept. of Molecular & Medical Pharmacology 10833 Le Conte Avenue Los Angeles, CA 90095	HW13029	03/10/2006	CA	AR-115-CHS
UCLA-Dept. of Molecular & Medical Pharmacology 10833 Le Conte Avenue Los Angeles, CA 90095	HW13029	03/10/2006	CA	AR-115-CHS
University Nuclear Medicine, Inc. 105 Parker Hall Buffalo, NY 14214	14414A	03/10/2006	NY	3435 Main St
University Radiology Group 75 Veronica Avenue Suite 102 Somerset, NJ 08873	425699	03/10/2006	NJ	

Anne Arundel Medical Center 2001 Medical Parkway Annapolis, MD 21401	210023	03/10/2006	MD	
US Imaging Center Corp., LLC 842 Sunset Lake Boulevard Suite 301 Venice, FL 34292	U0331	03/10/2006	FL	
USC PET Imaging Science Center 1510 San Pablo Street Suite 350 Los Angeles, CA 90033	W11874	03/10/2006	CA	
Rolling Oaks Radiology 415 Rolling Oak Drive, Suite 160 Thousand Oaks, CA 91361	W10746	03/10/2006	CA	
Vero Radiology Associates, Inc. 777 37th Street Suite A-103 Vero Beach, FL 32960	97445	03/10/2006	FL	
Ventura Coast Imaging Center 4601 Telephone Road Suite 101 Ventura, CA 93003	W11335	03/10/2006	CA	

Washington Imaging Services, LLC 1135-116th Avenue, NE Bellevue, WA 98004	GAB23386	03/10/2006	WA	
Washington Hospital Center 110 Irving Street, NW Washington, DC 20010	090011	03/10/2006	DC	
Washoe Med Imaging Services at 75 Kirman 75 Kirman Avenue Reno, NV 89502	WCHBB	03/10/2006	NV	
Wesley Long Hospital-Moses Cone Health System 501 North Elam Avenue Greensboro, NC 27403	34-0091	03/10/2006	NC	
Westcoast Radiology 36463 US Highway, 19 N. Palm Harbor, FL 34684	E4187	03/10/2006	FL	
Western Washington Oncology 4525 3rd Avenue SE Lacey, WA 98503	1497749642	03/10/2006	WA	
Windber Medical Center 600 Somerset Avenue Windber, PA 15963	390112	03/10/2006	PA	

Wyoming Valley PET Associates 190 Welles Street Forty Fort, PA 18704	045012	03/10/2006	PA	
Youngstown Regional PET Scan 850 McKay Court Youngstown, OH 44512	Y0ID0174	03/10/2006	OH	
X-RAY Associates at Santa Fe 490 A West Zia Road Suite 130 Santa Fe, NM 87505	2258263	03/10/2006	NM	
Sibley Memorial Hospital 5255 Loughboro Road, NW Washington, DC 20016	090005	03/10/2006	DC	
Lerman Diagnostic Imaging 6511 Fort Hamilton Parkway Brooklyn, NY 11215	16H771	03/10/2006	NY	
XRC Medical Imaging 53940 Carmichael Drive South Bend, IN 46635	187390	03/10/2006	IN	
St. Luke's Hospital 1026 A. Avenue N.E. Cedar Rapids, IA 52406-3026	160045	03/10/2006	IA	P.O. Box 3026

University Imaging at Science Park 110 Science Parkway Suite 100 Rochester, NY 14620	16624A	03/10/2006	NY	
Kadlec Medical Center/Nuclear Medicine Dept. 945 Goethals Street Richland, WA 99352	1972507580	03/10/2006	WA	
Central Georgia PET, LLC 1650 Hardmon Macon, GA 31201	47BBBKC	03/10/2006	GA	
PET/CT Imaging at Swedish Cancer Institute 1221 Madison Street First Floor Seattle, WA 98104	8857387	03/10/2006	WA	
National PET Scan Duval, LLC 425 North Lee Street Jacksonville, FL 32204	E7348	03/10/2006	FL	
National PET Scan Pinellas, LLC 805 Executive Center Drive W St. Petersburg, FL 33702	E7503	03/10/2006	FL	
National PET Scan Dade, LLC 7867 North Kendall Drive Suite 121 Miami, FL 33156	E5427	03/10/2006	FL	

National PET Scan Broward, LLC 6290 North Federal Highway Fort Lauderdale, FL 33308	E5432	03/10/2006	FL	
Scottsdale Medical Imaging, Ltd. 7624 E. Indian School Road Suite 109-1 Scottsdale, AZ 85251	WCFKX	03/10/2006	AZ	
Lakes Regional General Hospital 80 Highland Street Laconia, NH 03246	300005	03/10/2006	NH	
Northern California PET Imaging Center 3195 Folsom Boulevard Sacramento, CA 95816	ZZZ15725Z	03/10/2006	CA	
Northern California PET Imaging Center-Mobile 3195 Folsom Boulevard Sacramento, CA 95816	ZZZ25157Z	03/10/2006	CA	
Northern California PET Imaging Center-VAPA 3801 Miranda Avenue Palo Alto, CA 94304	ZZZ21308Z	03/10/2006	CA	

Advanced Medical Imaging 3548 Route 9 South Old Bridge, NJ 08857	595865	03/10/2006	NJ	
St. Vincent Infirmary Medical Center PET/CT Center 2 St. Vincent Circle Little Rock, AR 72205-5499	04-0007	03/10/2006	AR	
Lincoln Trail Diagnostics 1111 Woodland Drive Elizabethtown, KY 42701	470001408	03/10/2006	KY	
LifeScan Imaging 607 Clifty Street Somerset, KY 42503	7614	03/10/2006	KY	
St. John's Hospital Springfield Nuclear Medicine 1235 E. Cherokee Street Springfield, MO 65804	26-0065	03/10/2006	MO	
City of Hope 1500 E. Duarte Road Duarte, CA 91010	050146	03/10/2006	CA	Dept. of Nuclear Medicine
Hackettstown Regional Medical Center 651 Willow Grove Street Hackettstown, NJ 07840	310115	03/10/2006	NJ	

Imaging Alliance-Nashville PET, LLC 52 White Bridge Road. Nashville, TN 37205	3791068	03/10/2006	TN	
Molecular Imaging of Bradenton 2301 60th Street Court West Suite A Bradenton, FL 34209	U1334	03/10/2006	FL	
Molecular Imaging of Charlotte County 4130 Tamiami Trail Port Charlotte, FL 33952	U1934	03/10/2006	FL	
Imaging For Life 3830 Bee Ridge Road Suite A Sarasota, FL 34233	E6704	03/10/2006	FL	
Seattle Nuclear Medicine/Ultrasound Associates 1229 Madison Street Suite 1050 Seattle, WA 98104	G000158400	03/10/2006	WA	
Columbus Circle Imaging 1790 Broadway, 9th Floor Yonkers, NY10704	W00691	03/10/2006	NY	
Bryn Mawr Imaging Center-PET 100 Lancaster Avenue Wynnewood, PA 19096	473120	03/10/2006	PA	

Beth Israel Deaconess Medical Center 330 Brookline Avenue Boston, MA 02215	220086	03/10/2006	MA	
Boca Raton Community Hospital 800 Meadows Road Boca Raton, FL 33486	100168	03/10/2006	FL	
Centro Tomograficio de PR, Inc. 1409 Ashford Avenue San Juan, PR 00907	0087834	03/10/2006	PR	
Comprehensive Cancer Centers of Nevada 3730 S. Easton Las Vegas, NV 89109	WCHCX	03/10/2006	NV	
Grossman Imaging Center of CMH 2151 E. Gonzales Road Suite 101. Oxnard, CA 93036	W17252	03/10/2006	CA	
Cookeville Regional Medical Center 142 W. 5th Street Cookeville, TN 38501	440059	03/10/2006	TN	
Instituto Central de Diagnostico, Inc. 1er. Floor Oncologic Hospital San Juan, PR 00928	007835	03/10/2006	PR	PR Medical Center

Mercy Medical Center-Cedar Rapids 701 Tenth Street SE Cedar Rapids, IA 52403	16-0079	03/10/2006	IA	
Midwest Radiologic Imaging-1144217241 4087 Gateway Boulevard Newburgh, IN 47630	1144217241	03/10/2006	IN	
Miami Valley Hospital 1 Wyoming Street Dayton, OH 45409	360051	03/10/2006	OH	
Midwest Radiologic Imaging-214790 4087 Gateway Boulevard Newburgh, IN 47630	214790	03/10/2006	IN	
Midwest Regional PET/CT Center 6001 S. Sharon Avenue Suite #2 Sioux Falls, SD 57108	41406	03/10/2006	SD	
Mission Hospital PET Center 222 Asheland Avenue Asheville, NC 28801	3400002	03/10/2006	NC	
Mobile Molecular Imaging, LLC 100 Memorial Hospital Drive Suite 1E Mobile, AL 36608	1003804345	03/10/2006	AL	

Nebraska Health Imaging 7819 Dodge Street Omaha, NE 68114	098975	03/13/2006	NE	
Montgomery Metabolic & Memory Imaging Center 7100 University Ct. Montgomery, AL 36117	057554625	03/13/2006	AL	
Orange County Diagnostic Radiology, Inc. 17150 Euclid Street Suite 101 Fountain Valley, CA 92708	TD057	03/13/2006	CA	
Northwest PET Imaging 265 N. Broadway Portland, OR 97227	105512	03/13/2006	OR	
Nevada Cancer Institute Medical Group One Breakthrough Way, 10441 W. Twain Avenue Las Vegas, NV 89135	100505	03/13/2006	NV	
Positron Emission Tomography Institute at Hampton 5357 Henneman Drive Norfolk, VA 23513	FVN001	03/13/2006	VA	

Positron Imaging Facility 1311 Record Crossing Road Mail Code 9140 Dallas, TX 75235	UT000F626	03/13/2006	TX	
Premier Diagnostic Imaging 10019 Forest Green Boulevard Louisville, KY 40299	9375201	03/13/2006	KY	
Positron PET/CT of the Southern Tier 169 Riverside Drive Binghamton, NY 13905	AA1047	03/13/2006	NY	
Radiology Regional Center, PA, Inc.-Naples 700 Goodlette Road Naples, FL 34102	77185	03/13/2006	FL	
Somascan Plaza, Inc. Suite 405 Torre de Plaza Plaza Las Americas San Juan, PR 00917	0089178	03/13/2006	PR	
Somascan, Inc. Jose Marti #56 San Juan, PR 00917	0082435	03/13/2006	PR	

Southern Indiana Radiological Associates 500 Landmark Avenue Bloomington, IN 47403	214160	03/13/2006	IN	
Southern Illinois Cancer Center 10286 Fleming Road Carterville, IL 62918	643740	03/13/2006	IL	
South Nassau PET One Healthy Way Oceanside, NY 11572	97z851	03/13/2003	NY	
Southwest Diagnostic Center for Molecular Imaging 8440 Walnut Hill Lane Suite 100 Dallas, TX 75231	FTN-015	03/13/2006	TX	
St. Mary's Health Systems 900 E. Oakhill Avenue Knoxville, TN 37917	440120	03/13/2006	TN	
Tower Diagnostic Center 4719 N. Habana Avenue Tampa, FL 33614	00169	03/13/2003	FL	
Torrance Morial Medical Center 3330 Lomita Boulevard Torrance, CA 90505	050351	03/13/2006	CA	

University of Colorado Hospital (AOP) 1635 N. Ursula Street Aurora, CO 80045	06-0024	03/13/2006	CO	
William Beaumont Hospital-Royal Oak 3601 West 13 Mile Road Royal Oak, MI 48073-6769	23030	03/13/2006	MI	
Esther Quijoy Catalya, M.D. 3000 Oak Road #111 Walnut Creek, CA 94597	00A449120	03/13/2006	CA	
Valley PET Institute 311 S. Ham Lane Lodi, CA 95242	00C283720	03/13/2006	CA	
Dan Ben-Zeev, M.D. 3000 Oak Road #111 Walnut Creek, CA 94597	00G129831	03/13/2006	CA	
Midwest Center for Advanced Imaging 1307 Macom Drive Naperville, IL 60564	L72461	03/13/2006	IL	
Crittenton Hospital Medical Center 1101 W. University Drive Rochester, MI 48307	230054	03/13/2006	MI	

Medical Specialists of Palm Beaches, Inc. 5700 Lake Worth Road Suite 204 Lake Worth, FL 33463	33941A	03/13/2006	FL	
PET Medical Imaging Center 3264 North Evergreen Drive Grand Rapids, MI 49525	0P02650	03/13/2006	MI	
Radiology Regional Center, PA, Inc.-RPET 6100 Winkler Road Suite A Fort Myers, FL 33919	77185	03/13/2006	FL	
Good Samaritan Hospital 520 S. 7th Street Vincennes, IN 47591	150042	03/13/2006	IN	
Central Indiana Cancer Center 6845 Rama Drive Indianapolis, IN 46219	065910	03/13/2006	IN	
Decatur PET Imaging 2774 W. Decatur Road Decatur, GA 30033	47BBBLP	03/13/2006	GA	

Community Memorial Hospital, Medical Imaging 855 S. Main Street Oconto Falls, WI 54154	00439MPN	03/13/2006	WI	
Olympic Radiology 2700 Clare Avenue Bremerton, WA 98310	000242100	03/13/2006	WA	
Capitol Imaging 3161 L Street Sacramento, CA 95816	1285615294	03/13/2006	CA	
National Medical Imaging-Bryn Mawr 574 W. Lancaster Avenue Bryn Mawr, PA 19010	024513	03/13/2006	PA	
National Medical Imaging-Langhorne 2 Doublewoods Road Suite B Langhorne, PA 19047	024513	03/13/2006	PA	
National Medical Imaging-Philadelphia 1903-05 South Broad Street Philadelphia, PA 19148	024513	03/13/2006	PA	

University of VA Health System, Radiology 1215 Lee Street Charlottesville, VA 22908	490009	03/13/2006	VA	
Florida Institute for Advanced Diagnostic Imaging 9238 US 19 Port Richey, FL 34668	59-3475930	03/13/2006	FL	
Roseville PET & Nuclear Medicine Imaging 2241 Douglas Boulevard #110 Roseville, CA 95661	1194706689	03/13/2006	CA	
Memorial Sloan Kettering Cancer Center 1275 York Avenue New York, NY 10021	330154	03/13/2006	NY	
Northeast PET Imaging Center 8400 Roosevelt Boulevard Suite 208 Philadelphia, PA 19152	083723	03/13/2006	PA	Medical Arts Center at Parte Ridge
UAMS PET Center 4301 West Markham Street Little Rock, AR 72205	50528	03/13/2006	AR	

Joliet Oncology-Hematology Assoc., Ltd. 1600 W. Route 6 Morris, IL 60450	205474	03/13/2006	IL	
Saint Luke's Hospital 4323 Wornall Road Kansas City, MO 64111	26-0138	03/13/2006	MO	AH Peet Center
Mercy Medical Center 1320 Mercy Drive Canton, OH 44708	360070	03/13/2006	OH	
Dayton Medical Imaging Center 7901 Schatz Pointe Drive Dayton, OH 45459	US1D00231	03/13/2006	OH	
Community Radiology of Virginia 2000 Leatherwood Lane Bluefield, VA 24605	FVA002	03/13/2006	VA	
Bab Radiology-Huntington 75 East Main Street Huntington, NY 11743	W1L612	03/13/2006	NY	

Bab Radiology-Hauppauge 521 Route 111 Suite 312 Hauppauge, NY 11788	W1L601	03/13/2006	NY	
Center for Diagnostic Imaging-37 5775 Wayzata Boulevard #190 St. Louis Park, MN 55416	470000037	03/13/2006	MN	
Center for Diagnostic Imaging 5775 Wayzata Boulevard Suite 190 St. Louis Park, MN 55416	C01307	03/13/2006	MN	
Center for Diagnostic Imaging-Mendota Heights 910 Sibley Memorial Highway Mendota Heights, MN 55118	470000038	03/13/2006	MN	
Huntsville Hospital Imaging Center 1963 Memorial Parkway Huntsville, AL 35801	010039	03/13/2006	AL	
Long Beach PET Imaging Center 2888 Long Beach Boulevard Suite 110 Long Beach, CA 90806	TG167	03/13/2006	CA	

Highway Imaging Associates, LLP 2095 Flatbush Avenue Brooklyn, NY 11234	W10671	03/13/2006	NY	
St. Vincent Hospital PO Box 13508 Green Bay, WI 54307	520075	03/13/2006	WI	
Park South Imaging Center 6215 21st Avenue West #A Bradenton, FL 34209	E1858	03/13/2006	FL	
Mary Bird Perkins Cancer Center 4950 Essen Lane Baton Rouge, LA 70809	57290	03/13/2006	LA	
Boston Diagnostic Imaging 398 Altamonte Drive Altamonte Springs, FL 32701	E3510	03/13/2006	FL	
Sioux Valley Hospital Medical Center 1305 W. 18th Street Sioux Falls, SD 57117	430027	03/13/2000	SD	
Indianapolis Regional PET Scan, LLC 3830 Shore Drive Indianapolis, IN 46254	207260	03/13/2006	IN	

St. Joseph's PET Center 1 Mercy Lane Suite 105 Hot Springs, AR 71913	5C739	03/13/2006	AR	
Hinsdale PET Scan, LLC 812 Ogden Avenue Westmont, IL 60559	206271	03/13/2006	IL	
Del Amo PET Imaging Center 3531 Fashion Way Torrance, CA 90501	TP120	03/13/2006	CA	
North Shore PET Imaging Center 85 Herrick Street Beverly, MA 1915	327110	03/13/2006	MA	Beverly Hospital
Robert D. Russo & Associates Radiology, PC PO Box 6128 Bridgeport, CT 06606	C02013	03/13/2006	CT	
Advanced Medical Specialties 9035 Sunset Drive Suite 102 Miami, FL 33173	K7806	05/03/2006	FL	
Baptist M & S Imaging Center-Downtown 215 E. Quincy Street #100 San Antonio, TX 78215	FTA078	05/03/2006	TX	

Community Cancer Center 545 W. Umpqua Street Roseburg, OR 97470	R116571	05/03/2006	OR	
Baptist M & S Imaging Center 7888 Fredericksburg Road San Antonio, TX 78228	FTA078	05/03/2006	TX	
Evanston Northwestern Healthcare-Highland Park 757 Park Avenue West Highland Park, IL 60035	14-0010	05/03/2006	IL	
Grenada Diagnostic Radiology 1300 Sunset Drive Suite U Grenada, MS 38901	470000034	05/03/2006	MS	
Huntsman Cancer Hospital 2000 Circle of Hope Suite 2121 Salt Lake City, UT 84112-5550	460009	05/03/2006	UT	
High Tech Medical Park 11800 Southwest Highway Palos Heights, IL 60463	0703070	05/03/2006	IL	

Cyrus Diagnostic Imaging, Inc. 165 Waymont Court Lake Mary, FL 32746	40586	05/03/2006	FL	
Indiana Regional PET Imaging 7891 Broadway Suite A Merrillville, IN 46410	229400	05/03/2006	IN	
Lancaster PET Imaging 2100 Harrisburg Pike Lancaster, PA 17601	054504	05/03/2006	PA	
James PET/CT Imaging Center 236 Doan Hall Columbus, OH 43210	360242	05/03/2006	OH	410 w. 10th Ave
Mary Lanning Memorial Hospital 715 N. St. Joseph Avenue Hastings, NE 68901	280032	05/03/2006	NE	
Maplewood Cancer Center-MOHPA 1580 Beam Avenue Maplewood, MN 55109	C01828	05/03/2006	MN	
Titusville Area Hospital 406 W. Oak Street Titusville, PA 16354	390122	05/03/2006	PA	
Memorial Hospital 325 S. Belmont Street York, PA 17403	390101	05/03/2006	PA	

Mercy Regional Health Center 1823 College Avenue Manhattan, KS 66502	17-0142	05/03/2006	KS	
Northshore Regional PET Scan, LLC 1464 Waukegan Road Glenview, IL 60025	206272	05/03/2006	IL	
Northwest Indiana PET/CT Center 1505 S. Calument Road Suites 7 & 8 Chesterton, IN 46304	229810	05/03/2006	AL	
Parkway Ventures, Inc. 9000 Franklin Square Drive Baltimore, MD 21237	FMN002	05/03/2006	MD	Franklin Square Hospital
PET Fusion Imaging 3707 New Vision Drive Fort Wayne, IN 46845	190320	05/03/2006	IN	
River Oaks Imaging & Diagnostics PO Box 4346 Houston, TX 77210	FTA059	05/03/2006	TX	Dept 848
Regional PET Scan, LLC-Beachwood 2000 Auburn Road Beachwood, OH 44122	REID02211	05/03/2006	OH	

Regional PET Scan, LLC-Fairview 20455 Lorain Road Fairview Park, OH 44126	REID02211	05/03/2006	OH	
Regional PET Scan, LLC-Ridgepark 7575 Northcliff Avenue Brooklyn, OH 44144	REID02211	05/03/2006	OH	
Saint Francis Hospital 114 Woodland Street Hartford, CT 06105	07-0002	05/03/2006	CT	
St Nicholas Hospital 3100 Superior Avenue Sheboygan, WI 53081	520044	05/03/2006	WI	
Swedish Medical Center 501 E. Hampton Avenue Englewood, CO 80113	060034	05/03/2006	CO	
St Bernards PET Center 225 E. Jackson Avenue Jonesboro, AR 72401	5C658	05/03/2006	AR	

Toledo Regional PET Scan, LLC 3442 Granite Circle Toledo, OH 43617	T0ID01881	05/03/2006	OH	
University MRI 3848 F.A.U. Boulevard Suite 200 Boca Raton, FL 33431	E1765	05/03/2006	FL	
Tucson PET Imaging 5355 E. Erickson Drive Tucson, AZ 85712	WCBBM	05/03/2006	AZ	
Via Christi Oklahoma Regional Medical Center 1900 N. 14th Street Ponca City, OK 74601	370006	05/03/2006	OK	
Christian Hospital 11133 Dunn Road St Louis, MO 63136	260180	05/03/2006	MO	
DRA Imaging PC 1 Columbia Street Poughkeepsie, NY 12601	W18691	05/03/2006	NY	
Cleveland Clinic Star Imaging 921 Jasonway Avenue Columbus, OH 43214	34-1932969	05/03/2006	OH	
Norman PET Associates, LLC 3750 W. Robinson Street Suite 130 Norman, OK 73072	900522224	05/03/2006	OK	

Rhode Island PET Services–St. Josephs 200 High Service Avenue N Providence, RI 02904	479003556	05/03/2006	RI	
Rhode Island PET Services-South County Hospital 100 Kenyon Avenue Wakefield, RI 02879	479003556	05/03/2006	RI	
Rhode Island PET Services-Roger Williams 825 Chalkstone Avenue Providence, RI 02908	479003556	05/03/2006	RI	
Rhode Island PET Services-Landmark 115 Cass Avenue Woonsocket, RI 02895	479003556	05/03/2006	RI	
Forest City Diagnostic Imaging 735 Perryville Road Rockford, IL 61107	546450	05/03/2006	IL	Lower Level 2
New England Molecular Imaging-York 15 Hospital Drive York, ME 03909	479003556	05/03/2006	ME	
Pavilion Imaging 750 Wellington Avenue Grand Junction, CO 81502	060023	05/03/2006	CO	

Lifescan Chicago 2242 W. Harrison Street Chicago, IL 600612	470000014	05/03/2006	IL	
Southeast Medical Imaging 300 Evergreen Drive Suite 210 Glen Mills, PA 19342	092801	05/03/2006	PA	
The Western Pennsylvania Hospital 4800 Friendship Avenue Pittsburgh, PA 15224	390090	05/03/2006	PA	
Southtowns PET/CT 550 Orchard Park Road West Seneca, NY 14224	14422A	05/03/2006	NY	
Main Street Radiology-Bayside 44-01 Francis Lewis Boulevard Bayside, NY 11361	04217	05/03/2006	NY	
Main Street Radiology-Bayside 44-01 Francis Lewis Boulevard Bayside, NY 11361	04217A	05/03/2006	NY	
West VA University Center for Advanced Imaging 1 Medical Center Drive Morgantown, WV 26506	9121131	05/03/2006	WV	PO Box 9236, Health Center South

Twin Lakes Medical Specialist, PA 228 Bucher Drive Mountain Home, AR 72653	5B019	05/03/2006	AR	
Valley Metabolic Imaging, LLC 6121 N Thesta Street Fresno, CA 93710	ZZZ23924Z	05/03/2006	CA	Suite 207
Johnson City Medical Center 400 North State of Franklin Johnson City, TN 37642	440063	05/03/2006	TN	
St Louis University Hospital 3665 Vista Avenue St Louis, MO 63110	000050109	05/03/2006	MO	
Margaret R. Pardee Memorial Hospital 800 North Justice Street Hendersonville, NC 28791	340017A	05/03/2006	NC	
Valley Imaging Partnership 1401 W. Merced Avenue #103 West Covina, CA 91790	TP035	05/03/2006	CA	
Sierra Imaging 155 Calle Portal Sierra Vista, AZ 85635	Z68496	05/03/2006	AZ	

Aspirus Wausau Hospital 333 Pine Ridge Boulevard Wausau, WI 54401	520030A	05/03/2006	WI	
Cancer Care Northwest PET Center 910 W 5th Spokane, WA 99204	1922072081	05/03/2006	WA	Suite 130
PET/CT Imaging of North Texas 2900 North I-35 Denton, TX 76201	00088Y	05/03/2006	TX	Suite 119
Loyola University Health System 2160 S. First Avenue Maywood, IL 60153	140276	05/03/2006	IL	
St. Elizabeth Medical Center One Medical Village Drive Edgewood, KY 41017	180035	05/03/2006	KY	
Cleveland Clinic 9500 Euclid Ave Cleveland, OH 44195	9925511	05/03/2006	OH	
Ingalls Family Care Center 6701 159th Street Tinley Park, IL 60477	14-0191	05/03/2006	IL	
PET Fusion Center 4204 Houma Boulevard Metairie, LA 70006	5CB31	05/03/2006	LA	

United Regional Medical Center 1001 McArthur Drive Manchester, TN 37355	440007	05/03/2006	TN	
Joel Bernstein, MD 5395 Ruffin Road Suite 202 San Diego, CA 92123	W18972	05/03/2006	CA	
Hasnat Ahmed, MD 5395 Ruffin Road Suite 202 San Diego, CA 92123	W18370	05/03/2006	CA	
Meridian North Imaging Center 12188 N. Meridian Street Carmel, IN 46280	026010	05/03/2006	IN	Suite 100
Cancer Center Oncology Medical Group 5395 Ruffin Road Suite 202 San Diego, CA 92123	W12245A	05/06/2006	CA	
Firelands Regional Medical Center 1101 Decatur Street Sandusky, OH 44870	360025	05/03/2006	OH	
United Radiology-Greenbelt PO Box 34979 West Bethesda, MD 20827	FMN007	05/03/2006	MD	

Richard Just, MD 5395 Ruffin Road Suite 202 San Diego, CA 92123	W16197	05/03/2006	CA	
Michael Kipper, MD 5395 Ruffin Road Suite 202 San Diego, CA 92123	A24091	05/03/2006	CA	
McLaren Regional Medical Center 401 S. Ballenger Highway Flint, MI 48532	230141	05/03/2006	MI	
United Radiology- Silver Spring PO Box 34979 West Bethesda, MD 20827	FMN007	05/03/2006	MD	
United Radiology- Rockville PO Box 34979 West Bethesda, MD 20827	FMN007	05/03/2006	MD	
St Mary's Health Center 6420 Clayton Road St Louis, MO 63117	260091	05/03/2006	MO	
Bay Regional Medical Center 1900 Columbus Avenue Bay City, MI 48708	230041	05/03/2006	MI	

Lapeer Regional Medical Center 1375 N. Main Street Lapeer, MI 48446	230193	05/03/2006	MI	
Scottsdale Medical Imaging, Ltd.- SW Diagnostics 9003 E. Shea Boulevard Scottsdale, AZ 85260	1902896236	05/03/2006	AZ	
Valley Medical Oncology Consultants, Inc. 3000 Oak Road #111 Walnut Creek, CA 94597	ZZZ29659Z	05/03/2006	CA	
Northwest Community Hospital 800 W Central Road Arlington Heights, IL 60005	36-2340313	05/03/2006	IL	
PET Imaging of Dallas 8333 Douglas Avenue C-20 Dallas, TX 75225	FTN017	05/03/2006	TX	
PET Imaging of Dallas-Northeast 1250 R Northwest Highway Garland, TX 75041	FTN028	05/03/2006	TX	
St Joseph's Regional Medical Center 703 Main Street Paterson, NJ 07503	310019	05/03/2006	NJ	

PET Imaging of Houston 2493-A South Braeswood Houston, TX 77030	FTN010	05/03/2006	TX	
Goshen General Hospital 200 High Park Avenue Goshen, IN 46526	150026	05/03/2006	IN	
PET Imaging of ELMC 8550 West 38th Avenue Suite 102 Wheat Ridge, CO 80033	800665	05/03/2006	CO	
PET Imaging of Houston-Southeast 6021 Fairmont Parkway Suite 120 Pasadena, TX 77505	FTN030	05/03/2006	TX	
Peninsula Imaging, LLC 560 Riverside Drive Suite A104 Salisbury, MD 21801	481L	05/03/2006	AL	
Zwanger-Pesiri 126 Hicksville Road Massapequa, NY 11758	W13931	05/03/2006	NY	

Las Calinas PET Imaging, LLP 1110 Cottonwood Lane Irving, TX 75038	FTN019	05/03/2006	TX	Suite 220
Mt Carmel Regional Medical Center 1102 East Centennial Pittsburg, KS 66762	014041	05/03/2006	KS	
Iowa Blood & Cancer Care, PLC 855 A. Avenue NE Cedar Rapids, IA 52402	I6672	05/03/2006	IA	Medical Office Plaza, LL4
Hackensack University Medical Center 30 Prospect Avenue Hackensack, NJ 07601	310001	05/03/2006	NJ	
McLeod PET Imaging Center 800 East Cheves Street Florence, SC 29501	570370242001	05/03/2006	SC	Suite 170
St Alexius Medical Center 900 E. Broadway Avenue Bismarck, ND 58506	35-0002	05/03/2006	ND	PO Box 5510
Center for Diagnostic Imaging 1295 Orange Avenue Winter Park, FL 32789	K0097	05/03/2006	FL	

Charleston Radiologists, PA 9313 Medical Plaza Drive Charleston, SC 29406	1709	05/03/2006	SC	Suite 302
PET Imaging of Houston-West 9525 Katy Freeway Suite 102 Houston, TX 77024	FTN023	05/03/2006	TX	
University Hospitals of Cleveland 11100 Euclid Avenue Cleveland, OH 44106	36-0137	05/03/2006	OH	Mailstop BSHB5056
PET Imaging of Sugar Land 17320 W Grand Parkway S. Suite A Sugar Land, TX 77479	FTN027	05/03/2006	TX	
PET Imaging of Oklahoma City 1000 N. Lincoln Boulevard Suite 250 Oklahoma City, OK 73104	800522283	05/03/2006	OK	
PET Imaging of Tulsa 6711 S. Yale, #104 Tulsa, OK 74136	400522320	05/03/2006	OK	

PET Imaging of The Woodlands 3091 College Park Drive Suite 340 The Woodlands, TX 77384	FTN021	05/03/2006	TX	
Tarrant Diagnostic Imaging 1121 8th Avenue Fort Worth, TX 76104	FTN012	05/03/2006	TX	
Wyandot Memorial Hospital 85 North Sandusky Avenue Upper Sandusky, OH 43351	361329	05/03/2006	OH	
Oregon Health & Science University 3181 SW Sam Jackson Park Road Portland, OR 97229	380009	05/03/2006	OR	
Saint John's Health System 2015 Jackson Street Anderson, IN 46016	150088	05/03/2006	IN	
Hudson Valley PET Imaging, LLC 160 North Midland Avenue Nyack, NY 10960	W1L903	05/03/2006	NY	
Kingston Diagnostic Center 167 Schwenk Drive Kingston, NY 12401	W1L921	05/03/2006	NY	

Appleton Medical Center 1818 N. Meade Street Appleton, WI 54911	520160	05/03/2006	WI	
St. Elizabeth Health Center 1044 Belmont Avenue Youngstown, OH 44501	360064	05/03/2006	OH	
Sinai Hospital of Baltimore 2401 West Belvedere Avenue Baltimore, MD 21215	210012	05/03/2006	MD	
Associates in Radiology of Plattsburgh, NY 762 Route 3 Suite 14 Plattsburgh, NY 12901	33572A	05/03/2006	NY	
Affiliated PET Systems-Rockville 9711 Medical Center Drive Rockville, MD 20850	FDNX01	05/03/2006	MD	
Lake Medical Imaging & Breast Center 1400 US Highway 441 North Suite 510 The Villages, FL 32159	59-3522082	05/03/2006	FL	

Affiliated PET Systems-Silver Spring 1400 Forest Glen Road Silver Spring, MD 20910	FDNX01	05/03/2006	MD	Suite 430
North Texas Clinical PET Institute 3535 Worth Street Suite 150 Dallas, TX 75246	99R339	05/03/2006	TX	
Lake Imaging Center 801 E. Dixie Avenue Suite 104 Leesburg, FL 34748	59-3635297	05/06/2006	FL	
Edwards Comprehensive Cancer Center 1400 Hal Greer Boulevard Huntington, WV 25701	510055	05/03/2006	WV	
Allison Cancer Center 301 North N Street Midland, TX 79701	140414744	05/03/2006	TX	
Clinical PET of Leesburg 8525 US Highway 441 Leesburg, FL 34748	E7179A	05/03/2006	FL	
Greene Medical Imaging, PC 159 Jefferson Heights D-106 Catskill, NY 12414	W25021	05/03/2006	NY	

Caritas PET Imaging, LLC-Norwood Hosp 70 Walnut Street Foxboro, MA 02035	32-7092	05/03/2006	MA	Caritas Norwood Hospital - Foxboro Campus
Caritas PET Imaging, LLC-New England Medical Center 750 Washington Street Boston, MA 02111	32-7092	05/03/2006	MA	Tufts - New England Medical Center
Austin, Radiological Assn.-San Marcos 1348 B Highway 123 South San Marcos, TX 78666	74-1597116	05/03/2006	TX	
ARA Imaging-Rock Creek 2120 N Mays, #220 Round Rock, TX 78664	20-1651590	05/03/2006	TX	
ARA Imaging-Southwood 1701 W. Ben White Boulevard, #170 Austin, TX 78704	20-1651590	05/03/2006	TX	

Elkhart General Hospital 600 East Boulevard Elkhart, IN 46514	15-0018	05/03/2006	IN	
Austin, Radiological Assn.-Midtown 1301 W. 38th Street Suite 100 Austin, TX 78705	74-1597116	05/03/2006	TX	
Caritas PET Imaging, LLC-St. Elizabeth's 736 Cambridge Street Boston, MA 02135	32-7092	05/03/2006	MA	St. Elizabeth's Medical Center
Global PET Imaging, LLC 1800 Hollister Drive Suite G-10 Libertyville, IL 60048	309590	05/03/2006	IL	Grand Oaks Health Center
Caritas PET Imaging, LLC-Carney Hospital 2100 Dorchester Avenue Dorchester, MA 02124	32-7092	05/03/2006	MA	Caritas Carney Hospital
Caritas PET Imaging, LLC-Milton Hospital 92 Highland Street Milton, MA 02186	32-7092	05/03/2006	MA	
Caritas PET Imaging, LLC–St. Anne's Hospital 795 Middle Street Fall River, MA 02721	32-7087	05/03/2006	MA	St. Anne's Hospital

Caritas PET Imaging, LLC-Good Samaritan 235 North Pearl Street Brockton, MA 02301	32-7087	05/03/2006	MA	Caritas Good Samaritan Medical Center
Panhandle PET Imaging 6700 W. 9th Avenue Amarillo, TX 79106	TFN0007	05/03/2006	TX	
PET Imaging of San Francisco 1700 California Street Suite 480 San Francisco, CA 94109	ZZZ-223-782	05/03/2006	CA	
PET/CT Imaging of Berkeley 2855 Telegraph Avenue Suite 100 Berkeley, CA 94705	ZZZ-288-837	05/03/2006	CA	
Western Maryland Health System-Sacred Heart Campus 902 Seton Drive Cumberland, MD 21502	210027	05/03/2006	MD	Western Maryland Health System-Sacred Heart Campus
Desert PET Imaging, LLC 1180 N. Indian Cyn Drive Palm Springs, CA 92262	ZZZ28648Z	05/03/2006	CA	

First PET of Stockton 4744 Quail Lake Drive Stockton, CA 95207	00A484230	05/03/2006	CA	
Utah Cancer Specialist 3838 South 700 East Salt Lake City, UT 84106	57172	05/03/2006	UT	Suite 100
Washington Radiology Associates, PC 2121 K Street, NW Washington, DC 20006	WA409885	05/03/2006	DC	Suite T-120
New Rochelle Radiology Associates, PC 175 Memorial Highway New Rochelle, NY 10801	W05571	05/03/2006	NY	
North Little Rock PET Associates, LLC 3500 Springhill Drive North Little Rock, AR 72117	5F437	05/03/2006	AR	Suite 100

Advanced Imaging Concepts, PL 13063 Cortez Boulevard Brooksville, FL 34613	94774	05/03/2006	FL	
Mansfield Imaging Center 536 S. Trimble Road Mansfield, OH 44906	MAD10921	05/03/2006	OH	
West Tennessee Imaging Center 300 Coatsland Drive Jackson, TN 38305	44-0002	05/03/2006	TN	
Imaging Center of North Central Indiana, Inc. 2201 W. Boulevard Kokomo, IN 46902	224110	05/03/2006	IN	
University of Kansas Hospital 3901 Rainbow Boulevard Kansas City, KS 66160	17-00040	05/03/2006	KS	Division of Nuclear Medicine
PET Imaging of SWLA, LLC 600 Bayou Pines East Lake Charles, LA 70601	5CK63	05/03/2006	LA	Suite A

Community Imaging Partners of Frederick 67 Thomas Johnson Drive Frederick, MD 21702	980M	05/03/2006	MD	
Community Imaging Partners of Olney 18111 Prince Phillip Drive #T-20 Olney, MD 20832	409410	05/03/2006	MD	Community Imaging Partners
The West Clinic, PC 100 N. Humphreys Boulevard Memphis, TN 38120	3704066	05/03/2006	TN	
Imaging Central LLC 7111 W. Central Avenue Toledo, OH 43617	IMID01641	05/03/2006	OH	
Advanced Radiology-Dixon 291 Stoner Avenue Westminster, MD 21157	527L	05/03/2006	MD	
Advanced Radiology-Harford Imaging 104 Plumtree Road Bel Air, MD 21015	527L	05/03/2006	MD	Suite 106
Advanced Radiology-Cross Roads 4801 Dorsey Hall Road Ellicott City, MD 21042	527L	05/03/2006	MD	Suite 101

Advanced Radiology-PET Imaging of MD 1700 Reisterstown Road Baltimore, MD 21208	527L	05/03/2006	MD	Suite 119
Cancer & Blood Disease Center 521 N. Lecanto Highway Lecanto, FL 34461	72840	05/03/2006	FL	
Huntington Outpatient Imaging Center, Inc. 800 S. Fairmount Avenue Pasadena, CA 91105	W1575B	05/03/2006	CA	Suite 120
Universal Imaging, Inc. 4600 Investment Drive Troy, MI 48083	ON69130	05/03/2006	MI	
Berger Health System 1170 North Court Street Circleville, OH 43113	360710	05/03/2006	OH	
Contemporary Imaging-Trenton 1676 Fort Street Trenton, MI 48183	0P23200	05/03/2006	MI	
South Tulsa PET, LLC 7712 S. Yale Avenue Tulsa, OK 74136	800522360	05/03/2006	OK	Ste 100

Cancer Center of the Carolinas 200 Andrews Street Greenville, SC 29601	6526	05/03/2006	SC	Suite 100
OSF Saint Francis Medical Center 530 NE Glen Oak Avenue Peoria, IL 61637	14-0067	05/03/2006	IL	
Sacred Heart-St. Mary's Hospitals, Inc. 2251 Northshore Drive Rhinelander, WI 54501	1100700	05/03/2006	WI	
Capital Region Radiation Therapy & Imaging 3400 W. Truman Boulevard Jefferson City, MO 65109	260047	05/03/2006	MO	PO 150832
University PET/CT Imaging 19 Bradhurst Avenue Hawthorne, NY 10532	W2Y371	05/03/2006	NY	Suite 1200
Aztech Radiology-Apache Trail 1840 W. Apache Trail Apache Junction, AZ 85222	Z72398	05/03/2006	AZ	

Aztech Radiology-Casa Grande 1669 E McMurray Boulevard Casa Grande, AZ 85222	Z25341	05/03/2006	AZ	
Missouri Cancer Associates 105 N. Keene Street Columbia, MO 65201	000012700	05/03/2006	MO	Suite 100
White River Medical Center 1710 Harrison Street Batesville, AR 72501	040119	05/03/2006	AR	
Englewood Hospital & Medical Center 350 Engle Street Englewood, NJ 07631	310045	05/03/2006	NJ	
Regional Imaging & Therapeutic Radiology Services 360 Bard Avenue Staten Island, NY 10310	1023095445	05/03/2006	NY	
Rocky Mountain Cancer Centers-South 7951 E. Maplewood Avenue Suite 300 Greenwood Village, CO 80111	204508	05/03/2006	CO	

Rocky Mountain Cancer Centers-North 7951 E. Maplewood Avenue Suite 300 Greenwood Village, CO 80111	204508	05/03/2006	CO.	
Molecular Imaging of Hamilton County-Bethesda 4197 Fulton Road NW, Suite C Canton, OH 44718	MOID01221	05/03/2006	OH	
Molecular Imaging of Hamilton County-Good Sam 4197 Fulton Road NW, Suite C Canton, OH 44718	MOID01221	05/03/2006	OH	
Kettering Medical Center 3535 Southern Boulevard Kettering, OH 45429	360079	05/03/2006	OH	
St. Mary's Hospital 5801 Bremo Road Richmond, VA 23226	540793767	05/03/2006	VA	

Columbus Medical Institute of NY 97-85 Queens Boulevard Rego Park, NY 11374	05679	05/03/2006	NY	
Meadville Medical Center 1034 Grove Street Meadville, PA 16335	39-0113	05/03/2006	PA	
Chambersburg Hospital-Radiology 112 North Seventh Street Chambersburg, PA 17201	390151	05/03/2006	PA	
Oregon Advanced Imaging 881 O'Hare Parkway Medford, OR 97504	R114546	05/03/2006	OR	
Singing River Hospital 2809 Denny Avenue Pascagoula, MS 39581	250040	05/03/2006	MS	
East Texas Medical Center-Tyler 1000 S. Beckham Avenue Tyler, TX 75701	4500833	05/03/2006	TX	
Columbia, St. Mary's Hospital 2025 E. Newport Avenue, Columbia Campus Milwaukee, WI 53211	520051	05/03/2006	WI	

Sharon Regional Health System 740 East State Street Sharon, PA 16146	390211	05/03/2006	PA	
Northern Ohio Imaging Center 1900 West River Road Elyria, OH 44035	36-0172	05/03/2006	OH	
Oxford Valley Diagnostic Center 940 Town Center Drive Langhorne, PA 19047	232745550	05/03/2006	PA	Suite F50>
The Emory Clinic 1365 Clifton Road Building C Room Court 048 Atlanta, GA 30322	582030692	05/03/2006	GA	
Alegent Health Bergan Mercy Medical Center 7500 Mercy Road Omaha, NE 68124	280060	05/03/2006	NE	
University Center Imaging 1065 Delaware Avenue Marion, OH 43302	20-3873307	05/03/2006	OH	
Elk Regional Health Center 763 Johnsonburg Road St Mary's, PA 15857	39-0154	05/03/2006	PA	

Health Park Hospital 1636 Higdon Ferry Road Hot Springs, AR 71913	04-0142	05/03/2006	AR	
Johnsonburg Health Center 81 Clarion Road Johnsonburg, PA 15845	39-0104	05/03/2006	PA	
Jane Phillips Medical Center 3500 E. Frank Phillips Boulevard Bartlesville, OK 74006	370015	05/03/2006	OK	
North Main Imaging Center 7650 First Place Suite B Oakwood Village, OH 44146	NEID01521	05/03/2006	OH	
PET Imaging Center of Delaware County-DCMH 501 North Lansdowne Avenue Drexel Hill, PA 19026	390081	05/03/2006	PA	
NEO-PET CRC Imaging 7650 First Place Suite B Oakwood Village, OH 44146	NEID01521	05/03/2006	OH	

PET Imaging Center of Delaware County-Springfield 190 West Sproul Road. Springfield, PA 19064	381080	05/03/2006	PA	
Harper University Hospital 3990 John R Street Detroit, MI 48201	230104	05/03/2006	MI	
Sinai-Grace Hospital 6071 W. Outer Drive Detroit, MI 48235	23-0024	05/03/2006	MI	
Seattle Radiologists APC 1229 Madison Street Seattle, WA 98104	G0001589600	05/03/2006	WA	#900
Huron Valley-Sinai Hospital 1 William Carl Drive Commerce, MI 48382	23-0277	05/03/2006	MI	
East Memphis PET Imaging 6005 Park Avenue Memphis, TN 38119	3374526	05/03/2006	TN	Suite 101B
UPMC-PET Imaging Facility 200 Lothrop Street Pittsburgh, PA 15213	390164	05/03/2006	PA	9th Floor B-Wing PUH
UPMC-PET Imaging Facility 300 Halket Street Pittsburgh, PA 15213	390114	05/03/2006	PA	

Rhode Island Hospital 593 Eddy Street Providence, RI 02903	05-025-8954	05/03/2006	RI	
David C. Pratt Cancer Center 607 South New Bulbs Road St Louis, MO 63141	260020	05/03/2006	MO	
Lewistown Hospital 400 Highland Avenue Lewistown, PA 17044	390048	05/03/2006	PA	
Lawrence Memorial Hospital 325 Maine Street Lawrence, KS 66044	170137	05/03/2006	KS	
Jameson Hospital 1211 Wilmington Avenue New Castle, PA 16105	39-0016	05/03/2006	PA	
Diagnostic Clinic of Houston . 1200 Binz Street Houston, TX 77004	76-0203506	05/03/2006	TX	
Arlington Heights Radiology Center, LLC 121 South Wilke Road Arlington Heights, IL 60005	212301	05/03/2006	IL	
Oregon Imaging Center 1200 Hilyard Street Eugene, OR 97401	R0000WCPGH	05/03/2006	OR	#330

Arlington Heights Radiology Center, LLC 121 South Wilke Road Arlington Heights, IL 60005	212301	05/03/2006	IL	
Indiana Univ Radiology Assoc PET Imaging Center 950 W. Walnut Street Room E124 Indianapolis, IN 46202	959090	05/03/2006	IN	
Morristown Memorial Hospital 100 Madison Avenue Morristown, NJ 07962	310015	05/03/2006	NJ	
Baton Rouge Radiology Group 5422 Dijon Drive Baton Rouge, LA 70808	5B039	05/03/2006	LA	
North Texas PET Imaging 3720 South I-35E Denton, TX 76210	752131429	05/03/2006	TX	
Children's Hospital of Michigan PET Center 3901 Beaubien Street Detroit, MI 48201	23-3300	05/03/2006	MI	

Winchester Medical Center 1840 Amherst Street Winchester, VA 22601	490005	05/03/2006	VA	
Decatur Health Imaging, LLC 1123 16th Avenue SE Decatur, AL 35601	051555161	05/03/2006	AL	
Health Imaging Services, LLC 1760 Warnke Circle NE Cullman, AL 35058	051553273HEA	05/03/2006	AL	
PET/CT Imaging of the Mainline 21 Industrial Boulevard Suite 103 Paoli, PA 19301	097715	05/03/2006	PA	
PET Imaging of Brevard 1430 Pine Street Melbourne, FL 32901	39254	05/03/2006	FL	
North Carolina Baptist Hospital Medical Center Boulevard Winston Salem, NC 27157	34-0047	05/03/2006	NC	

St Francis Hospital 34515 9th Avenue S Federal Way, WA 98003	500108	05/03/2006	WA	
Saint Barnabas Outpatient Center 200 S. Orange Avenue Livingston, NJ 07039	440149	05/03/2006	NJ	
PET/CT Imaging of Ramapa Radiology 972 Route 45 Suite 106 Pomona, NY 10970	W21711	05/03/2006	NY	
Medical University of South Carolina PET/CT 169 Ashley Avenue Charleston, SC 29425	420004	05/03/2006	SC	
Akron General Medical Center 300 Wabash Avenue Akron, OH 44307	36-0027	05/03/2006	OH	
New England Molecular Imaging- Mercy Hospital 144 State Road Portland, ME 04103	NE327075	05/03/2006	ME	

New England Molecular Imaging-Penobscot Bay 6 Glenn Cove Drive Rockport, ME 04856	NE327076	05/03/2006	ME	
Center for Outpatient Services-St. Joseph 3900 Hollywood Road St. Joseph, MI 49085	23-0021	05/03/2006	MI	
New England Molecular Imaging-Central Maine 12 High Street Lewiston, ME 04240	NE327076	05/03/2006	ME	
Imaging Consultants, Inc.-Berkshire 8 Conte Drive Pittsfield, MA 01210	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Boston Medical 840 Harrison Avenue Boston, MA 02118	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Boston PET One Brookline, Place Brookline, MA 02445	327083	05/03/2006	MA	

Baptist Memorial Hospital PET Center 6027 Walnut Grove Road Memphis, TN 38120	44-0048	05/03/2006	TN	
Southern Oklahoma PET/CT Imaging 701 E. Robinson Street Norman, OK 73071	90015477	05/03/2006	OK	
Ann G. Fetters Diagnostic Imaging Center 2151 N. Harbor Boulevard Fullerton, CA 92835	050168	05/03/2006	CA	
Pitt County Memorial Hospital 2100 Stantonsburg Road Greenville, NC 27835	56-0585243	05/03/2006	NC	
Inland Imaging, LLC 105 W. 8th Avenue Spokane, WA 99202	AB01749	05/03/2006	WA	Suite 100C
University of Chicago Hospitals 5758 S. Maryland Avenue Chicago, IL 60637	140088	05/03/2006	IL	Room #0150
Birch Medical Imaging Center 20162 SW Birch Street Newport Beach, CA 92660	W19353	05/03/2006	CA	

Tennessee Oncology PET Services 2018 Murphy Avenue Nashville, TN 37203	3709319	05/03/2006	TN	Suite 200
Tennessee PET Scan 1020 N. Highland Avenue Murfreesboro, TN 37130	3791187	05/03/2006	TN	Suite A
Texas Oncology-Harris Center HEB 1615 Hospital Parkway Bedford, TX 76022	00R66C	05/03/2006	TX	Suite 300
Greater Dayton Cancer Center 3120 Governor's Place Boulevard Kettering, OH 45409	9295791	05/03/2006	OH	
Martha Jefferson Hospital 459 Locust Avenue Charlottesville, VA 22902	490077	05/03/2006	VA	
Modern Diagnostic Imaging 600 S. Dobson Road Chandler, AZ 85224	107628	05/03/2006	AZ	Suite B-16
Christiana Care Nuclear Medicine/PET 4755 Ogletown-Stanton Road Newark, DE 19718	080001	05/03/2006	DE	

Advanced Imaging of Port Charlotte, LLC 2625 Tamiami Trail Port Charlotte, FL 33952	K6802	05/03/2006	FL	Suite 1
St. Joseph's Diagnostic Center-MLK 3003 Martin Luther King, Jr. Boulevard Tampa, FL 33067	97779	05/03/2006	FL	
South Carolina Oncology Associates 166 Stoneridge Drive Columbia, SC 29210	6275	05/03/2006	SC	
South Carolina Oncology Associates 166 Stoneridge Drive Columbia, SC 29210	6276	05/03/2006	SC	
Access Health Imaging 5257 Highway 82, East Lake Village, AR 71653	5M809	05/03/2006	AR	

PET/CT Services of Florida-Beverly Hills 3404 N. Lecanto Highway Beverly Hills, FL 34465	V0103	05/03/2006	FL	Beverly Hills Medical Park
PET/CT Services of Florida-Ocala 1541 SW 1st Avenue Ocala, FL 34474	V0103	05/03/2006	FL	Suite 101B
Blanchard Valley Regional Health Center 145 W. Wallace Street Findlay, OH 45840	360095	05/03/2006	OH	
Papastavros Associates Medical Imaging 1701 Augustine Cut-Off Wilmington, DE 19803	1083615561	05/03/2006	DE	
PET Imaging of Willowbrook 13300 Hargrave Road Houston, TX 77070	FTN032	05/03/2006	TX	Suite 130
PET Imaging of Northern Colorado 1915 Wilmington Drive Ft Collins, CO 80528	804621	05/03/2006	CO	Suite 101

Temecula Valley Advanced Imaging 25395 Hancock Avenue Murrieta, CA 92592	ZZZ-150752	05/03/2006	CA	Suite 110
Saint Anthony Memorial Health Center 301 West Homer Street Michigan City, IN 46360	A150015	05/03/2006	IN	
Salina Regional Health Center 400 S. Santa Fe Avenue Salina, KS 67401	170012	05/03/2006	KS	PO Box 5080
Cancer Center of Kansas 818 N. Emporia Street Wichita, KS 67214	110217	05/03/2006	KS	Suite 100
Clinton Crossings Imaging 995 Senator Keating Boulevard Rochester, NY 14618	14439A	05/03/2006	NY	
NSMS-Shelby County 4253 Argosy Court Madison, WI 53714	I16068	05/03/2006	WI	
Verrazano Radiology, PC 256A Mason Avenue Staten Island, NY 10305	200011201	05/03/2006	NY	

Imaging Consultants, Inc.-Brockton Hospital 680 Centre Street Brockton, MA 02301	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Cape Cod 252 Long Pond Drive Harwich, MA 02645	327085	05/03/2006	MA	Fontain Medical Center
Imaging Consultants Inc - Falmouth 100 Ter Hewn Drive Falmouth, MA 02540	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Jordan 275 Sandwich Street Plymouth, MA 02360	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Holyoke 575 Beech Street Holyoke, MA 01040	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Mercy Medical 271 Carew Street Springfield, MA 01089	327085	05/03/2006	MA	

Imaging Consultants, Inc.-Lawrence Memorial 170 Governors Avenue Medford, MA 02155	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Metro West 115 Lincoln Street Framingham, MA 01701	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Milford 14 Prospect Street Milford, MA 01757	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Quincy 114 Whitwell Street Quincy, MA 02196	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Saints Memorial 2 Hospital Drive Lowell, MA 01852	327083	05/03/2006	MA	

Imaging Consultants, Inc.-Truesdale 1030 Presidents Avenue Fall River, MA 02720	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Twin City 76 Summer Street Fitenburg, MA 01420	N/A	05/03/2006	MA	
Imaging Consultants, Inc.-Worcester 20 Worcester Center Boulevard Worcester, MA 01608	327085	05/03/2006	MA	
Sentara Mobile PET/CT-Careplex 5900 Lake Wright Drive Suite B Norfolk, VA 23502	250605	05/04/2006	VA	
Sentara Mobile PET/CT-Lake Wright 5900 Lake Wright Drive Suite B Norfolk, VA 23502	250605	05/04/2006	VA	
Sentara Mobile PET/CT-Princess Anne 5900 Lake Wright Drive Suite B Norfolk, VA 23502	250605	05/04/2006	VA	

Sentara Mobile PET/CT-Williamsburg 5900 Lake Wright Drive Suite B Norfolk, VA 23502	250605	05/04/2006	VA	
Memorial Hospital of South Bend 615 N. Michigan Street South Bend, IN 46601	150058	05/04/2006	IN	
NSMS-Belleville, IL 4253 Argosy Court Madison, WI 53714	208196	05/04/2006	WI	
NSMS-Flora, IL 4253 Argosy Court Madison, WI 53714	208196	05/04/2006	WI	
NSMS-Breese, IL 4253 Argosy Court Madison, WI 53714	208196	05/04/2006	WI	
SSM DePaul Health Center 12303 DePaul Drive St Louis, MO 63044	260104	05/04/2006	MO	
Lutheran Hospital 7950 W. Jefferson Boulevard Fort Wayne, IN 46804	150017	05/11/2006	IN	
Memorial MRI and Diagnostic 1346 Campbell Road Houston, TX 77055	00941U	05/11/2006	TX	

Shields Imaging of Eastern Mass 55 Fogg Road Weymouth, MA 2190	327088	05/11/2006	MA	
Baystate MRI and Imaging Center 3300 Main Street Springfield, MA 1107	327039	05/11/2006	MA	
Advanced Imaging Center 16110 Jog Road, 200 Delray Beach, FL 33446	U2049	05/11/2006	FL	
UMASS Memorial MRI and Imaging Center 214 Shrewsburg Street Worcester, MA 1604	327040	05/11/2006	MA	
RCOA Imaging Services 1108 Minnequa Avenue Pueblo, CO 81004	475748	05/11/2006	CO	
Adventist Health PET/CT-Hanford 450 N. Greenfield Avenue Hanford, CA 93230	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT-Feather River 5974 Pertz Road Paradise, CA 95969	ZZZ318852	05/11/2006	CA	

Adventist Health PET/CT-Sonora 1000 Greenley Road Sonora, CA 95370	ZZZ318852	05/11/2006	CA	
Sarasota Memorial PET 5350 University Parkway Sarasota, FL 34238	U1775	05/11/2006	FL	
Adventist Health PET/CT-Redbud 18th Ave. at Highway 53 PO Box 6710 Clear Lake, CA 95422	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT-St. Helena 10 Woodland Road St. Helena, CA 94574	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT-Ukiah 275 Hospital Drive Ukiah, CA 95482	ZZZ318852	05/11/2006	CA	
Mease Outpatient Imaging 1840 Mease Drive Safety Harbor, FL 34685	100265	05/11/2006	FL	
Bardmoor Outpatient Center 8787 Bryan Dairy Road Largo, FL 33777	00594C	05/11/2006	FL	

Trinity Outpatient Center 2102 Trinity Oaks Boulevard New Port Richey, FL 34655	00594D	05/11/2006	FL	
Walnut Creek Imaging Center 114 La Casa Via, #200 Walnut Creek, CA 94598	ZZZ13902Z	05/11/2006	CA	
Carlisle Imaging Center 1240 S. Ft. Harrison Clearwater, FL 33756	594	05/11/2006	FL	
Valley Radiology Imaging at Samaritan 2581 Samaritan Drive, #100 San Jose, CA 95124	ZZZ139851Z	05/11/2006	CA	
Forest Hills PET Imaging 102-02 Queens Boulevard Forest Hills, NY 11375	06998G	05/11/2006	NY	
Roper LowCountry PET Imaging Center 316 Calhoun Street Charleston, SC 29401	Q326280001	05/11/2006	SC	

Premier PET Imaging of NJ 119 Cherry Hill Road Parsippany, NJ 07054	68433	05/11/2006	NJ	Suite 100
Methodist Medical Center of Illinois 221 NE Glen Oak Avenue Peoria, IL 61636	370661223	05/11/2006	IL	
Medical Imaging of Baltimore 6715 N. Charles Street Baltimore, MD 21204	258L	05/12/2006	MD	
Yagnesh Oza, MD 4117 Velerous Memorial Drive Mt Vernon, IL 62864	212702	05/12/2006	IL	
Moffitt Cancer Center 12902 Magnolia Drive Tampa, FL 33612	100271	05/12/2006	FL	
PrimeMed Imaging 5 Morgan Highway Suite 7 Scranton, PA18505	260	05/12/2006	PA	Morgan Medical Complex

Rockville PET Imaging, PC 119 North Park Avenue Rockville Centre, NY 11570	WTC601	05/12/2006	NY	Suite 101
Porter Adventist Hospital 2525 South Downing Street Denver, CO 80210	60064	05/12/2006	CO	
Rapid City Regional Hospital Medical Imaging Services 353 Fairmont Boulevard Rapid City, SD 57701	43007	05/12/2006	SD	
Advanced Radiolgy Consultants 56 Quarry Road Trumbull, CT 06611	C02747	05/12/2006	CT	
Northeastern PA Imaging Center 2601 Stafford Avenue Scranton, PA 18505-0305	475385	05/12/2006	PA	PO BOX 3305
Billings MRI Center 1041 North 29th Street Billings, MT 59101-1075	81030	05/12/2006	MT	
Aurora St. Luke's Medical Center 2900 W. Oklahoma Avenue Milwaukee, WI 53215	520138	05/12/2006	WI	Nuclear Medicine Department

Memorial & St. Elizabeth's Healthcare Services, LLC 4000 N. Illinois Lane Swansea, IL 62226	201339	05/12/2006	IL	PET/CT Imaging Center
Palm Beach Cancer Institute-West Palm Beach 1309 North Flagler Drive West Palm Beach, FL 33401-2710	34754	05/12/2006	FL	
Overlook Hospital 99 Beauvoir Avenue Summit, NJ 07902	8772966189	05/12/2006	NJ	
Ashland Bellefonte Cancer Center 122 Saint Christopher Drive Ashland, KY 41101	2150	05/12/2006	KY	
Bryn Mawr Imaging Center 101 S. Bryn Mawr Avenue Bryn Mawr, PA 19010	473120	05/12/2006	PA	
Oncology Alliance 1055 N. Mayfair Road Suite 100 Wauwatosa, WI 53220	32836000	05/12/2006	WI	

Shared PET Maimonides 6300 Eighth Avenue Brooklyn, NY 11220	97Z661	05/12/2006	NY	
Hoboken Radiology, LLC 79 Hudson Street Suite 100 Hoboken, NJ 07030	80395	05/12/2006	NJ	
Akron City Hospital 525 E. Main Street Akron, OH 44309	360020	05/12/2006	OH	
Park Avenue Radiologists, PC 525 E. Main Street Rome, GA 30165	W21771	05/12/2006	NY	
Comprehensive Blood & Cancer Center 6501 Truxtun Avenue Bakersfield, CA 93309	zzz238732	05/12/2006	CA	
Rome Imaging Center 309 West 10th Street Rome, GA 30165	GRP1221	05/12/2006	GA	
Hawaii PET Imaging 2230 Liliha Street Honolulu, HI 96817	54537	05/12/2006	HI	
Imaging Consultants, Inc. at Henry Heywood Hospital 242 Green Street Gardner, MA 01440	327085	05/12/2006	MA	

Imaging Consultants, Inc. at Nashoba Valley Medical Center 200 Groton School Road Ayer, MA 01432	327085	05/12/2006	MA	
Rhode Island PET Services at Memorial Hospital 111 Brewster Street Pawtucket, RI 2860	479003556	05/12/2006	RI	
Osceola Cancer Center 737 W. Oak Street Kissimmee, FL 34741	1629034202	05/12/2006	FL	
Valley Radiologists, Ltd.-Paseo II Office 5605 W. Eugie Avenue Suite 110 Glendale, AZ 85304	1902896236	06/13/2006	AZ	
Southeast GYN, Oncology PET 5210 Belfort Road Suite 130 Jacksonville, FL 32256	45542	06/13/2006	FL	
The Johns Hopkins PET Center 600 N. Wolfe Street Baltimore, MD 21287	210009	06/13/2006	MD	Nelson Basement
Maklansky, Grunter, Kurzban, Cohen, Zimmer, Hyman 165 East 84th Street New York, NY 10028	W20393	06/13/2006	NY	

Methodist Medical Center of Illinois 112 Crescent Avenue Peoria, IL 61636	370661223	06/13/2006	IL	
Phoebe Putney Memorial Hospital 417 Third Avenue PO Box 1828 Albany, GA 31702-1828	110007	06/13/2006	GA	
Eiber Radiology/PET Premier Imaging 21 West 49th Street Hialeah, FL 33012	k3166	06/13/2006	FL	
Botsford Hospital 28050 Grand River Avenue Farmington Hills, MI 48336	230151	06/13/2006	MI	
Middletown Regional Hospital 105 McKnight Drive Middletown, OH 45044	360076	06/13/2006	OH	
Waukesha Memorial Hospital 725 American Avenue Waukesha, WI 53188	390910727	06/13/2006	WI	
Battle Creek Health System 300 North Avenue Battle Creek, MI 49016	230075	06/13/2006	MI	

Orlando Regional Medical Center 1414 Kuhl Avenue Orlando, FL 32806	100006	06/13/2006	FL	
NorthEast Medical Center 1065 NorthEast Gateway Court NE Concord, NC 28025	340001	06/13/2006	NC	
Premier Medical Imaging 7651 Stagers Loop Delaware, OH 43015	9912921	06/13/2006	OH	
Advanced Radiolgy Consultants 15 Corporate Drive Trumbull, CT 6611	C02747	06/13/2006	CT	
Advance PET Imaging 23 Technology Drive East Setauket, NY 11733	46a401	06/13/2006	NY	
Premier PET Imaging of Wichita 500 S. Main Street Suite B Wichita, KS 67202	110682	06/13/2006	KS	
Health Center Northwest 320 Sunnyview Lane Kalispell, MT 59901	270087	06/13/2006	MT	
Olympic Medical Center 844 N. 5th Avenue Sequim, WA 98382	500072	06/13/2006	WA	

Premier PET Imaging of Jacksonville 5210 Belfort Road Suite 130 Jacksonville, FL 32256	K3166	06/13/2006	FL	
PET/CT Imaging of San Jose 2211 Moorpark Avenue Suite 220 San Jose, CA 95128	ZZZ19866Z	06/13/2006	CA	
The Reading Hospital and Medical Center 6th and Spruce Streets West Reading, PA 19611	390044	06/13/2006	PA	
Julia Rackley Perry Memorial Hospital 530 Park Avenue East Princeton, IL 61356	141337	06/13/2006	IL	
Ashland Bellefonte Cancer Center 122 Saint Christopher Drive Ashland, KY 41101	2150	06/13/2006	KY	
Tower Imaging BBD 14231 Bruce B Down Boulevard Tampa, FL 33613	169	06/13/2006	FL	

VyMed Diagnostic Imaging Tampa, LLC 10010 N. Dale Mabry Suite 160 Tampa, FL 33618	U4068	06/13/2006	FL	
Texas Oncology Cancer Center Sugar Land 1350 First Colony Boulevard Sugar Land, TX 77479	00073F	06/13/2006	TX	
Samaritan North Health Center 9000 N. Main Street Dayton, OH 45415	360052	06/13/2006	OH	
The PET Center of Oxford 1612 US Highway 78 East Suite 102 Oxford, AL 36203	51554888	06/13/2006	AL	
Shared PET Mem Lighthouse 6901 N. Main Street Granger, IN 46530	232800	06/13/2006	IN	
Shared PET Hope Cancer Center 3702 South Fourth Street Terre Haute, IN 47802	201320	06/13/2006	IN	
Athens Regional Medical Center 1199 Prince Avenue Athens, GA 30606	110074	06/13/2006	GA	

Muskogee PET & Nuclear Imaging 3300 Chandler Road Suite #106 Muskogee, OK 74403	400522529	06/13/2006	OK	
Lubbock Imaging Center 4011 19th Street Lubbock, TX 79410	00027K	06/13/2006	TX	
Memorial Medical Center 701 N. First Street Springfield, IL 62781	140148	06/13/2006	IL	
Hamamatsu/Queen's PET Imaging Center 1301 Punchbowl Street Honolulu, HI 96813		06/13/2006	HI	
Aurora BayCare Medical Center 2845 Greenbrier Road Green Bay, WI 54308	520193	06/13/2006	WI	
Medical Center of Plano 3901 W. 15th Street Plano, TX 75002	450651	06/13/2006	TX	
Carolinas Medical Center 1000 Blythe Boulevard Charlotte, NC 28203	340113	06/13/2006	NC	

Redwood Regional Medical Group d.b.a. Santa Rosa Radiology 121 Sotoyome Street Santa Rosa, CA 95405	680344865	06/13/2006	CA	
Boone Hospital Center 1600 East Broadway Columbia, MO 65201	260068	06/13/2006	MO	
River Radiology 45 Pine Grove Avenue Kingston, NY 12401	W30681	06/13/2006	NY	
University of Washington Medical Center 1959 NE Pacific Street Seattle, WA 98195	142700	06/13/2006	WA	
Mid American Imaging-Salem 1987 E. 4th Street Salem, OH 44460	ID00804	06/13/2006	OH	
Piedmont Medical Center 222 S. Herlong Avenue Rock Hill, SC 29732	420002	06/13/2006	SC	
Alliance Imaging-Sparks 1311 South I Street Fort Smith, AR 72817	5F463	06/13/2006	AR	

Radiology Imaging Associates 1825 SE Tiffany Avenue Suite 104 Port St. Lucie, FL 34952	52	06/13/2006	FL	
Mount Sinai Medical Center One Gustave L. Levy Place New York, NY 10029	H23620	06/13/2006	NY	
NSMS-Ottawa, IL 4253 Argosy Court Madison, WI 53714	208196	06/13/2006	WI	
Center for Diagnostic Imaging 1550 E. Chestnut Avenue Vineland, NJ 08360	53290	06/13/2006	NJ	Bldg 4 Suite A
St. Mary Mercy Hospital- Livonia 36475 Five Mile Road Livonia, MI 48154	230002	06/13/2006	MI	
Harold Leever Regional Cancer 1075 Chase Parkway Waterbury, CT 06708	470000025	06/13/2006	CT	
Kentucky Metabolic Imaging 2425 Regency Road Suite B Lexington, KY 40503	9366001	06/13/2006	KY	

Western Baptist Hospital 2501 Kentucky Avenue Paducah, KY 42001	180104	06/13/2006	KY	
St. Anthony Regional Hospital 311 South Clark Street Box 628 Carroll, IA 51401	1720067127	06/13/2006	IA	
Alliance Imaging-Sequoia Hospital 170 Alameda De Las Pulgas Redwood City, CA 94062	ZZZ28890Z	06/13/2006	CA	
Craven Regional Medical Center 2000 Neuse Boulevard New Bern, NC 28560	340131	06/13/2006	NC	
Alliance Imaging-Tri City Medical Center 4002 Vista Way Oceanside, CA 92056	TG281C	06/13/2006	CA	
Alliance Imaging-Yavapai Del Webb Outpatient Center Prescott Valley, AZ 86314	76103	06/13/2006	AZ	3262 Windsong Drive
Saint Vincent's Comprehensive Cancer Center 325 West 15th Street New York, NY 10011	330290	06/13/2006	NY	

Alliance Imaging-Southwest Medical Imaging 3104 Stockton Hill Road Kingman, AR 86401	76103	06/13/2006	AZ	
Alliance Imaging-North Idaho Imaging 700 Ironwood Drive Coeur d'Alene, ID 93814	1790291	06/13/2006	ID	
Froedtert Hospital 9200 W. Wisconsin Avenue Milwaukee, WI 53226	520177	06/13/2006	WI	
Alliance Imaging-Flagstaff Medical Center 1200 N. Beaver Street Flagstaff, AZ 86001	71855	06/13/2006	AZ	
South Florida Oncology and Hematology Consultants 4850 W. Oakland Park Boulevard Lauderdale Lakes, FL 33313	33873	06/13/2006	FL	Suite A
Alliance Imaging-Sierra Vista 300 El Camino Real Sierra Vista, AZ 85635	71855	06/13/2006	AZ	

Alliance Imaging-St. Joseph Eureka 2700 Dolbeer Street. Eureka, CA 95501	zzz23046z	06/13/2006	CA	
Alliance Imaging-Corvallis Clinic 3680 NW Samaritan Drive Corvallis, OR 97330	132104	06/13/2006	OR	
Bridgeport Hospital 267 Grant Street Bridgeport, CT 06610	70010	06/13/2006	CT	
Valley Radiologists, Ltd.-Paseo II Office 5605 W. Eugie Avenue Glendale, AZ 85304	1902896236	06/13/2006	AZ	Suite 110
Central Texas Medical Center 1301 Wonder World Drive San Marcos, TX 78666	450272	06/13/2006	TX	
Alliance Imaging-Verde Valley Medical Center 269 S. Candy Lane Cottonwood, AZ 86326	76103	06/13/2006	AZ	
Alliance Imaging-Union Hospital Cecil 106 Bow Street Elkton, MD 21821	FMN008	06/13/2006	MD	

St. Joseph Mercy Hospital -Ann Arbor 5301 E. Huron River Road Ann Arbor, MI 48106	230156	06/13/2006	MI	
Alliance Imaging-Navapache 2200 E. Show Low Lake Show Low, AZ 85901	76103	06/13/2006	AZ	
St. Clare Medical Center 1710 Lafayette Road Crawfordsville, IN 17933	150022	06/13/2006	IN	
Boynton Beach EFL Imaging Center, LLC 2300 S. Congress Avenue Boynton Beach, FL 33426	272376000	06/13/2006	FL	#105
Aurora Medical Center Oshkosh 855 N. Westhaven Drive Oshkosh, WI 54904	590198	06/13/2006	WI	
Southeast GYN, Oncology PET 5210 Belfort Road Jacksonville, FL 32256	45542	06/13/2006	FL	Suite 130

Stockton MRI & Molecular Imaging Medical Center 2320 N. California Street #2 Stockton, CA 95219	ZZZ290872	06/13/2006	CA	
South Texas Cancer Center 2150 N. Expressway 83 Brownsville, TX 78521	14041756	06/13/2006	TX	
Southwest Cancer Care Medical Group 5395 Ruffin Road San Diego, CA 92123	W4957B	06/13/2006	CA	#202
Radiology Associates of Venice and Englewood, PA 512-516 S. Nokomis Avenue Venice, FL 34285	99390	06/13/2006	FL	
Langlade Memorial Hospital Oncology 112 E. 5th Avenue Antigo, WI 54409	521350	06/13/2006	WI	
RCOA Imaging Services 305 South 5th Street Enid, OK 73701	400522301	06/13/2006	OK	
North Shore Hematology Oncology Associates, PC 235 N. Belle Mead Road East Setauket, NY 11733	W04051	06/13/2006	NY	

Providence Holy Cross Imaging Center 26357 McBean Parkway Suite 155 Santa Clarita, CA 91355	TP129	06/13/2006	CA	
Alaska Open Imaging Center, LLC 6911 DeBarr Road Anchorage, AK 99504	K153149	06/13/2006	AK	
Temecula Valley Nuclear Medicine 25485 Medical Center Drive Murrieta, CA 92562	00A417170.	06/13/2006	CA	Suite 102
Hematology Oncology Assoc. of the Treasure Coast 1801 SE Hillmoor Drive Port Saint Lucie, FL 34952	40806	06/13/2006	FL	Suite B-107 (Mobile)
The Center for Cancer and Blood Disorders 800 W. Magnolia Avenue Fort Worth, TX 76104	00L79L	06/13/2006	TX	
Alliance Imaging-South Coast Medical Center 31872 Pacific Coast Highway Laguna Beach, CA 92651	TG281B	06/13/2006	CA	

The Medical Center at Bowling Green 250 Park Street Bowling Green, KY 42101	180013	06/13/2006	KY	PET/CT Center
Johns Hopkins Bayview Medical Center 4940 Eastern Avenue Baltimore, MD 21224	210029	06/13/2006	MD	Imaging Department-Nuclear Medicine
University of Michigan, Department of Radiology 1500 E. Medical Center Drive Ann Arbor, MI 48109	230046	06/13/2006	MI	Box 0028, B1H418 University Hospital
Carmichael Imaging, LLC 4147 Carmichael Road Montgomery, AL 36106	51551742	06/13/2006	AL	
Clearfield Hospital 809 Turnpike Avenue Clearfield, PA 16830	390052	06/13/2006	PA	
Clinical Pet of Hernando 4003 Mariner Boulevard Spring Hill, FL 34609	V2683	06/13/2006	FL	

Booth Radiology 105 Kings Way W. Hurffville-Crosskeys Road Sewell, NJ 08080	39460	06/13/2006	NJ	
Clinical PET of Zepherhills 38044 Daughtery Road Zephyrhills, FL 33542	E7179B	06/13/2006	FL	
Radiology & Diagnostic Imaging 2200 East Parrish Avenue Owensboro, KY 42303	3641	06/13/2006	KY	Building D
Santa Monica Bay Physicians 12524 W. Washington Boulevard Los Angeles, CA 90066	W14560	06/13/2006	CA	
Missouri Baptist Medical Center 3023 N. Ballas Road. St. Louis, MO 63141	260108	06/13/2006	MO	Suite 150, Building D
Radiology Associates of Tallahassee, PA 1600 Phillips Road Tallahassee, FL 32308	60	06/13/2006	FL	

Pacific Imaging-Oakland 3200 Telegraph Avenue Oakland, CA 94609	1265480099	06/13/2006	CA	
Medical Group of North County 5395 Ruffin Road #202 San Diego, CA 92123	W11609	06/13/2006	CA	#202
Somerset Community Hospital 225 South Center Avenue Somerset, PA 15501	390039	06/13/2006	PA	
Elmbrook Memorial Hospital 19333 W. North Avenue Brookfield, WI 53045	520170	06/13/2006	WI	
San Luis Diagnostic Medical Associates 1100 Monterey Street San Luis Obispo, CA 93401	W14221	06/13/2006	CA	Suite 210
Cancer Care Centers of S.Texas, PA (New Braunfels) 1448 Common Street New Braunfels, TX 78130	00U40Q	06/13/2006	TX	

Cancer Care Centers of S.Texas, PA (San Antonio) 8109 Fredericksburg Road San Antonio, TX 78229	00U40Q	06/13/2006	TX	
Cancer Care Centers of S.Texas, PA (Kerrville) 694 Hill Country Drive Kerrville, TX 78028	00U40Q	06/13/2006	TX	
San Antonio Molecular Imaging SAMI 9102 Floyd Curl Drive San Antonio, TX 78240	FTN025	06/13/2006	TX	Suite 193
Pacific Medical Imaging and Oncology Center, Inc. 707 South Garfield Avenue Alhambra, CA 91801	W19267	06/13/2006	CA	Suite B-001
Northern IL Cancer Treatment Center 327 IL Route 2 Dixon, IL 61021	210699	06/13/2006	IL	
Cancer Care Center 2210 Green Valley Road New Albany, IN 47150	243690	06/13/2006	IN	Suite 1

Northeast Radiology 3839 Danbury Road Brewster, NY 10509	1134118607	06/13/2006	NY	
New England PET Imaging System 70 East Street Methuen, MA1844	M20762	06/13/2006	MA	
Southeast Texas PET Imaging 690 North 14th Street Beaumont, TX 77702	0004CC	06/13/2006	TX	
Sun City West PET Scan 14418 W. Meeker Boulevard Sun City West, AZ 85374	102496	06/13/2006	AZ	Suite 105
Butler Memorial Hospital 911 East Brady Street Butler, PA 16001	390168	06/13/2006	PA	
Diagnos, Inc., d.b.a. Diagnos PET/CT Imaging 2000 North Loop West Houston, TX 77018	ftnx11	06/13/2006	TX	Suite 100
Alliance Imaging-Washington Hospital 38950 Civic Center Drive Fremont, CA 94538	ZZZ28890Z	06/13/2006	CA	

Providence Saint Joseph Hospital 201 S. Buena Vista Street Burbank, CA 91505	50235	06/13/2006	CA	#125
Alliance Imaging-Centinela Freeman 333 Prairie Avenue Inglewood, CA 90301	TG281	06/13/2006	CA	
Alliance Imaging-Corona Regional Hospital 800 S. Main Street Corona, CA 91720	ZZZ23042Z	06/14/2006	CA	
Alliance Imaging-St. Mary's Regional Medical Center 235 W. 6th Street Reno, NV 89503	37860	06/14/2006	NV	235 W. 6th Street
Alliance Imaging-Downey Regional Medical Center 11500 Brookshire Avenue Downey, CA 90241	TG490	06/14/2006	CA	
Alliance Imaging-Visalia Medical Clinic 5400 W. Hillsdale Drive Visalia, CA 93291	ZZZ23046Z	06/14/2006	CA	
Alliance Imaging-Anaheim Memorial Medical Center 1111 W. La Palma Avenue Anaheim, CA 92801	TD017C	06/14/2006	CA	Anaheim Memorial Medical Center

Glendale Diagnostic Imaging Network Medical Office 403 South Glendale Avenue Glendale, CA 91205	W19100	06/14/2006	CA	
Advanced Imaging at Baybrook 11 Murray Street Glens Falls, NY 12801	33554a	06/14/2006	NY	
Elizabethtown Hematology-Oncology PLC 1107 Woodland Drive Elizabethtown, KY 42701	3638	06/14/2006	KY	Suite 105
Northern Arizona Radiology 77 W. Forest Avenue Suite 101 Flagstaff, AZ 86001	WCGJX	06/14/2006	AZ	
Suburban Imaging-Coon Rapids 8990 Springbrook Drive Suite 140 Coon Rapids, MN 55433	3087	06/14/2006	MN	
Covenant Medical Center 200 East Ridgeway Avenue Waterloo, IA 50702	421264647	06/14/2006	IA	

Mayo Clinic Rochester 10 3rd Avenue NW Rochester, MN 55905	1922074434	06/14/2006	MN	Charlton Building
Thousand Oaks Diagnostic Imaging Center 2180 Lynn Road Thousand Oaks, CA 91360	TP118	06/14/2006	CA	
InnerVision Advanced Medical Imaging 3801 Amelia Avenue Lafayette, IN 47905	167840	06/14/2006	IN	
UT-M. D. Anderson Cancer Center-PET Facility 1220 Holcombe Boulevard Houston, TX 77030	450076	06/14/2006	TX	ACB 6th Floor
Emory University Hospital 1364 Clifton Road, NE Atlanta, GA 30322	110010	06/14/2006	GA	Rm. E121 Nuclear Medicine/PET
Glendale MRI Institute 624 S. Central Avenue Glendale, CA 91204	HW9951	06/14/2006	CA	

Princeton Radiology 9 Centre Drive Jamesburg, NJ 08831	526492	06/14/2006	NJ	
Caromont Imaging Services 620 Summit Crossing Place Gastonia, NC 28054	340032	06/14/2006	NC	Suite 106
North Central Imaging 155 Sonterra Boulevard Suite 100 San Antonio, TX 78258	00867N	06/14/2006	TX	
Robert L. B. Tobin Diagnostic Imaging Center 7979 Wurzbach Drive Suite U113 San Antonio, TX 78229	00867N	06/14/2006	TX	
Edwards Comprehensive Cancer Center 1400 Hal Greer Boulevard Huntington, WV 25701	510055	06/14/2006	WV	
Home Hospital GLHS 2400 South Street Lafayette, IN 47904	150109	06/14/2006	IN	

St. Luke's North PET 153 Brodhead Road Bethlehem, PA 18017	390049	06/14/2006	PA	
Alamance Regional Medical Center 1240 Huffman Mill Road Burlington, NC 27216-0202	340070	06/14/2006	NC	PO Box 202
Verrazano Radiology 256 Mason Avenue Staten Island, NY 10305	1698	06/14/2006	NY	
Total Imaging Sun City 3862 Sun City Center Sun City Center, FL 33571	U4840	06/14/2006	FL	
Ortonville Area Health Services 450 Eastvold Avenue Ortonville, MN 56278	241342	06/14/2006	MN	
Merle West Medical Center 2865 Daggett Avenue Klamath Falls, OR 97601	380050	06/14/2006	OR	
Elite Imaging, LLC 2845 Aventura Boulevard Aventura, FL 33180	K3535	06/14/2006	FL	Suite 145

St. Mary Centralia 400 N. Pleasant Avenue Centralia, IL 62801	140034	06/14/2006	IL	
North Texas Regional Cancer Center 3705 W. 15th Street. Plano, TX 75075	00543K	06/14/2006	TX	
Centegra Health System 4201 Medical Center Drive McHenry, IL 60050	140116	06/14/2006	IL	
Boston Diagnostic Imaging 398 East Altamonte Drive Altamonte Springs, FL 32701	77022	06/14/2006	FL	
William W. Backus Hospital 326 Washington Street Norwich, CT 06360	70024	06/14/2006	CT	
NSMS-Sparta, IL 4253 Argosy Court Madison, WI 53714	208196	06/14/2006	WI	
LaPorte Hospital & Healthcare Services 1007 Lincolnway LaPorte, IN 46350	150006	06/14/2006	IN	

Skagit Valley Hospital 1415 E. Kincaid Street Mt.Vernon, WA 98273	500003	06/14/2006	WA	
Alliance Imaging-Fairfield Hospital 303 NW 11th Street Fairfield, IL 62837	213393	06/14/2006	IL	
Anderson Hospital 6800 State Route 162 Maryville, IL 62062	212761	06/14/2006	IL	
Alliance Imaging-Dean 1313 Fish Hatchery Road Madison, WI 53715	92170	06/14/2006	WI	
Alliance Imaging-Research 2316 E. Meyer Boulevard Kansas City, MO 64112	9004263A	06/14/2006	MO	
Alliance Imaging-St. Joseph 1000 Carondelet Drive Kansas City, MO 64114	9004263A	06/14/2006	MO	
Beebe Health Campus, d.b.a. Beebe Medical Center 18941 John J. Williams Highway Rehoboth, DE 19971	80007	06/14/2006	DE	

Medical Outsourcing Services, LLC 1200 Maple Road Joliet, IL 60432	211223	06/14/2006	IL	
Silver Spring Radiology 10801 Lockwood Drive Silver Spring, MD 20901	FDX009	06/14/2006	MD	STE 170
New England PET of Greater Lowell 295 Varnum Avenue Lowell, MA 01854	327080	06/14/2006	MA	
Stanford University 900A Blake Wilbur Drive Stanford, CA 94305	50441	06/14/2006	CA	
Medical Outsourcing, Services, LLC 3333 W. DeYoung Street Marion, IL 62959	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC 1700 Clinton Street Muskegon, MI 49443	230066	06/14/2006	MI	
Medical Outsourcing Services, LLC 1001 Bellefontaine Avenue Lima, OH 45807	MEID02391	06/14/2006	OH	
Golf Diagnostic Imaging Center 9680 Golf Road Des Plaines, IL 60016	378810	06/14/2006	IL	

Medical Outsourcing Services, LLC 2816 South Ellis Avenue Chicago, IL 60616	211222	06/14/2006	IL	
Medical Outsourcing Services, LLC 1100 E. Norris Drive Ottawa, IL 61350	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC 111 E. Spring Street Streator, IL 61364	211224	06/14/2006	IL	
Mansfield Imaging Center 536 S. Trimble Road Mansfield, OH 44906	MAD10921	06/14/2006	OH	Suite A
Manhattan Diagnostic Radiology 400 East 66th Street New York, NY 10021	W23211	06/14/2006	NY	
Riverside Walter Reed Hospital 7519 Hospital Drive Gloucester, VA 23061	490130	06/14/2006	VA	
Good Shepherd Hospital 450 West Highway 22 Barrington, IL 60010	140291	06/14/2006	IL	

Alliance Imaging-Presbyterian Intercomm Hospital 12401 Washington Boulevard Whittier, CA 90602	TG281A	06/14/2006	CA	Presbyterian Intercommunity Hospital
Altru Hospital 1200 S. Columbia Road. Grand Forks, ND 58201	350019	06/14/2006	ND	
Mid American Imaging-Union Hospital 659 Boulevard Street Dover, OH 44622	ID00805	06/14/2006	OH	
Gundersen Clinic 1900 South Avenue Lacrosse, WI 54601	34217	06/14/2006	WI	
University of Minnesota Medical Center, Fairview 500 Harvard Street, SE Box 292 Minneapolis, MN 55455	C02390	06/14/2006	MN	
The Christ Hospital 2139 Auburn Avenue Cincinnati, OH 45219	360163	06/14/2006	OH	
West Michigan Cancer Center 200 N. Park Street Kalamazoo, MI 49007	0N66660	06/14/2006	MI	

Cyrus Diagnostic Imaging, Inc. 165 Waymont Court Lake Mary, FL 32746	40586	06/14/2006	FL	
Cancer Centers of Florida 1561 West Fairbanks Avenue Winter Park, FL 32789	K1833	06/14/2006	FL	
Cedars-Sinai Medical Center 8700 Beverly Boulevard Adler-Nail PET Center Los Angeles, CA 90048	951644600	06/14/2006	CA	S. Mark Taper Foundation Imaging Center
Cancer Centers of Florida 52 West Gore Street Orlando, FL 32806	K1833	06/14/2006	FL	
Cancer Centers of Florida 1111 Blackwood Avenue Ocoee, FL 34761	K1833	06/14/2006	FL	
Mt. Clemens Regional Medical Center 1000 Harrington Street Mt. Clemens, MI 48043	230227	06/14/2006	MI	

Truxtun Radiology Medical Group, LP 1818 16th Street Bakersfield, CA 93301	ZZZ25213Z	06/14/2006	CA	
Medical Outsourcing Services, LLC 1515 North Madison Avenue Anderson, IN 46011	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC 1215 Franciscan Drive Litchfield, IL 62056	211224	06/14/2006	IL	
Piedmont Medical Center 1968 Peachtree Road, NW Atlanta, GA 30305	110083	06/14/2006	GA	
Medical Outsourcing Services, LLC 1400 West Park Street Urbana, IL 61801	211224	06/14/2006	IL	
Central Indiana PET, LLC 8301 Harcourt Road Suite 100 Indianapolis, IN 46260	201930	06/14/2006	IN	

Medical Outsourcing Services, LLC 812 North Logan Avenue Danville, IL 61832	211224	06/14/2006	IL	
Queens Medical Imaging, PC 69-15 Austin Street Forest Hills, NY 11375	1023011285	06/14/2006	NY	
NYOH PET/CT Imaging 43 New Scotland Avenue Albany, NY 12208	56917A	06/14/2006	NY	
Conroe Regional Medical Center 504 Medical Center Boulevard Conroe, TX 77304	450222	06/14/2006	TX	
Northeast Georgia Health System, Inc. Northeast Georgia Medical Center; 743 Spring Street Gainesville, GA 30501	110029	06/14/2006	GA	
Texas Oncology, PA-Mckinney 4510 Medical Center Drive Mckinney, TX 75069	00543K	06/14/2006	TX	#215

Medical Outsourcing Services, LLC 7150 Clearwater Drive Indianapolis, IN 46256	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC 1402 East County Line Road Indianapolis, IN 46227	223260	06/14/2006	IN	
Texas Cancer Center-Sherman 2800 Highway 75 North Sherman, TX 75090	00543K	06/14/2006	TX	
Medical Outsourcing Services, LLC 120 Ralston Avenue Defiance, OH 43512	MEID02391	06/14/2006	OH	
Medical Outsourcing Services, LLC 2400 N. Rockton Avenue Rockford, IL 61103	211224	06/14/2006	IL	
Arlington Cancer Center 906 W. Randol Mill Road Arlington, TX 76012	00LK20	06/14/2006	TX	
Jupiter Medical Center 2055 Military Trail Jupiter, FL 33458	100253	06/14/2006	FL	

Cheyenne Radiology Group and MRI, PC 2003 Bluegrass Circle Cheyenne, WY 82009	W309142	06/14/2006	WY	
Hunterdon Imaging, PA 2100 Wescott Drive MRI Suite Flemington, NJ 08822	714119	06/14/2006	NJ	
Medical Outsourcing Services, LLC 200 Berteau Avenue Elmhurst, IL 60126	211223	06/14/2006	IL	
Magnolia Regional Center 611 Alcorn Drive Corinth, MS 38834	250009	06/14/2006	MS	
Monroe Clinic 515 22nd Avenue Monroe, WI 53566	520028	06/14/2006	WI	
Jupiter Hematology-Oncology Associates 345 Jupiter Lakes Boulevard Jupiter, FL 33458	34922	06/14/2006	FL	Ste.100
Southwest Regional Cancer Center 901 West 38th Street Austin, TX 78705	0080BY	06/14/2006	TX	
Positron Imaging Of Austin 6101 Balcones Drive Austin, TX 78731	00538K	06/14/2006	TX	

Southern Ocean County Hospital 1140 Route 72 West Manahawkin, NJ 08050	310113	06/14/2006	NJ	Radiology
Medical Outsourcing Services, LLC 9830 S. Ridgeland Road Chicago Ridge, IL 60145	211222	06/14/2006	IL	
Medical Outsourcing Services, LLC 430 West Votaw Street Portland, IN 47374	223260	06/14/2006	IN	
Saint Agnes Medical Center 1303 E. Herndon Avenue Fresno, CA 93720	50093	06/14/2006	CA	
Central Physicians Imaging 100 Southland Drive Lexington, KY 40503	9375001	06/14/2006	KY	Suite B
NEA Medical Center 3024 Stadium Boulevard Jonesboro, AR 72401	1386699353	06/14/2006	AR	
Northgate Medical Imaging, LLC 807 Northgate Boulevard New Albany, IN 47150	1205894235	06/14/2006	IN	

Ball Memorial Hospital 2401 University Avenue Muncie, IN 47303	150089	06/14/2006	IN	
The MRI Center 5200 Harroun Road Sylvania, OH 43560	360074	06/14/2006	OH	Flower Hospital
St. Joseph Regional Health Center 2801 Franciscan Drive Bryan, TX 77802	450011	06/14/2006	TX	
Steinberg Diagnostic (SDMI) 2850 Siena Heights Henderson, NV 89052	WCHCC	06/14/2006	NV	
Raritan Bay Medical Center 1 Hospital Plaza Old Bridge, NJ 08857	310039	06/14/2006	NJ	
MRI Center-St. Anne Mercy Hospital 3404 W. Sylvania Avenue Toledo, OH 43623	360262	06/14/2006	OH	
MRI Center-St. Charles Mercy Hospital 2600 Navarre Avenue Oregon, OH 43616	360081	06/14/2006	OH	

MRI Center-St. Luke's Hospital 2901 Monclova Road Maumee, OH 43537	360090	06/14/2006	OH	
MRI Center-St. Vincent Medical Center 2213 Cherry Street Toledo, OH 43608	360112	06/14/2006	OH	
MRI Center-Toledo Hospital 2142 N. Cove Boulevard Toledo, OH 43606	360068	06/14/2006	OH	
McAlester Regional Health Center One Clark Bass Boulevard McAlester, OK 74501	370034	06/14/2006	OK	
Express Imaging Center, Ltd. 1987 West Fourth Street Mansfield, OH 44906	9299151	06/14/2006	OH	Suite A
Mercy Regional Medical Center 375 East Park Avenue Durango, CO 81301	60013	06/14/2006	CO	

Texas Oncology-Longview Cancer Center PET 1300 N. Fourth Street Longviews, TX 75601	00T35E	06/14/2006	TX	
UNC Hospitals 101 Manning Drive Chapel Hill, NC 27514	3400610	06/14/2006	NC	PET Department. Basement W/C Hospital
DeKalb Medical Center-Diagnostic Imaging Center 2701 North Decatur Road Decatur, GA 30033	110076	06/14/2006	GA	
Long Island Pet Imaging 6 Ohio Drive Lake Success, NY 11042	W4921	06/14/2006	NY	Suite 101
Vanderbilt University Medical Center 1161 21st Avenue South Nashville, TN 37232	3284867	06/14/2006	TN	Building 1251 RRB
Medical Outsourcing Services, LLC 1800 E. Lakeshore Drive Decatur, IL 62521	211224	06/14/2006	IL	
New York PET and CTA Imaging Center 7404 5th Avenue Brooklyn, NY 11209	1083680003	06/14/2006	NY	

Mercy Medical Center-North Iowa 1000 4th Street SW Mason City, IA 50401	160064	06/14/2006	IA	
Lawrence and Memorial Hospital 365 Motauk Avenue New London, CT 06320	70007	06/14/2006	CT	
Superior Medical Diagnostics II, LLC 235 Franklin Avenue Nutley, NJ 07110	68423	06/14/2006	NJ	
Oncology Specialists, S.C. 7900 N. Milwaukee Avenue Niles, IL 60714	587940	06/14/2006	IL	Suite 16
Hahnemann University Hospital Broad & Vine, MS300 Philadelphia, PA 19102	390290	06/14/2006	PA	
Shrewsbury Diagnostic Imaging, LLC 1131 Broad Street Shrewsbury, NJ 07702	24021	06/14/2006	NJ	Suite 110
Medical Outsourcing Services, LLC 500 West Court Street Kankakee, IL 60901	211224	06/14/2006	IL	

Forsyth Medical Center 3333 Silas Creek Parkway Winston Salem, NC 27103	3400014	06/14/2006	NC	
Medical Outsourcing Services, LLC 500 John Deere Road Moline, IL 61265	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC 836 W. Wellington Avenue Chicago, IL 60657	211222	06/14/2006	IL	
Medical Outsourcing Services, LLC 1600 West Walnut Jacksonville, IL 62650	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC 1600 23rd Street Bedford, IN 47471	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC 1500 North Ritter Avenue Indianapolis, IN 46219	223260	06/14/2006	IN	

Medical Outsourcing Services, LLC 1221 N. Highland Aurora, IL 60506	211223	06/14/2006	IL	
Medical Outsourcing Services, LLC 1000 Lincoln Health Center Drive Mattoon, IL 61938	211224	06/14/2006	IL	
Salinas Valley Memorial Healthcare System 450 E. Romie Lane Salinas, CA 93901	50334	06/14/2006	CA	
Bridgeport Hospital 267 Grant Street Bridgeport, CT 06610	70010	06/14/2006	CT	
MRIGP, Inc., d.b.a. Advanced Medical Imaging Diamond H. 2490 W 26th Avenue Suite 20A Denver, CO 80211	H8808	06/14/2006	CO	
RCHO PET Imaging 5120 Belfort Boulevard Suite 130 Jacksonville, FL 32256	40259	06/14/2006	FL	
Presbyterian Hospital 200 Hawthorne Lane Charlotte, NC 28204	560554230	06/14/2006	NC	

Eisenhower Imaging Center 39000 Bob Hope Drive Rancho Mirage, CA 92210	ZZZ91572Z	06/14/2006	CA	Lower Level Lucy Curci Cancer Center
Mississippi Baptist Medical Center 501 Marshall Street Jackson, MS 39202	250102	06/14/2006	MS	
Texas Oncology-South Texas Cancer Center 2121 Pease Street Suite 101 Harlingen, TX 78550	14041756	06/14/2006	TX	Texas Oncology-South Texas Cancer Center
Valley Radiologists, Ltd.-Paseo II Office 5605 W. Eugie Avenue Suite 110 Glendale, AZ 85304	WCFHS	06/14/2006	AZ	
Good Samaritan Hospital 400 15th Avenue SE Puyallup, WA 98372	500079	06/14/2006	WA	
St. John's Mercy Hospital 851 5th Street Washington, MO 63090	260052	06/14/2006	MO	
Memorial Hermann The Woodlands OPID 9200 Pinecroft Drive Suite 100 The Woodlands, TX 77380	741152597	07/14/2006	TX	

St. Luke's Hospital 232 South Wood's Mill Road Chesterfield, MO 63017	260179	07/14/2006	MO	
Lake Vista Cancer Center 2790 Lake Vista Drive Lewisville, TX 75067	00543K	07/14/2006	TX	
Palms Imaging Medical Group, Inc. 1901 Outlet Center Drive Oxnard, CA 93036	W19564	07/14/2006	CA	
Houston Medical Imaging, LLC 3310 Richmond Avenue Houston, TX 77006	00137K	07/14/2006	TX	
Alliance Imaging-West Anaheim Medical Center 3033 W. Orange Avenue Anaheim, CA 92804	TD017	07/14/2006	CA	
Winthrop PET Imaging Center 222 Station Plaza North Suite 140 Mineola, NY 11501	330167	07/14/2006	NY	
Greenville Hospital System University Medical Center 701 Grove Road Greenville, SC 29605	420078	07/14/2006	SC	

High Field Open MRI 1895 Jefferson Road Rices Landing, PA 15357	7885	07/14/2006	PA	
PET/CT Center at St. Anthony's POB 1201 5th Avenue North St. Petersburg, FL 33705	E5753	07/14/2006	FL	Suite 100
Texas Oncology-Deke Slayton Cancer Center 501 Medical Center Webster, TX 77598	00t40e	07/14/2006	TX	
Invision North Florida Outpatient Imaging Center 6605 NW 9th Boulevard Gainesville, FL 32609	E4639	07/14/2006	FL	
Memorial Hospital of Union County 500 London Avenue Marysville, OH 43040	360092	07/14/2006	OH	
Texas Oncology/South Texas Cancer Center-McAllen 1901 S. 2nd Street McAllen, TX 78503	00N39J	07/14/2006	TX	

Baylor Medical Center at Irving 1901 North MacArthur Boulevard Irving, TX 75061	450079	07/14/2006	TX	
Providence Park Hospital 47601 Grand River Avenue Novi, MI 48374	230019	07/14/2006	MI	
Texas Oncology-Abilene 1957 Antilley Road Abilene, TX 79606	140414748	07/14/2006	TX	
St. Anthony Hospital 1000 North Lee Street Oklahoma City, OK 73101	370037	07/14/2006	OK	
Rice Memorial Hospital 301 Becker Avenue SW Willmar, MN 56201	240088	07/14/2006	MN	
LDS Hospital Nuclear Medicine 8th Avenue & C Street Salt Lake City, UT 84143	460010	07/14/2006	UT	

RMG First & Laurel Imaging Center 2466 First Avenue San Diego, CA 92101	W14057	07/14/2006	CA	
RMG Gardenview Imaging Center 1200 Gardenview Road Encinitas, CA 92024	W14057F	07/14/2006	CA	Suite 110
Decatur County Memorial Hospital 720 North Lincoln Street Greensburg, IN 47240	150062	07/14/2006	IN	
Midland Imaging Center 5001 Andrews Highway Midland, TX 79703	00U75H	07/14/2006	TX	
Advanced Imaging, LLC 3433 NW 56th C-10 Oklahoma City, OK 73112	400522379	07/14/2006	OK	
University of Iowa Hospitals and Clinics 200 Hawkins Drive Iowa City, IA 52242	160058	07/14/2006	IA	
AZ Oncology Associates PET/CT & CT Imaging Center 2070 W. Rudasill Road Tucson, AZ 85704	25291	07/14/2006	AZ	Suite 110

Medical Diagnostic Imaging 14 Raymond Avenue Poughkeepsie, NY 12603	EEN841	07/14/2006	NY	
Shore Memorial Hospital 10085 William F. Bernart Circle Nassawadox, VA 23413	540560500	07/14/2006	VA	
Deaconess Hospital 600 Mary Street Evansville, IN 47747	150082	07/14/2006	IN	
Great Neck Imaging, PC 907 Northern Boulevard Great Neck, NY 11021	1487646311	07/14/2006	NY	
FMH Rose Hill 1562 Opossumtown Pike Frederick, MD 21702	KP72	07/14/2006	MD	
Oakwood Annapolis Hospital 33155 Annapolis Road Wayne, MI 48184	230142	07/14/2006	MI	
The Regional Cancer Center 2500 West 12th Street Erie, PA 16505	140052	07/14/2006	PA	
Meritcare Hospital 801 North Broadway Fargo, ND 58122	350011	07/14/2006	ND	

Community Hospitals and Wellness Centers 433 W. High Street Bryan, OH 43506	360121	07/14/2006	OH	
Sacred Heart Hospital 900 W. Clairemont Avenue Eau Claire, WI 54701	520013	07/14/2006	WI	
Via Radiology-Meridian Pavilion 11011 Meridian Avenue North #101 Seattle, WA 98133	8859612	07/14/2006	WA	
Medical Outsourcing Services, LLC 2200 Market Street Charlestown, IN 47111	223260	07/14/2006	IN	
Allegheny General Hospital 320 East North Avenue Pittsburgh, PA 15232	60503	07/14/2006	PA	Division of Nuclear Medicine
Texas Oncology-12th Avenue 1001 W. 12th Avenue Fort Worth, TX 76104	00R66C	07/14/2006	TX	
Southwest Fort Worth Cancer Center 6500 Harris Parkway Fort Worth, TX 76132	00R66C	07/14/2006	TX	

St. Rita's Medical Center 730 W. Market Street Lima, OH 45801	360066	07/14/2006	OH	
New Mexico Oncology Hematology Consultants, Ltd. 4901 Lang Avenue NE Albuquerque, NM 87109	850367056	07/14/2006	NM	
Emory Eastside Medical Center 545 Old Norcross Road Lawrenceville, GA 30045	110192	07/14/2006	GA	Suite 200
Riverside Regional Medical Center 500 J. Clyde Morris Boulevard Newport News, VA 23601	490052	07/14/2006	VA	
Connecticut Oncology & Hematology 220 Kennedy Drive Torrington, CT 06790	C00633	07/14/2006	CT	
Chilton Memorial Hospital 97 West Parkway Pompton Plains, NJ 07444	310017	07/14/2006	NJ	

Riverside Diagnostic Center Williamsburg 120 Kings Way Williamsburg, VA 23188	490052	07/14/2006	VA	
Lawrence County MRI & Diagnostic Imaging Center 2526 Wilmington Road New Castle, PA 16105	68617	07/14/2006	PA	
Joint Township District Memorial Hospital 200 St. Clair Street Saint Marys, OH 45885	360032	07/14/2005	OH	
Radiation Therapy Regional Centers 3680 Broadway Fort Myers, FL 33901	77215	07/14/2006	FL	
Graduate Hospital 1800 Lombard Street Philadelphia, PA 19146	390285	07/14/2006	PA	One Graduate Hospital
Columbia Diagnostic Center 1111 Paulison Avenue Clifton, NJ 07015	94729	07/14/2006	NJ	
The Nebraska Medical Center 4250 Dewey Avenue Omaha, NE 68113	280013	07/14/2006	NE	

Memorial Hermann Memorial City OPID 925 Gessner Road Houston, TX 77024	741152597	07/14/2006	TX	
Clifton Springs Hospital and Clinic 2 Coulter Road Clifton Springs, NY 14432	330265	07/14/2006	NY	
Monongalia General Hospital 1200 J. D. Anderson Drive Morgantown, WV 26505	510024	07/14/2006	WV	Monongalia General Hospital
Providence Portland Medical Center 4805 NE Glisan Street Portland, OR 97213	380061	07/14/2006	OR	
Highfield Open MRI, Inc. 995 GreenTree Road Pittsburgh, PA 15220	7885	07/14/2006	PA	
Providence St. Vincent Medical Center 9205 SW Barnes Road Portland, OR 97225	380004	07/14/2006	OR	

Conway Regional Imaging Center 2120 Robinson Avenue Conway, AR 72034	40029	07/14/2006	AR	
Martin Memorial Medical Center 300 Hospital Avenue Stuart, FL 34994	100044	07/14/2006	FL	
Northwest Medical Foundation of Tillamook 1000 Third Street Tillamook, OR 97141	381317	07/14/2006	OR	Tillamook County General Hospital
O'Connor Hospital 2105 Forest Avenue San Jose, CA 95128-1471	50153	07/14/2006	CA	
Midtown Imaging, LLC-Wellington 440 N. State Road 7 Wellington, FL 33411	E9133	07/14/2006	FL	
Midtown Imaging, LLC-Jupiter 345 Jupiter Lakes Boulevard Jupiter, FL 33458	E9133	07/14/2006	FL	Suite 100
MMI/Mid Coast Hospital 51 US Route 1 Scarborough, ME 04074	327079	07/14/2006	ME	Suite O

Molecular Imaging Institute 5349 Commerce Boulevard Crown Point, IN 46307	192870	07/14/2006	IN	
RCOA Imaging Services 11937 US Highway 271 Tyler, TX 75708	FTN022	07/14/2006	TX	
MMI/Maine Medical Center 51 US Route 1 Scarborough, ME 4074	327079	07/14/2006	ME	Suite O
Radiology, Ltd. 4640 East Camp Lowell Drive Tucson, AZ 85712	WCBBM	07/14/2006	AZ	
Intermed Oncology Associates, S.C. 6701 159th Street Tinley Park, IL 60477	610860	07/14/2006	IL	
Lakes Radiology 450 Canisteo Street Hornell, NY 14843	1710937727	07/14/2006	NY	
Opelousas PET/CT Imaging Center 3975 I-49 South Service Road Suite 100 Opelousas, LA 70570	5DA11	07/14/2006	LA	

Florida Cancer Institute-BRK 7154 Medical Center Drive Spring Hill, FL 34608	1427017326	08/07/2006	FL	
Capital Health System 446 Belleview Avenue Trenton, NJ 08618	310044	08/07/2006	NJ	
Hudson Valley Diagnostic Imaging, PLLC 575 Hudson Valley Avenue New Windsor, NY 12553	WBH241	08/07/2006	NY	
St Joseph's Hospital 3200 Pleasant Valley Road West Bend, WI 53095	520063	08/07/2006	WI	
Atlantic Medical Imaging 30 East Maryland Avenue Somers Point, NJ 08244	101024	08/07/2006	NJ	
Providence Imaging Center 3340 Providence Drive Anchorage, AK 99508	2085R0202X	08/07/2006	AK	

Rochester Radiology Associates, PC 1277 Portland Avenue Rochester, NY 14621	199726	08/07/2006	NY	
Melbourne Internal Medicine Associates 1132 South Hickory Street Melbourne, FL 32901	77167	08/07/2006	FL	
Highline Imaging, LLC 275 SW 160th Street Seattle, WA 98166	8801784	08/07/2006	WA	
Tyler PET 415 South Fleishel Avenue Tyler, TX 75702	752131429	08/07/2006	TX	
Lake City Medical Center 340 NW Commerce Drive Lake City, FL 32055	100156	08/07/2006	FL	
Blount Memorial Hospital 907 East Lamar Alexander Boulevard Maryville, TN 37804	440011	08/07/2006	TN	

Texas Cancer Center Mesquite 4700 North Galloway Mesquite, TX 75150	R339	08/07/2006	TX	
Rutland Regional Medical Center: Diagnostic Imaging 160 Allen Street Rutland, VT 05701	470005	08/07/2006	VT	
MDMED, Inc. 155 Calle Portal Suite 700 Sierra Vista, AZ 85635	Z68496	08/07/2006	AZ	
Atlantic Medical Imaging Wall Township 2399 North Highway 34 Manasquan, NJ 08736	101024	08/07/2006	NJ	Ramshorn Executive Centre Bldg B
Newport Imaging Center 455 Old Newport Road Suite 101 Newport Beach, CA 92660	W10829	08/07/2006	CA	
Cancer Care and Hematology Specialists(CCHSC) 8915 West Golf Road Niles, IL 60714-05825	355030	08/07/2006	IL	

Hematology Oncology Associates of Illinois (HOAI) 715 West North Avenue Melrose Park, IL 60160	218860	08/07/2006	IL	
Princeton Community Hospital 122 12th Street Ext Princeton, WV 24740	510046	08/07/2006	WV	PO Box 1369
TRICAT, LLC at Edison 3830 Park Avenue Edison, NJ 08820	27193	08/07/2006	NJ	Suite 102
Olathe Medical Center 20333 W. 151st Street Olathe, KS 66061	170049	08/07/2006	KS	
St. Joseph Hospital 1140 West La Veta Avenue Orange, CA 92868	50069	08/07/2006	CA	2nd Floor Nuclear Medicine
Baptist Health Medical Center 9601 I630, Exit 7 Little Rock, AR 72205-7299	40114	08/07/2006	AR	
Florida Cancer Specialists 3840 Broadway Fort Myers, FL 33901	1225064520	08/07/2006	FL	

Pacca PET Imaging 5210 Belfort Road Suite 130 Jacksonville, FL 32256	37572	08/07/2006	FL	
National PET Scan Palm Beach, LLC 16110 Jog Road Delray Beach, FL 33484	1164452405	08/07/2006	FL	Suite 200
Central Memphis Regional PET Imaging Center, LLC 1388 Madison Avenue Memphis, TN 38104	1295719110	08/07/2006	TN	
Johnston Memorial Hospital 351 Court Street NE Abingdon, VA 24210	490053	08/07/2006	VA	
Lenox Hill Hospital 100 East 77th Street New York, NY 10021	131624070	08/07/2006	NY	
Mercy Medical Center 411 Laurel Street Suite 2310 Des Moines, IA 50314	160083	08/07/2006	IA	

New Orleans Regional PET Center, LLC 3434 Prytania Street Suite 120 New Orleans, LA 70115	1538143474	08/07/2006	LA	
Indiana Regional Medical Center PET Imaging 835 Hospital Road Indiana, PA 15701	390173	08/07/2006	PA	PO Box 788
Mid American-Defiance Clinic 1400 E. Second Street Defiance, OH 43512	ID00809	08/07/2006	OH	
Total Imaging Robertson 737 West Brandon Boulevard Brandon, FL 33511	k7282	08/07/2006	FL	
New Tampa Imaging Center 14302 N. Bruce B. Downs Boulevard Tampa, FL 33613	k57209	08/07/2006	FL	
Summit Imaging 12037 Cortez Boulevard Brooksville, FL 34613	40986	08/08/2006	FL	
University of NM Cancer Research & Treatment Center 900 Caminodey Salud NE Albuquerque, NM 87131	400521103	08/08/2006	NM	

Alliance Imaging-Los Alamitos Med Center 3751 Katella Avenue Los Alamitos, CA 90720	TD017	08/08/2006	CA	
NYU Clinical Cancer Center, Diagnostic Imaging 160 E. 34th Street New York, NY 10016	W1L361	08/08/2006	NY	2nd Floor
Margaret Mary Community Hospital 321 Mitchell Avenue Batesville, IN 47006	151329	08/08/2006	IN	
Quantum PET-Apple Hill 37 Monument Road York, PA 17403	40635	08/08/2006	PA	
Memorial Hospital 1204 N. Mound Street Nacogdoches, TX 75961	450508	08/08/2006	TX	
BMH-DeSoto 7601 Southcrest Parkway Southaven, MS 38671	250141	08/08/2006	MS	
Riverside Medical Center 300 Bourbonnais Campus Bourbonnais, IL 60914	140186	08/08/2006	IL	Riverside Medical Center

UCSD Center for Molecular Imaging 11388 Sorrento Valley Road Suite 100 San Diego, CA 92121	TG302	08/08/2006	CA	
Imaging Partners at Valley, LLC 400 South 43rd Street Renton, WA 98055	AB38657	08/08/2006	WA	Olympic Building
El Paso Cancer Treatment Center 7848 Gateway East Boulevard El Paso, TX 79915	00543K	08/08/2006	TX	
Desert Radiologists 3930 S. Eastern Avenue Las Vegas, NV 89119	VWCCBT	08/08/2006	NV	
Saint Joseph Hospital 2900 North Lake Shore Drive Chicago, IL 60068	140224	08/08/2006	IL	
Midstate Medical Center 435 Lewis Avenue Meriden, CT 06451	60646715	08/08/2006	VT	
Brookville Hospital 100 Hospital Road Brookville, PA 15825	391312	08/08/2006	PA	

Suntree Diagnostic Center 6300 N. Wickham Road Suite 101 Melbourne, FL 32940	701	08/08/2006	FL	
Virginia Mason Medical Center 1100 Ninth Avenue Seattle, WA 98101	500005	08/08/2006	WA	
Van Wert County Hospital 1250 South Washington Street Van Wert, OH 45891	360071	08/08/2006	OH	
Manhasset Diagnostic Imaging, PC 1350 Northern Boulevard 2nd Floor Manhasset, NY 11030	W14841	08/08/2006	NY	
Southern New Mexico Cancer Center 150 Road Runner Parkway Las Cruces, NM 88011	752131429	08/08/2006	NM	
Davis Memorial Hospital Gorman Avenue and Reed Street Elkins, WV 26241	510030	08/08/2006	WV	Gorman Avenue

Advocate Good Samaritan Hospital 3815 Highland Avenue Downers Grove, IL 60515	140288	08/08/2006	IL	
Benefis Healthcare 1101 26th Street South Great Falls, MT 59405	270012	08/08/2006	MT	
Fort Walton Beach Medical Center 1032 Mar Walt Drive Fort Walton Beach, FL 32547	100223	08/08/2006	FL	
Blessing Hospital PO Box #7005 Quincy, IL 62305	140015	08/08/2006	IL	
Alliance Imaging-Allen County Hospital 101 South 1st Street Iola, KS 53808	130656	08/08/2006	KS	
Florida Cancer Institute-NPR 8763 River Crossing Boulevard New Port Richey, FL 34655	1427017326	08/08/2006	FL	
Kimball Medical Center 600 River Avenue Lakewood, NJ 08701	315084	08/08/2006	NJ	

Radiology Imaging Associates at Heritage 8926 Woodyard Road Clinton, MD 20735	521454775	08/08/2006	MD	Suite 502
Immanuel Medical Center 6901 North 72nd Street Omaha, NE 68122	280081	08/08/2006	NE	
North Fork Radiology 1333 Roanoke Avenue Riverhead, NY 11901	w11401	08/08/2006	NY	
South County PET Imaging, LLC 10010 Kennerly Road St. Louis, MO 63128	93053	08/08/2006	MO	
Carolinas Hospital System 805 Pamplico Highway Florence, SC 29505	621587267	08/08/2006	SC	
Radiology Associates of San Luis Obispo 522 E. Plaza Drive Santa Maria, CA 93454	GR0009774	08/08/2006	CA	

Florida Cancer Specialists-Port Charlotte 22395 Edgewater Drive Port Charlotte, FL 33980	1225064520	08/08/2006	FL	
Florida Cancer Specialists-Venice 901 South Tamiami Trail Venice, FL 34285	1225064520	08/08/2006	FL	
Florida Cancer Specialists-Bradenton 6001 21st Avenue West Bradenton, FL 34209	1225064520	08/08/2006	FL	
Nebraska Methodist Hospital 8303 Dodge Street Omaha, NE 68114	280040	08/08/2006	NE	
PET/CT Center of Richardson 399 Melrose Drive Richardson, TX 75080	1740207539	08/08/2006	TX	Suite A
Molecular Imaging at Sequoia Imaging Center 4949 W. Cypress Avenue Visalia, CA 93277	ZZZ27463Z	08/08/2006	CA	

Central Jersey Radiologists 2128 Kings Highway Oakhurst, NJ 07755	527995	08/08/2006	NJ	
Claxton-Hepburn Medical Center 214 King Street Ogdensburg, NY 13669	330211	08/08/2006	NY	
Memorial Hermann Southeast 11800 Astoria Boulevard Houston, TX 77089	741152597	08/08/2006	TX	
NSMS-Pine Bluff, AR 4253 Argosy Court Madison, WI 53714	5f168	08/08/2006	WI	
Yuma Regional Medical Center 2400 S. Avenue A Yuma, AZ 85364	866007596	08/08/2006	AZ	
Carle Clinic 1702 S. Mattis Avenue Champagne, IL 61820	371188284	08/08/2006	IL	
North Shore-LIJ Center for Advanced Medicine 450 Lakeville Road Lake Success, NY 11042	330106	08/08/2006	NY	North Shore-LIJ Center for Advanced Medicine Diagnostic Imaging Center
McAlester Diagnostic Imaging 10 South Third Street McAlester, OK 74501	1760411540	08/08/2006	OK	Suite 100

California Imaging Institute 1867 E. Fir Avenue Fresno, CA 93720	ZZZ03565Z	08/08/2006	CA	
Bon Secours Memorial Regional Medical Center 8260 Atlee Road Mechanicsville, VA 23116	541744931	08/08/2006	VA	
University of Maryland Medical Center 22 S. Greene Street Gudelksy 2nd Floor Baltimore, MD 21201	210002	08/08/2006	MD	Division of Nuclear Medicine
Bixby Medical Center 818 Riverside Avenue Adrian, MI 49221	230005	08/08/2006	MI	
Kern Radiology Medical Group 2301 Bahamas Drive Bakersfield, CA 93309	1720023997	08/08/2006	CA	
Bon Secours St. Francis Medical Center 13710 St. Francis Boulevard Midlothian, VA 23114	311716973	08/08/2006	VA	
MMI/Maine General Waterville 51 US Route 1 Scarborough, ME 04074	327079	08/08/2006	ME	Suite O

Mount Adams Imaging Center 3911 Castlevale Road Yakimaw, WA 98902	8857843	08/08/2006	WA	
Carilion Roanoke Memorial Hospital 2001 Crystal Spring Avenue Roanoke, VA 24014	490024	08/08/2006	VA	
Seton Medical Center; Nuclear Medicine Dept. 1900 Sullivan Avenue Daly City, CA 94015-2229	50289	08/08/2006	CA	
Arnett Imaging Center 2403 Loy Drive Lafayette, IN 47909	224390	08/08/2006	IN	
Advanced Diagnostic Imaging, PC 1120 Professional Boulevard Evansville, IN 47630	639970	08/08/2006	IN	
Queen of Peace Hospital 301 Second Street NE New Prague, MN 56071	241361	08/08/2006	MN	
Agnesian Health Care 430 E. Division Street Fond du Lac, WI 54935	520088	08/08/2006	WI	

ACMH Hospital One Nolte Drive Kittanning, PA 16201	390163	08/08/2006	PA	
Wilshire Oncology Medical Group, Inc. 1280 Corona Pointe Court Corona, CA 92879	zzz19568z	08/08/2006	CA	Suite 112
United Radiology-Laurel 14201 Laurel Park Drive Laurel, MD 20707	2.01558E+11	08/08/2006	MD	Suite 208
Bay Area Medical Center 3100 Shore Drive Marinette, WI 54143	520113	08/08/2006	WI	
Penn State Milton S. Hershey Medical Center 500 University Drive Hershey, PA, 17033	251854772	08/08/2006	PA	HG380
Delta St. Joseph's MRI, LLC 1617 N. California Street Stockton, CA 95204	ZZZ19725Z	08/08/2006	CA	Suites 1A and 1B
United Radiology: Bowie 16701 Melford Boulevard Bowie, MD 20715	2.01558E+11	08/08/2006	MD	
United Radiology Gaithersburg 702 Russell Avenue Gaithersburg, MD 20877	2.01558E+11	08/08/2006	MD	

United Radiology Olney 18120 Hillcrest Drive Olney, MD 20832	2.01558E+11	08/08/2006	MD	Suite A
FCS/Axcess Diagnosis/Sarasota 600 N. Cattleman Road Sarasota, FL 34232	1225064520	08/08/2006	FL	
NSMS-Greenville, IL 4253 Argosy Court Madison, WI 53714	208196	08/08/2006	WI	
FCS/Axcess Diagnosis/Venice 842 Sunset Lake Boulevard Venice, FL 34292	1225064520	08/08/2006	FL	Suite #301
Leading Edge Radiation 8715 5th Avenue Brooklyn, NY 11209	WEM111	09/05/2006	NY	
Rena Tarbet Cancer Center 4201 Medical Center Drive Suite 180 McKinney, TX 75069	oow753	09/05/2006	TX	
McLaughlin & Marte, M.D, LLP 3850 Tampa Road Suite 202 Palm Harbor, FL 34684	1003862079	09/05/2006	FL	
BryanLGH Medical Center 2300 South 16th Street Lincoln, NE 68502	280003	09/05/2006	NE	

Freehold MR Associates 691 West Main Street Freehold, NJ 07728	405856	09/05/2006	NJ	
Franciscan Skemp Healthcare 700 West Avenue South La Crosse, WI 54601	520004	09/05/2006	WI	
Teton Radiology 2001 S. Woodruff Suite 17 Idaho Falls, ID 83404	1371462	09/05/2006	ID	
Fletcher Allen Health Care Mobile Pad 790 College Parkway Colchester, VT 05446	1659309615	09/05/2006	VT	790 College Parkway
University of Penn Imaging Center 3600 Market Street 3rd Floor Silverstein Philadelphia, PA 19104	764089	09/05/2006	PA	
Sitron-Hammel Radiology Group 4277 Hempstead Turnpike Suite 200 Bethpage, NY 11714	W14891	09/05/2006	NY	
MRI of Saint Louis Obispo 1064 Murray Avenue San Luis Obispo, CA 93405	1881661361	09/05/2006	CA	
Lahey Clinic 41 Mall Road Burlington, MA 01805	220171	09/05/2006	MA	

St Joseph Medical Center 215 N. 12th Street Reading, PA 19603	390096	09/05/2006	PA	
Spartanburg Regional Medical Center 101 E. Wood Street Spartanburg, SC 29303	420007	09/05/2006	SC	
Aurora Sinai Medical Center 945 N. 12th Street Milwaukee, WI 53201	520064	09/05/2006	WI	
FHN Memorial Hospital 1045 W. Stephenson Street Freeport, IL 61032	140160	09/05/2006	IL	
Southwest Washington Medical Center 400 NE Mother Joseph Place Vancouver, WA 98668	500050	09/05/2006	WA	
St. Lukes Center for Diagnostic Imaging 6 McBride and Sons Corporate Center Drive Suite 101 Chesterfield, MO 63005	47006	09/05/2006	MO	
The Stamford Health System Shelbourn Road & West Broad Street Stamford, CT 06904	70006	09/05/2006	CT	

Hagerstown Imaging, LLC 1150 A Professional Court Hagerstown, MD 21741	1518914936	09/05/2006	MD	
GCM Suburban Imaging 6420 Rockledge Drive Suite 3100 Bethesda, MD 20817	409623	09/05/2006	MD	
Alliance Imaging-No. Idaho Imaging 2003 Lincoln Way Coeur d'Alene, ID 83814	1790291	09/05/2006	ID	
HPMA PET Center 22710 Professional Drive Suite 104 Kingwood, TX 77339	0019BY	09/05/2006	TX	
Parma Community General Hospital 7007 Powers Boulevard Parma, OH 44129	360041	09/05/2006	OH	
Pacific Shores Medical Group PET Imaging 1043 Elm Street #104 Long Beach, CA 90813	W13494	09/05/2006	CA	
Clark Memorial Hospital 1220 Missouri Avenue Jeffersonville, IN 47130	15009	09/05/2006	IN	

Abilene Imaging Center, LLC 750 North 18th Street Abilene, TX 79601	FTA070	09/05/2006	TX	
DuBois Regional Medical Center 100 Hospital Avenue DuBois, PA 15801	390086	09/06/2006	PA	
Meeker County Memorial Hospital 612 South Sibley Avenue Litchfield, MN 55355	241366	09/06/2006	MN	
Memorial Health 4700 Waters Avenue Savannah, GA 31403	110036	09/06/2006	GA	
St. Luke's Regional Medical Center, Ltd. 190 E. Bannock Street Boise, ID 83712	130006	09/06/2006	ID	
Radiology Consultants Imaging Center 400 Avenue K, SE Winter Haven, FL 33880	U3944	09/06/2006	FL	
Patient Comprehensive Cancer Center 4352 North Josey Lane Carrollton, TX 75010	0083BY	09/06/2006	TX	
The University of Tennessee Medical Center 1924 Alcoa Highway Knoxville, TN 37920	440015	09/06/2006	TN	

Radiation Therapy Regional Centers-Naples 800 Goodlette Road Suite 110 Naples, FL 34102	77215	09/06/2006	FL	
St. Mary's Medical Center 2900 First Avenue Huntington, WV 25702	510007	09/06/2006	WV	
McKinney Regional Cancer Center 4601 Medical Center Drive McKinney, TX 75069	00711W	09/06/2006	TX	
WCA Hospital PO Box 840 Jamestown, NY 14701	330239	09/06/2006	NY	207 Foote Avenue
Grants Pass Imaging and Diagnostic Center, LLC 1619 NW Hawthorne Suite 110 Grants Pass, OR 97526	1659307973	09/06/2006	OR	
Baptist Memorial Hospital-Golden Triangle 2520 5th Street North Columbus, MS 39705	250100	09/06/2006	MS	
Florida Medical Clinic 13417 US Highway 301 Dade City, FL 33525	39715	09/06/2006	FL	

Saint Clare's Hospital 400 West Blackwell Street Dover, NJ 07801	310067	09/06/2006	NJ	
Radiation Medicine Associates 2202 South 77 Sun Shine Strip Suite E Harlingen, TX 78550	00645N	09/06/2006	TX	
The Radiology Clinic, LLC 208 McFarland Circle North Tuscaloosa, AL 35406	13089	09/06/2006	AL	
Bay Area Hospital 1775 Thompson Road. Coos Bay, OR 97420	30090	09/06/2006	OR	
MMI/St. Mary's Hospital 51 US Route 1 Scarborough, ME 04074	327079	09/06/2006	ME	Suite O
Gulf Coast Medical Diagnostic Center 2024 State Avenue Panama City, FL 32405	30930	09/06/2006	FL	
Diagnostic Radiology Systems, Inc. 1010 Medical Center Drive Powderly, KY 42366	9366001	09/05/2006	KY	
Lewis Gale Medical Center 1900 Electric Road Salem, VA 24153	490048	09/06/2006	VI	

Radiology Diagnostic Center 1310 Las Tablas Road Suite 103 Templeton, CA 93465	W7491	09/06/2006	CA	
Weslaco Nuclear Imaging Center 913 S. Airport Drive Weslaco, TX 78596	1780796219	09/06/2006	TX	
Pioneer PET, LLC 1930 E. Southern Avenue Tempe, AZ 85282	1265401996	12/05/2006	AZ	
Kearney Imaging Center, LLC 3219 Central Avenue Suite 109 Kearney, NE 68847	98950	12/05/2006	NE	
Rose Medical Center 4567 East 9th Avenue Denver, CO 80220	841321373	12/05/2006	CO	
UCSF Medical Center 185 Berry Street San Francisco, CA 94107	50454	12/05/2006	CA	Lobby 7 Suite 180

Broward General Medical Center 1500 S. Andrews Avenue Fort Lauderdale, FL 33316	100039	12/05/2006	FL	
St. Paul Radiology, PA/Midwest Radiology 166 Fourth Street East St. Paul, MN 55101	CO2661	12/05/2006	MN	
Queen of the Valley Hospital 1000 Trancas Street Napa, CA 94558	941243669	12/05/2006	CA	
Dana-Farber Cancer Institute 44 Binney Street Boston, MA 02115	220162	12/05/2006	MA	
Holmes Regional Medical Center 1350 South Hickory Street Melbourne, FL 32901	100019	12/05/2006	FL	
Niagara County PET Center Niagara Falls, NY 14302	f27482	12/05/2006	NY	621 Tenth Street Department of Radiology
Augusta Medical Center 78 Medical Center Drive Fishersville, VA 22939	490018	12/05/2006	VA	

Nevada Cancer Center 2851 North Tenaya Way Las Vegas, NV 89128	VWQBHJ	12/05/2006	NV	#100
Wellstar Kennestone Hospital Imaging Center 340 Kennestone Hospital Boulevard Marietta, GA 30060	110035	12/05/2006	GA	Suite LL10
Ashtabula County Medical Center 2412 Lake Avenue Ashtabula, OH 44004	1285607416	12/05/2006	OH	The Regional Cancer Center
Rowan Regional Medical Center 514 Corporate Circle Salisbury, NC 28147	340015	12/05/2006	NC	
The Pottsville Hospital and Warne Clinic 420 South Jackson Street Pottsville, PA 17901	390030	12/05/2006	PA	
Georgetown Memorial Hospital 606 Blackriver Road Georgetown, SC 29442	1982604021	12/05/2006	SC	
Medical Center of Arlington 3301 Matlock Road Arlington, TX 76015	450675	12/05/2006	TX	
Valley View Regional Hospital 430 N. Monte Vista Ada, OK 74820	370020	12/05/2006	OK	

Montgomery Medical Services 644 Maysville Road, Suite 10 Mount Sterling, KY 40353	9141	12/05/2006	KY	
Medical Outsourcing Services, LLC 5409 N. Knoxville Avenue Peoria, IL 61614	211224	12/05/2006	IL	
Medical Outsourcing Services, LLC 1300 N. Main Street Rushville, IN 46173	223260	12/05/2006	IN	
Mayo Clinic Arizona 13400 E. Shea Boulevard Scottsdale, AZ 85259	WCTGB	12/05/2006	AZ	
Door County Memorial Hospital 323 S. 18th Avenue Sturgeon Bay, WI 54235	1093743874	12/05/2006	WI	
Center for Diagnostic Imaging-Sartell 166 19th Street S. Sartell, MN 56377	C01307	12/05/2006	MN	Suite 100
South Texas Institute of Cancer 1205 South 19th Street Corpus Christi, TX 78405	0065AZ	12/05/2006	TX	
Del Sol Medical Center 10460 Vista Del Sol El Paso, TX 79925	450646	12/05/2006	TX	

University Hospital 818 St. Sebastian Way Augusta, GA 30901	110028	12/05/2006	GA	Suite 103
St. John Health System-Tulsa, OK 1923 S. Utica Avenue Tulsa, OK 74104	370114	12/05/2006	OK	
Allen Memorial Hospital 1825 Logan Avenue Waterloo, IA 50703	160110	12/05/2006	IA	
Craig General Hospital 735 North Foreman Street Vinita, OK 74301	370065	12/05/2006	OK	
Vision Imaging of Kingston 517 Pierce Street Kingston, PA 18704	86463	12/05/2006	PA	
Lake Hospital Mentor Campus 9485 Mentor Avenue Mentor, OH 44060	360098	12/05/2006	OH	Attn: Suite A
Excela RCL PET CT Imaging, LLC 200 Village Drive Greensburg, PA 15601	1144260415	12/05/2006	PA	
Kousay Al-Kourainy, MD 5395 Ruffin Road #202 San Diego, CA 92123	A39783	12/05/2006	CA	

Memorial Hermann Northwest Hospital 1635 North Loop West Houston, TX 77008	450184	12/05/2006	TX	
Accu/Site PET/CT Imaging Center 30 Harrison Street Johnson City, NY 13790	DD1474	12/05/2006	NY	Suite #102
DDIS-Bond 9 Bond Street Brooklyn, NY 11201	687s41	12/05/2006	NY	
West Valley Radiology Medical Group 7301 Medical Center Drive West Hills, CA 91307	Hw5870A	12/05/2006	CA	Suite 103
Westside Diagnostic and Therapeutic Medical Center, LLC 12524 West Washington Boulevard Los Angeles, CA 90066	TG472	12/05/2006	CA	
DDIS-Still 1783 Stillwell Avenue Brooklyn, NY 11223	687s41	12/05/2006	NY	
Alpena Regional Medical Center 1501 W, Chisholm Street Alpena, MI 49707	386000029	12/05/2006	MI	

Santa Monica Imaging Center 1245 16th Street Suite 105 Santa Monica, CA 90404	1881670248	12/05/2006	CA	
Mercer County Community Hospital 800 W. Main Street Coldwater, OH 45828	360058	12/05/2006	OH	
Johnson Memorial Hospital 1125 W. Jefferson Street Franklin, IN 46131-2675	150001	12/05/2006	IN	PO Box 549
St. Mary's Health Center 100 St. Mary's Medical Plaza Jefferson City, MO 65101	260011	12/05/2006	MO	
Eastside PET Center, LLC 46 Medical Park East Drive Birmingham, AL 35023	1619925070	12/05/2006	AL	Suite 224
United Regional Health Care System 1600 8th Street Wichita Falls, TX 76301	450010	12/05/2006	TX	
Denton Regional Medical Center 3535 S. I-35 Denton, TX 76210	450634	12/05/2006	TX	

Canton-Potsdam Hospital 50 Leroy Street Potsdam, NY 13676	161012691	12/05/2006	NY	
St. John Macomb Hospital 11800 E. 12 Mile Road Warren, MI 48093	230195	12/05/2006	MI	
Cleveland Regional Medical Center 201 East Grover Street Shelby, NC 28150	340021	12/05/2006	NC	
Bluefield Regional Medical Center 500 Cherry Street Bluefield, WV 24701	510071	12/05/2006	WV	
Charles Cole Memorial Hospital 1001 East Second Street Coudersport, PA 16915	390246	12/05/2006	PA	
New Jersey State Open MRI 155 State Street Hackensack, NJ 07601	85238	12/06/2006	NJ	
Westcoast Radiology 501 S. Lincoln Ave. Clearwater, FL 33756	E4187	12/06/2006	FL	
The Iowa Clinic / PETCO, LLC 1221 Pleasant Street Des Moines, IA 50309	I5819	12/06/2006	IA	

Quantum PET-Holy Spirit Hospital 890 Poplar Church Road Camp Hill, PA 17011	40635	12/06/2006	PA	
Coastal Bend PET Scan, Ltd. 1533 5th Street Corpus Christi, TX 78404	FTN014	12/06/2006	TX	
Pottstown Memorial Medical Center 1600 E. High Street Pottstown, PA 19464	390123	12/06/2006	PA	
UTMB PET/CT Imaging Center UTMB-Rebecca Sealy Hospital Galveston, TX 77555-0793	R518	12/06/2006	TX	301 University Blvd.
Diagnostic Imaging Services, LLC 11110 Medical Campus Road, Suite 204 Hagerstown, MD 21742	1114982808	12/06/2006	MD	
North Memorial Medical Center 3435 West Broadway Robbinsdale, MN 55422	1851344907	12/06/2006	MN	
Hays Medical Center 2220 Canterbury Drive Hays, KS 67601	2473	12/06/2006	KS	

St. Patrick Hospital & Health Sciences Center 500 West Broadway Missoula, MT 59802	1023032588	12/06/2006	MT	
Park Ridge Hospital 100 Hospital Drive Hendersonville, NC 28792	340023	12/06/2006	NC	
Fostoria Community Hospital 610 Plaza Drive Fostoria, OH 44830	361318	12/06/2006	OH	
UMDNJ-University Hospital 30 Bergen Street Newark, NJ 07101	221775306	12/06/2006	NJ	ADMC 5 Room 575 P.O. Box 1709
Metabolic Imaging of Boca 5458 Town Center Road Suite 103 Boca Raton, FL 33486	E5434	12/06/2006	FL	
Olean Open MRI 413 North 8th Street Olean, NY 14760	AA0996	12/06/2006	NY	
Mercy Memorial Health Center 1011 14th Avenue NW Ardmore, OK 73401	731500629	12/06/2006	OK	
Pontiac Osteopathic Hospital d.b.a. POH Medical Center 385 N. Lapeer Road Oxford, MI 48371	230207	12/06/2006	MI	

Texas Oncology Ft. Worth 1450 8th Avenue Fort Worth, TX 76104	00R66C	12/06/2006	TX	
West Valley Imaging 3025 S. Rainbow Boulevard Las Vegas, NV 89146	WQBDY	12/06/2006	NV	
Springman Medical Plaza Imaging Center PO Box 4650 Brownsville, TX 78523	1912973108	12/06/2006	TX	
EMH Regional Health Care System 630 East River Street Elyria, OH 44035	360145	12/06/2006	OH	
Denfeld Medical Center 4702 Grand Avenue Duluth, MN 55807	C06028	12/06/2006	MN	
Caldwell Memorial Hospital 321 Mulberry Street SW Lenoir, NC 28645	560554202	12/06/2006	NC	
Belleville, IL (Swansea) 4253 Argosy Court Madison, WI 53714	208196	12/06/2006	WI	
Comprehensive Cancer Centers of Nevada - NW Office 7445 Peak Drive Las Vegas, NV 89128	WCHCX	12/06/2006	NV	

Wheaton Francisan Healthcare-St. Joseph 5000 W. Chambers Street Milwaukee, WI 53210	520136	12/06/2006	WI	
United Hospital Center Rt. 19 South Clarksburg, WV 26302-1680	510006	12/06/2006	WV	#3 Hospital Plaza
Massena Memorial Hospital 1 Hospital Dive Massena, NY 13662	330223	12/06/2006	NY	
Redlands Community Hospital 350 Terracina Boulevard Redlands, CA 92373	ZZZ01782Z	12/06/2006	CA	
The Valley Hospital 1 Valley Health Plaza Paramus, NJ 07652	310012	12/06/2006	NJ	
Advanced Medical Imaging of Toms River 1430 Hooper Avenue Toms River, NJ 08753	447655	12/06/2006	NJ	Suite 102
McKenna Memorial Hospital 598 N. Union Street New Braunfels, TX 78130	450059	12/06/2006	TX	
NSMS-Parkland Farmington, Mo 4253 Argosy Court Madison, WI 53714	208196	12/06/2006	WI	

Alton Memorial Hospital 1 Memorial Drive Alton, IL 62002	14002	12/06/2006	IL	
Medical City Dallas Hospital Diagnostic Imaging Dallas, TX 75230	20943901	12/06/2006	TX	7777 Forest Lane
Mercy Medical Center 301 St. Paul Place Baltimore, MD 21202	210008	12/06/2006	MD	
St. Joseph's Medical Center 503 N. 3rd Street Brainerd, MN 56401	240075	12/06/2006	MN	
Covenant Healthcare 600 Irving Street Saginaw, MI 48602	1457354318	12/06/2006	MI	
Little Company of Mary Hospital 2800 West 95th Street Evergreen Park, IL 60805	140179	12/06/2006	IL	
Marion General Hospital Progressive Medical Imagine 830 N. Theatre Drive Marion, IN 46952	1457354318	12/06/2006	IN	
Escondido Pulmonary Medical Group 5395 Ruffin Road Suite 202 San Diego, CA 92123	W301	12/06/2006	CA	

Marshall Medical Center 1100 Marshall Way Placerville, CA 95667	50254	12/06/2006	CA	
Clermont Radiology 1804 Oakley Seaver Drive Clermont, FL 34711	U5066	12/06/2006	FL	Suite B
Mahoning Valley Imaging, Ltd. 7067 Tiffany Boulevard Youngstown, OH 44514	1457354318	12/06/2006	OH	
Southeastern Ohio Regional Medical Center 1341 Clark Avenue Cambridge, OH 43725	1457354318	12/06/2006	OH	
White County Medical Center 3214 E. Race Avenue Searcy, AR 72143	40014	12/06/2006	AR	
MED Arts JVIC 9101 Franklin Square Drive Baltimore, MD 21237	1932167178	12/06/2006	MD	
Memorial Hermann Southwest OPID 7797 SW Freeway Houston, TX 77074	741152597	12/06/2006	TX	
Twin County Regional Hospital 200 Hospital Drive Galax, VA 24333	1174524094	12/06/2006	VA	

Marion Ancillary Services, LLC 1040 Delaware Avenue Marion, OH 43302	991	12/06/2006	OH	
Owensboro Medical Health Systems Breckenridge Diagnostics Owensboro, KY 42301	180038	12/06/2006	KY	1020 Breckenridge Street
NSMS-Darlington, WI 209 Limestone Pass Cottage Grove, WI 53527	92420	12/06/2006	WI	
Santa Fe Imaging, LLC 1640 Hospital Drive Santa Fe, NM 87505	400521037	12/06/2006	NM	
Suncoast Imaging of Port Orange 1680 Dunlawton Avenue Port Orange, FL 32127	40370B	12/06/2006	FL	
Great Basin Imaging 2874 N Carson Street 3rd Floor Carson City, NV 89706	WJBDK	12/06/2006	NV	
St. Francis Hospital & Health Centers 1201 Hadley Road Mooresville, IN 46158	1457354318	12/06/2006	IN	

Las Colinas Cancer Center 7415 Las Colinas Boulevard Irving, TX 75063	00J062	12/06/2006	TX	
ADI 4006 Jonathan Street Waterloo, IA 50701	I15454	12/06/2006	IA	
St Francis Hospital & Health Centers South 8111 S. Emerson Avenue Indianapolis, IN 46237	1457354318	12/06/2006	IN	
Central Baptist Diagnostic Center 100 Southland Drive Lexington, KY 40503	9375001	06/14/2006	KY	Suite B
Baptist Health Medical Center-NLR PET/CT 3500 Springhill Drive North Little Rock, AR 72117	5F437	05/03/2007	AR	Suite 100
Commonwealth Hematology Oncology 216 Southtown Drive Danville, KY 40422	1285687178	03/21/2007	KY	
Commonwealth Hematology Oncology 95 Bogle Office Park Drive Somerset, KY 42503	1285687178	03/21/2007	KY	

UMPC and The Washington Hospital Cancer Center 155 Wilson Avenue Washington, PA 15301	105589VXB	03/10/2006	PA	
Lexington Diagnostic Center 1725 Harrodsburg Road Suite 100 Lexington, KY 40504	0406	03/08/2006	KY	
UW PET Imaging Center 8007 Excelsior Drive Madison, WI 53717	1346266319	04/03/2007	WI	
Fort Wayne Medical Oncology and Hematology 7910 W. Jefferson Boulevard Suite 107 Ft. Wayne, IN 46804	055770	04/23/2007	IN	
Danbury Hospital 24 Hospital Avenue Danbury, CT 06810	070033	04/23/2007	CT	
Reno Diagnostic Centers 590 Eureka Avenue Reno, NV 89512	1518904994	04/24/2007	NV	
The Kirklin Clinic PET-CT Facility 2000 6th Ave South Birmingham, AL 35233	10933768723	05/07/2007	AL	
PET Imaging Radiology, PSC Paseo San Pablo 100 Bayamon, PR	0085142	05/15/2007	PR	EDIF Dr. Arturo Cadilla Suite 208

Punxsutawney Area Hospital 81 Hillcrest Drive Punxsutawney, PA 15767	390199	05/15/2007	PA	
Princeton Baptist Medical Center 701 Princeton Avenue SW Birmingham, AL 35211	35211	05/30/2007	AL	
Medical Arts Radiology Commack 55 Veterans Memorial Highway Commack, NY 11725	W11682	05/31/2007	NY	
Carrol, Sheth & Raghavan MD 1460 Bluegrass Avenue Louisville, KY 40215	5460	06/05/2007	KY	
Personal Care Molecular Imaging 1514 Highway 138 Wall, NJ 07719	109631	06/06/2007	NJ	
Lincoln Radiology Imaging 7121 Stephanie Lane Lincoln, NE 68516	099920	06/06/2007	NE	
Medcenter One 300 North 7th Street Bismark, ND 58506-5525	1538245634	07/24/2007	ND	

Addendum XIII
Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities
[April Through June 2007]

On October 1, 2003, we issued our decision memorandum on ventricular assist devices for the clinical indication of destination therapy. We determined that ventricular assist devices used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.

VAD Destination Therapy Facilities

The following facilities have met the CMS facility standards for destination therapy VADs.

Facility	Provider Number	Date Approved	State	Other Information
Advocate Christ Medical Center 4440 W 95th Street Oak Lawn, Illinois	140208	12/17/2003	IL	
California Pacific Medical Center 2333 Buchanan Street San Francisco, California	050047	03/19/2004	CA	
Baptist Memorial Hospital 6019 Walnut Grove Road Memphis, Tennessee	440048	04/07/2004	TN	
Duke University Medical Center DUMC Box 3943 Durham, North Carolina	340030	10/31/2003	NC	
Fairview-University Medical Center 2450 Riverside Avenue Minneapolis, Minnesotta	240080	10/28/2003	MN	
Allegheny General Hospital 320 E North Avenue Pittsburgh, Pennsylvania	390050	12/10/2003	PA	
Barnes-Jewish Hospital One Barnes-Jewish Hospital Plaza Saint Louis, Missouri	260032	10/27/2003	MO	

Brigham and Women's Hospital 15 Francis Street Boston, Massachusetts	220110	01/09/2004	MA	
Bryan LGH Medical Center East 1600 S 48 Street Lincoln, Nebraska	280003	10/23/2003	NE	
Cedars-Sinai Medical Center 8700 Beverly Boulevard Los Angeles, California	050625	12/29/2003	CA	
Clarian Health Partners, Inc. 1701 N. Senate Avenue Indianapolis, Indiana	150056	11/25/2003	IN	
Cleveland Clinic 9500 Euclid Avenue Cleveland, Ohio	360180	12/03/2003	OH	
Hahnemann University Hospital Broad and Vine Streets Philadelphia, Pennsylvania	390290	12/22/2003	PA	
Hospital of the University of Pennsylvania 3400 Spruce Street Philadelphia, Pennsylvania	390111	10/28/2003	PA	
Henry Ford Hospital 2799 W. Grand Boulvard Detroit, Michigan	230053	01/06/2004	MI	
Inova Fairfax Hospital 3300 Gallows Road Falls Church, Virginia	490063	03/31/2004	VA	

Jewish Hospital 200 Abraham Flexner Way Louisville, Kentucky	180040	11/10/2003	KY	
Jackson Memorial Hospital 1611 NW 12th Avenue Miami, Florida	100022	01/12/2004	FL	University of Miami
LDS Hospital 8th Avenue and C Street Salt Lake City, Utah	460010	10/23/2003	UT	
Johns Hopkins Hospital 600 N. Wolfe Street Baltimore, Maryland	210009	10/28/2003	MD	
Loyola University Medical Center 2160 S. 1st Avenue Maywood, Illinois	140276	01/30/2004	IL	
Lutheran Hospital of Indiana 7950 W. Jefferson Boulevard Fort Wayne, Indiana	150017	10/29/2003	IN	
Massachusetts General Hospital 55 Fruit Street Boston, Massachusetts	220071	12/15/2003	MA	
Mayo Clinic 4500 San Pablo Road Jacksonville, Florida	100151	11/06/2003	FL	
Medical City Dallas Hospital 7777 Forest Lane Dallas, Texas	450647	12/03/2003	TX	

The Methodist Hospital 6565 Fannin Houston, Texas	450358	11/03/2003	TX	
Montefiore Medical Center 111 E. 210th Street Bronx, New York	330059	11/14/2003	NY	
Methodist Specialty and Transplant Hospital 8026 Floyd Curl Drive San Antonio, Texas	450388	11/19/2003	TX	
Newark Beth Israel Medical Center 201 Lyons Avenue Newark, New Jersey	310002	11/14/2003	NJ	
Mount Sinai Medical Center 1190 5th Avenue New York, New York	330024	11/25/2003	NY	
New York-Presbyterian Hospital 177 Fort Washington Avenue New York, New York	330101	10/28/2003	NY	Columbia University Medical Center
Ohio State University Columbus, Ohio	360085	11/12/2003	OH	
Oregon Health and Sciences University 3181 SW Sam Jackson Park Road Portland, Oregon	380009	11/21/2003	OR	
OSF St Francis Medical Center 530 NE Glen Oak Avenue Peoria, Illinois	140067	11/12/2003	IL	

Penn State Milton S Hershey Medical Center 500 University Drive Hershey, Pennsylvania	390256	10/29/2003	PA	
Rush-Presbyterian-St Luke Medical Center 1653 W Congress Parkway Chicago, Illinois	140119	11/14/2003	IL	
Sentara Norfolk General Hospital 600 Gresham Drive Norfolk, Virginia	490007	11/10/2003	VA	
Sacred Heart Medical Center 101 W 8th Avenue Spokane, Washington	500054	01/12/2004	WA	
Seton Medical Center 1201 W 38th Street Austin, Texas	450056	01/13/2004	TX	
Shands at the University of Florida 1600 SW Archer Road Gainesville, Florida	100113	11/26/2003	FL	
Sharp Memorial Hospital 7901 Frost Street San Diego, California	050100	12/01/2003	CA	
Stanford University Hospital and Clinics 300 Pasteur Drive Stanford, California	050441	12/22/2003	CA	Stanford University Medical Center
St Francis Hospital 6161 S. Yale Avenue Tulsa, Oklahoma	370091	01/09/2004	OK	

St Luke's Medical Center 2900 W Oklahoma Avenue Milwaukee, Wisconsin	520138	11/03/2003	WI	
St Luke's Episcopal Hospital 6720 Bertner Avenue Houston, Texas	450193	10/28/2003	TX	
St Vincent Hospital and Health Services 2001 W. 86th Street Indianapolis, Indiana	150084	01/05/2004	IN	
St Paul Medical Center 5909 Harry Hines Boulevard Dallas, Texas	450044	12/10/2003	TX	
Strong Memorial Hospital 601 Elmwood Avenue Rochester, New York	330285	10/29/2003	NY	
Tampa General Hospital 2 Columbia Drive Tampa, Florida	100128	11/26/2003	FL	
Temple University Hospital 3401 N. Broad Street Philadelphia, Pennsylvania	390027	11/03/2003	PA	
Tufts-New England Medical Center 750 Washington Street Boston, Massachusetts	220116	11/06/2003	MA	
UCLA Medical Center 10833 Le Conte Avenue Los Angeles, California	050262	12/10/2003	CA	

University Medical Center 1501 N. Campbell Avenue Tucson, Arizonia	030064	10/29/2003	AZ	
University of Alabama at Birmingham Health System 500 22nd Street S Birmingham, Alabama	010033	10/29/2003	AL	
University of Colorado Hospital 4200 E. Ninth Avenue Denver, Colorado	060024	11/06/2003	CO	9th & Colorado Campus
The University of Chicago Hospitals and Health System 5841 South Maryland Avenue Chicago, Illinois	140088	02/25/2004	IL	
University of Iowa Hospitals and Clinics 200 Hawkins Drive Iowa City, Iowa	160058	11/12/2003	IA	
University of Maryland Medical Center 22 S. Greene Street Baltimore, Maryland	210002	11/12/2003	MD	
University of Michigan Health System 1500 E. Medical Center Drive Ann Arbor, Michigan	230046	10/27/2003	MI	
University of North Carolina Hospitals 101 Manning Drive Chapel Hill, North Carolina	340061	05/05/2004	NC	

University of Utah Hospital 50 N Medical Drive Salt Lake City, Utah	460009	12/22/2003	UT	
University of Virginia Health System 1215 Lee Street Charlottesville, Virginia	490009	01/12/2004	VA	
University of Washington Medical Center 1959 NE Pacific Street Seattle, Washington	500008	01/15/2004	WA	
University of Wisconsin Hospitals and Clinics 600 Highland Avenue Madison, Wisconsin	520098	12/03/2003	WI	
USC University Hospital 1500 San Pablo Los Angeles, California	050696	01/09/2004	CA	
UPMC Presbyterian 200 Lothrop Street Pittsburgh, Pennsylvania	390164	10/23/2003	PA	
Virginia Commonwealth University Medical Center 401 North 12th Street Richmond, Virginia	490032	04/08/2004	VA	Medical College of Virginia Hospitals
Vanderbilt University Medical Center 1161 21st Avenue S Nashville, Tennessee	440039	10/28/2003	TN	
Ochsner Clinic Foundation 1514 Jefferson Highway New Orleans, Louisiana	190036	06/29/2004	LA	

Addendum XIV
Lung Volume Reduction Surgery (LVRS)
[April Through June 2007]

Three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS): National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs), Credentialed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) under their Disease Specific Certification Program for LVRS, and Medicare approved for lung transplants. Only the first two types are in the list.

Facility name	Date approved	State	Type of Certification
Baylor College of Medicine Houston, Texas	N/A	TEXAS	NETT
Brigham and Women's Hosptial Boston, MA	N/A	MASSACHUSETTS	NETT
Cedars-Sinai Medical Center Los Angeles, CA	N/A	CALIFORNIA	NETT
Chapman Medical Center Orange, CA	N/A	CALIFORNIA	NETT
Cleveland Clinic Foundation Cleveland, OH	N/A	OHIO	NETT
Columbia University New York, NY	N/A	NEW YORK	NETT
Duke University Medical Center Durham, NC	N/A	NORTH CAROLINA	NETT

Johns Hopkins Hospital Baltimore, MD	N/A	MARYLAND	NETT
Kaiser Foundation Hospital - Riverside Riverside, CA	09/20/2006	CALIFORNIA	JCAHO
Long Island Jewish Medical Center New Hyde Park, NY	N/A	NEW YORK	NETT
Mayo Clinic Rochester, MN	N/A	MINNESOTA	NETT
Memorial Medical Center Springfield, IL	12/13/2006	ILLINOIS	JCAHO
National Jewish Medical Center Denver, CO	N/A	COLORADO	NETT
The Ohio State University Hospital Columbus, OH	N/A	OHIO	JCAHO
Ohio State University Medical Center Columbus, OH	N/A	OHIO	NETT
Saint Louis University Saint Louis, MO	N/A	MISSOURI	NETT
Temple University Hospital Philadelphia, PA	N/A	PENNSYLVANIA	NETT
UCLA Medical Center Los Angeles, CA	N/A	CALIFORNIA	NETT
University of California, San Diego San Diego, CA	N/A	CALIFORNIA	NETT
University of Maryland Medical Center Baltimore, MD	N/A	MARYLAND	NETT
University of Michigan Medical Center Ann Arbor, MI	N/A	MICHIGAN	NETT

University of Pennsylvania Philadelphia, PA	N/A	PENNSYLVANIA	NETT
University of Pittsburgh Pittsburgh, PA	N/A	PENNSYLVANIA	NETT
University of Washington Seattle, WA	N/A	WASHINGTON	NETT
Washington University/Barnes Hospital Saint Louis, MO	N/A	MISSOURI	NETT

Addendum XV—Medicare-Approved Bariatric Surgery Facilities

On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity, and have been previously unsuccessful with medical treatment for obesity.

This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

Addendum XV—Medicare-Approved Bariatric Surgery Facilities

The following facilities have met our minimum facility standards for bariatric surgery and have been certified by American College of Surgeons or American Society for Bariatric Surgery.

Facility Name	Provider Number	Date approved	State	Other Information
Evanston Northwestern Hospital 2650 Ridge Avenue Suite 1308 Evanston, IL 60201	140010	01/26/2006	IL	ACS
Chapman Medical Center 2601 East Chapman Avenue Orange, CA 92646	05-0745	02/21/2006	CA	ASBS
St Vincent Carmel Hospital 13430 Old Meridian Street Suite 168 Carmel, IN 46032	15-0157	02/21/2006	IN	ASBS
Abbott Northwestern Hospital 800 E. 28th Street Minneapolis, MN 55407	N/A	02/24/2006	MN	ASBS
Alexian Brothers Medical Center 800 Biesterfield Road Elk Grove Village, IL 60007	N/A	02/24/2006	IL	ASBS
American Bariatric Institute at Doctors' Hospital 1130 Louisiana Avenue Shreveport, LA 71101	N/A	02/24/2006	LA	ASBS
Arnot Ogden Medical Center 600 Fitch Street Elmira, NY 14905	N/A	02/24/2006	NY	ASBS

AtlantiCare Regional Medical Center 2500 English Creek Avenue Egg Harbor Township, NJ 08234	N/A	02/24/2006	NJ	Center for Surgical Weight Loss and Wellness Salartash Surgical Associates ASBS
Atlanta Medical Center 303 Parkway Drive NE Atlanta, GA 30312	N/A	02/24/2006	GA	ASBS
Aurora Sinai Medical Center 945 N. 12th Street Milwaukee, WI 53211	N/A	02/24/2006	WI	ASBS
Baptist Memorial Hospital North Mississippi 2301 South Lamar Boulevard Oxford, MS 38655	N/A	02/24/2006	MS	ASBS
Bellin Health 215 N. Webster Avenue Green Bay, WI 54301	N/A	02/24/2006	WI	ASBS
Bon Secours Community Hospital 160 E. Main Street Port Jervis, NY 12771	N/A	02/24/2006	NY	ASBS
California Pacific Medical Center 2333 Buchanan Street San Francisco, CA 94115	N/A	02/24/2006	CA	ASBS
Cape Fear Valley Health System 1638 Owen Drive Fayetteville, NC 28304	N/A	02/24/2006	NC	ASBS
Centennial Center for the Treatment of Obesity 2300 Patterson Street Nashville, TN 37203	N/A	02/24/2006	TN	ASBS
Cleveland Clinic Hospital-Weston 3100 Weston Road Weston, FL 33331	N/A	02/24/2006	FL	ASBS
Christus Schumpert Health System 1 Saint Mary Place Shreveport, LA 71101	N/A	02/24/2006	LA	ASBS

Citizen's Bariatric Center 2701 Hospital Avenue Victoria, TX 77901	N/A	02/24/2006	TX	ASBS
Columbia-St. Mary's Bariatric Center 2025 E. Newport Avenue Milwaukee, WI 53211	N/A	02/24/2006	WI	ASBS
Community Hospital Monterey Peninsula 23625 Holman Highway Monterey, CA 93940	N/A	02/24/2006	CA	ASBS
Crestwood Medical Center One Hospital Drive Huntsville, AL 35801	N/A	02/24/2006	AL	ASBS
Cypress Fairbanks Medical Center Hospital 10655 Steepletop Drive Houston, TX 77065	N/A	02/24/2006	TX	ASBS
Danbury Hospital 24 Hospital Avenue Danbury, CT 06810	N/A	02/24/2006	CT	ACS
East Texas Medical Center 1000 S. Beckman Avenue Tyler, TX 75701	N/A	02/24/2006	TX	ASBS
Eastern Maine Medical Center 905 Union Street EMH Mall Suite 11 Bangor, ME 04401	200033	02/24/2006	ME	ASBS
Elmbrook Memorial Hospital 19333 W. North Avenue Brookfield, WI 53045	N/A	02/24/2006	WI	ASBS
Emory Dunwoody Medical Center 4575 N. Shallowford Road Atlanta, GA 30338	N/A	02/24/2006	GA	ASBS
Florida Hospital Celebration Health	N/A	02/24/2006	FL	ASBS

400 Celebration Place Kissimmee, FL 34747				
Florida Medical Center 4850 W. Oakland Boulevard Lauderdale Lakes, FL 33313	N/A	02/24/2006	FL	ASBS
Froedtert Memorial Lutheran Hospital 9200 W. Wisconsin Avenue Milwaukee, WI 53226	N/A	02/24/2006	WI	Medical College of Wisconsin ASBS
Frye Regional Medical Center 420 N. Center Street Hickory, NC 28601	N/A	02/24/2006	NC	ASBS
Geisinger Medical Center 100 North Academy Avenue Danville, PA 17822	390006	N/A	PA	ASBS-02/24/2006 ACS-01/26/2007
Good Samaritan Hospital 375 Dixmyth Avenue Cincinnati, OH 45220	N/A	02/24/2006	OH	ASBS
Grandview Medical Center 405 Grand Avenue Dayton, OH 45405	N/A	02/24/2006	OH	ASBS
Greater Baltimore Medical Center 6701 N. Charles Street Baltimore, MD 21204	N/A	02/24/2006	MD	ASBS
Hamilton Medical Center 1200 Memorial Drive Dalton, GA 30720	N/A	02/24/2006	GA	ASBS
Hennepin County Medical Center 701 Park Avenue Minneapolis, MN 55415	N/A	02/24/2006	MN	ASBS
Holy Cross Hospital 4725 N. Federal Highway Fort Lauderdale, FL 33308	N/A	02/24/2006	FL	ASBS
Hospital of Saint Raphael 1450 Chapel Street New Haven, CT 06511	N/A	02/24/2006	CT	ASBS

Huntington Memorial Hospital 100 W. California Boulevard Pasadena, CA 91105	N/A	02/24/2006	CA	ASBS
Jupiter Medical Center 1210 S. Old Dixie Highway Jupiter, FL 33458	N/A	02/24/2006	FL	ASBS
King's Daughters Medical Center 617 23rd Street Ashland, KY 41101	N/A	02/24/2006	KY	ASBS
Legacy Good Samaritan Hospital and Medical Center 1015 NW 22nd Avenue Portland, OR 97210	N/A	02/24/2006	OR	ASBS
Lexington Medical Center 2720 Sunset Boulevard West Columbia, SC 29169	N/A	02/24/2006	SC	ASBS
Little Company of Mary 2800 W. 95th Street Evergreen Park, IL 60805	N/A	02/24/2006	IL	ASBS
Lutheran Medical Center 150 55th Street Brooklyn, NY 11220	29D361	02/24/2006	NY	ACS
Medical University of South Carolina 171 Ashley Avenue Charleston, SC 29425	N/A	02/24/2006	SC	ASBS
Memorial Hermann Hospital 6411 Fannin Street Houston, TX 77030	N/A	02/24/2006	TX	ASBS
Memorial Hospital 2525 DeSales Avenue Chattanooga, TN 37404	N/A	02/24/2006	TN	ASBS
Mercy Hospital Miami 3663 South Miami Avenue Miami, FL 33133	N/A	02/24/2006	FL	ASBS
Mercy San Juan Medical Center 6501 Coyle Avenue	N/A	02/24/2006	CA	ASBS

Carmichael, CA 95608				
Metabolic Surgery Center at Baptist Hospital 2011 Church Street Nashville, TN 37203	N/A	02/24/2006	TN	ASBS
Methodist Dallas Medical Center PO Box 655999 Dallas, TX 75265-5999	N/A	02/24/2006	TX	Texas Bariatric Center ASBS
Methodist Healthcare System 8109 Fredricksburg Road San Antonio, TX 78229	N/A	02/24/2006	TX	ASBS
Methodist Hospital 6500 Excelsior Boulevard Saint Louis Park, MN 55426	N/A	02/24/2006	MN	ASBS
Middlesex Hospital 28 Crescent Street Middletown, CT 06457	N/A	02/24/2006	CT	ASBS
Methodist Hospital of Southern California 300 West Huntington Drive Arcadia, CA 91007	N/A	02/24/2006	CA	ASBS
Mills-Peninsula Health Services 1783 El Camino Real Burlingame, CA 94010	N/A	02/24/2006	CA	ASBS
New Hanover Regional Medical Center 2131 S. 17th Street Wilmington, NC 28401	N/A	02/24/2006	NC	ASBS
New York Methodist Hospital 506 Sixth Street Brooklyn, NY 11215	N/A	02/24/2006	NY	ASBS
North Hills Hospital 4401 Booth Calloway Road North Richland Hills, TX 76180	N/A	02/24/2006	TX	ASBS
North Colorado Medical Center 1801 16th Street Greeley, CO 80631	N/A	02/24/2006	CO	ASBS

North Vista Hospital 1409 E. Lake Mead Boulevard North Las Vegas, NV 89101	N/A	02/24/2006	NV	ASBS
Northeast Georgia Health System, Inc. 743 Spring Street NE Gainesville, GA 30501	N/A	02/24/2006	GA	ASBS
NorthEast Medical Center 920 Church Street N. #302E Concord, NC 28025	N/A	02/24/2006	NC	ASBS
Northwestern Memorial Hospital 215 E. Huron Street, NE Chicago, IL 60611	N/A	02/24/2006	IL	Northwestern Medical Faculty Foundation ASBS
Ocala Regional Medical Center 1431 SW 1st Street Ocala, FL 34474	N/A	02/24/2006	FL	ASBS
Palms of Pasadena Hospital 1501 Pasedena Avenue St. Petersburg, FL 33707	N/A	02/24/2006	FL	ASBS
Orange Coast Memorial Medical Center 9920 Talbert Avenue Fountain Valley, CA 92708	N/A	02/24/2006	CA	ASBS
Parkwest Medical Center 9352 Park West Boulevard Knoxville, TN 37923	N/A	02/24/2006	TN	ASBS
Penrose-St. Francis Health Services 825 E. Pikes Peak Avenue Colorado Springs, CO 80917	N/A	02/24/2006	CO	ASBS
Poudre Valley Hospital 1024 S. Lemay Avenue Fort Collins, CO 80524	N/A	02/24/2006	CO	ASBS

Presbyterian-St. Luke's Medical Center 1719 E. 19th Avenue Denver, CO 80218	N/A	02/24/2006	CO	ASBS
Princeton HealthCare System 253 Witherspoon Street Princeton, NJ 08540	N/A	02/24/2006	NJ	ASBS
Roger Williams Medical Center 825 Chalkstone Avenue Providence, RI 02908	N/A	02/24/2006	RI	Drs. Lentrichia & Pohl, Inc. ASBS
Rose Medical Center 4545 E. 9th Avenue, #470 Denver, CO 80220	N/A	02/24/2006	CO	ASBS
Saint Barnabas Medical Center 94 Old Short Hills Road Livingston, NJ 07039	N/A	02/24/2006	NJ	ASBS
Saint Francis Hospital 5959 Park Avenue Memphis, TN 38119	N/A	02/24/2006	TN	ASBS
St. Francis Hospital - Franciscan Health System 34515 Ninth Avenue S. Federal Way, WA 98003	N/A	02/24/2006	WA	N/A
Saint Joseph East Center for Weight Loss 160 N. Eagle Creek Drive Lexington, KY 40509	N/A	02/24/2006	KY	ASBS
Saint Mary's Regional Medical Center 234 W. 6th Street Reno, NV 89503	N/A	02/24/2006	NV	ASBS
Saint Mary's Hospital 5801 Bremo Road Richmond, VA 23226	N/A	02/24/2006	VA	ASBS

Scottsdale Healthcare Shea Campus 900 E. Shea Boulevard Scottsdale, AR 85260	N/A	02/24/2006	AZ	ASBS
Scripps Memorial 9888 Genesee Avenue La Jolla, CA 90237	N/A	02/24/2006	CA	ASBS
Scripps Mercy Hospital 4077 Fifth Avenue San Diego, CA 92103	N/A	02/24/2006	CA	ASBS
Sentara Careplex Hospital 3000 Coliseum Drive Hampton, VA 23666	N/A	02/24/2006	VA	ASBS
Sinai Hospital of Baltimore 2401 W. Belvedere Avenue Baltimore, MD 21215	N/A	02/24/2006	MD	Sinai Surgical Associates ASBS
Sisters of Charity Hospital 2130 Main Street Buffalo, NY 14214	N/A	02/24/2006	NY	ASBS
Sioux Valley Hospital USD Medical Center 1305 W. 18th Street Sioux Falls, SD 57105	N/A	02/24/2006	SD	ASBS
Sound Shore Medical Center of Westchester 16 Guion Place New Rochelle, NY 10801	N/A	02/24/2006	NY	ASBS
South Nassau Communities Hospital 1 Healthy Way Oceanside, NY 11572	N/A	02/24/2006	NY	ASBS
Southwest Healthcare System 36485 Inland Valley Drive Wildomar, CA 92595	N/A	02/24/2006	CA	ASBS

Southwest Medical Center 2810 Ambassador Caffery Parkway Lafayette, LA 70506	N/A	02/24/2006	LA	ASBS
Spectrum Health Blodgett Campus 1840 Wealthy Street, SE Grand Rapids, MI 49506	N/A	02/24/2006	MI	MMPC Center for Health Excellence ASBS
SSM DePaul Health Center 12303 DePaul Avenue Bridgeton, MO 63044	N/A	02/24/2006	MO	ASBS
St. Joseph's Area Health Services 600 Pleasant Avenue Park Rapids, MN 56470	N/A	02/24/2006	MN	ASBS
St. Vincent Charity Hospital 2322 E. 22nd Street #220 Cleveland, OH 44115	N/A	02/24/2006	OH	ASBS
Staten Island University Hospital 475 Seaview Avenue Staten Island, NY 10305	N/A	02/24/2006	NY	ASBS
Theda Clark Medical Center 200 Theda Clark Medical Plaza Suite 410 Neenah, WI 54956	000071445	02/24/2006	WI	ACS
The Ohio State University Hospital 410 W. 10th Avenue Columbus, OH 43210	N/A	02/24/2006	OH	ASBS
The Regional Medical Center at Memphis 877 Jefferson Avenue Memphis, TN 38103	N/A	02/24/2006	TN	ASBS
Tri-City Regional Medical Center 21530 Pioneer Boulevard Hawaiian Gardens, CA 90716	N/A	02/24/2006	CA	ASBS
United Hospital 333 North Smith Avenue Saint Paul, MN 55102	N/A	02/24/2006	MN	ASBS
United Regional Health Care System	N/A	02/24/2006	TX	ASBS

1600 19th Street Wichita Falls, TX 76301				
Unity Hospital 550 Osborne Road, NE Fridley, MN 55432	N/A	02/24/2006	MN	ASBS
University of Chicago Hospitals 5841 S. Maryland Avenue Chicago, IL 60637	N/A	02/24/2006	IL	University of Chicago Department of Surgery ASBS
University of Minnesota Medical Center, Fairview 420 Delaware Street, NE Minneapolis, MN 55455	N/A	02/24/2006	MN	ASBS
UPMC St. Margaret 815 Freeport Road Pittsburgh, PA 15215	N/A	02/24/2006	PA	ASBS
UPMC Horizon 110 North Main Street Greenville, PA 16125	N/A	02/24/2006	PA	ASBS
Virginia Commonwealth University Medical Center Richmond, VA 23284	N/A	02/24/2006	VA	ASBS
Vanderbilt University Medical Center 1211 22nd Avenue S. Nashville, TN 37232	N/A	02/24/2006	TN	ASBS
Weight Loss Surgery Program at Baylor 9101 N. Central Expressway Suite 370 Dallas, TX 75231	N/A	02/24/2006	TX	ASBS
Wellstar Health Systems 677 Church Street, NE Marietta, GA 30060	N/A	02/24/2006	GA	ASBS
White Plains Hospital Center 190 E. Post Road	N/A	02/24/2006	NY	ASBS

White Plains, NY 10601				
York Hospital 1001 S. George Street York, PA 17403	N/A	02/24/2006	PA	ASBS
Norman Regional Hospital 901 North Porter, Box 1308 Norman, OK 73070	370008	03/22/2006	OK	ASBS
St. Luke's Medical Center 1800 E. Van Buren Suite 307B Phoenix, AZ 85006	030037	03/22/2006	AZ	Abdominal Surgeons, Ltd. ASBS
Silver Cross Hospital 1200 Maple Road Joliet, IL 60432	140213	03/22/2006	IL	Midwest Comprehensive Bariatrics ASBS
Tampa General Hospital 2 Columbia Drive, F145 Tampa, FL 33601	100128	03/22/2006	FL	University of South Florida ASBS
Spartanburg Regional Healthcare System 101 East Wood Street Spartanburg, SC 29303	420007	03/27/2006	SC	ASBS
OSF Saint Francis Medical Center 530 NE Glen Oak Avenue Peoria, IL 61637	140067	04/05/2006	IL	ASBS
Palmetto Health Baptist 1850 Laurel Street, Suite 1A Columbia, SC 29201	420086	04/05/2006	SC	ASBS
Peconic Bay Medical Center 1300 Roanoke Avenue Riverhead, NY 11901	330107	04/06/2006	NY	ASBS
Desert Springs Hospital 2075 East Flamingo Las Vegas, NV 89119	290022	04/07/2006	NV	ASBS
Palmetto General Hospital 2001 West 68th Street Hialeah, FL 33016	100187	04/11/2006	FL	ASBS

Hurley Medical Center One Hurley Plaza Flint, MI 48503-5993	230132	04/14/2006	MI	ACS
University of California, Davis 2315 Stockton Boulevard Sacramento, CA 95817	N/A	04/18/2006	CA	ASBS
Russell County Medical Carroll and Tate Streets Lebanon, VA 24266	N/A	04/27/2006	VA	ASBS
Western Pennsylvania Hospital 4800 Friendship Avenue Pittsburgh, PA 15224	028672	N/A	PA	ASBS-05/01/2006 ACS-10/16/2006
Banner Good Samaritan Bariatric Center 1300 North 12th Street Suite 610 Phoenix, AZ 85006	N/A	05/04/2006	AZ	ASBS
Bothwell Regional Health Center 601 East 14th Street Sedalia, MO 65301	N/A	05/17/2006	MO	ASBS
Durham Regional Hospital 3643 N. Roxboro Road Durham, NC 27704	N/A	05/17/2006	NC	ASBS
Fairview Southdale Hospital 6405 France Avenue Street Suite W320 Edina, MN 55435	N/A	05/17/2006	MN	ASBS
Cleveland Clinic 9500 Euclid Avenue (A80) Cleveland, OH 44195	360180	N/A	OH	05/24/2006-ASBS 12/01/2006-ACS
St. Agnes Healthcare 900 Caton Avenue Baltimore, MD 21229	210011	05/24/2006	MD	ASBS
Sycamore Hospital 2150 Leiter Road Miamisburg, OH 45342	360239	05/24/2006	OH	ASBS
Albany Medical Center	330013	06/02/2006	NY	ACS

47 New Scotland Avenue Albany, NY 12208				
Georgetown Community Hospital 1140 Lexington Road Georgetown, KY 40324	180101	06/07/2006	KY	ASBS
Fletcher Allen Health Care 111 Colchester Avenue Burlington, VT 05401	N/A	06/09/2006	VT	Hospital: 470003 Group Provider: VN0997 ACS
New York-Presbyterian Hospital/Columbia University Medical Center 161 Fort Washington Avenue, Herbert Irving Pavilion New York, NY 10032	330101	06/14/2006	NY	ACS
Providence Memorial Hospital 2001 North Oregon Street El Paso, TX 79902	450668	06/15/2006	TX	ASBS
UT Southwestern University Hospitals-Zale Lipshy 5909 Harry Hines Boulevard Dallas, TX 75390	450766	06/19/2006	TX	ASBS
Cedars-Sinai Medical Center 8700 Beverly Boulevard Los Angeles, CA 90048	N/A	06/20/2006	CA	Thalians-2W ACS
Community Medical Center-Clovis 2755 Herndon Avenue Clovis, CA 93611	050492	N/A	CA	ACS-06/26/2006 ASBS-12/07/2006
Oregon Health & Science University 3181 SW Sam Jackson Park Road L223A Portland, OR 97239	See other information	06/27/2006	OR	OHSU Medical Group-107708 OHSU Hospital-380009 ACS
Hospital of the University of Pennsylvania 3400 Spruce Street, 4 Silverstein Philadelphia, PA 19104	N/A	07/06/2006	PA	ASBS

Swedish Medical Center 501 East Hampden Avenue Englewood, CO 80113	060034	07/06/2006	CO	ASBS
Blount Memorial Hospital 907 East Lamar Alexander Parkway Maryville, TN 37801	440011	07/11/2006	TN	ASBS
University of Virginia Health System PO Box 800809 Charlottesville, VA 22908-0809	490009	07/12/2006	VA	ACS
Sewickley Valley Hospital 720 Blackburn Road Sewickley, PA 15143	390037	07/13/2006	PA	ASBS
The Christ Hospital 2139 Auburn Avenue Cincinnati, OH 45219	632319	07/17/2006	OH	ASBS
Cabell Huntington Hospital 1340 Hal Greer Boulevard Huntington, WV 25701	510055	07/19/2006	WV	ASBS
Mount Sinai Hospital One Gustave L. Levy Place 1190 5th Avenue New York, NY 10029	330024	07/25/2006	NY	ASBS
UMass Memorial Medical Center-Memorial Campus 119 Belmont Street Worcester, MA, 01605	A22819	07/27/2006	MA	ACS
Henry Ford Hospital 2799 West Grand Boulevard Detroit, MI 48202	N/A	07/31/2006	MI	ASBS
Vista Surgical Hospital 9094 Perkins Road Suite B Baton Rouge, LA 70810	230053	07/31/2006	LA	ASBS
Town & Country Hospital 6001 Webb Road	100255	08/02/2006	FL	ASBS

Tampa, FL 33615				
New York-Presbyterian Hospital/Weill Cornell Medical Center 630 West 168th Street New York, NY 10032	330101	08/04/2006	NY	ACS
Centinela Freeman Regional Medical Center 323 Prairie Avenue Suite 434 Inglewood, CA 90301	050741	08/07/2006	CA	ASBS
NYU Medical Center 560 First Avenue New York, NY 10016	330214	08/08/2006	NY	ASBS
Regional West Medical Center 4021 Avenue B Scottsbluff, NE 69361	280061	08/08/2006	NE	ASBS
Mercy Medical Center 1000 North Village Avenue Rockville Centre, NY 11570	N/A	08/10/2006	NY	ASBS
Brigham and Women's Hospital 75 Francis Street Boston, MA 02115-6195	M20830	08/14/2006	MA	ACS
Highland Hospital 1000 South Avenue Rochester, NY 14620	330164	08/30/2006	NY	ACS
Inova Fair Oaks Hospital 3600 Joseph Siewick Drive Fairfax, VA 22033	490101	08/31/2006	VA	ASBS
Our Lady of Lourdes Medical Center 1600 Haddon Avenue Camden, NJ 08104	613039	08/31/2006	NJ	ASBS
FirstHealth Moore Regional Hospital 155 Memorial Drive Pinehurst, NC 27374	340115	09/01/2006	NC	ASBS

Hamot Medical Center 201 State Street Erie, PA 16550	390063	09/01/2006	PA	ASBS
St. Alexius Hospital - NewStart 3933 South Broadway Street St. Louis, MO 63118	260210	09/01/2006	MO	ASBS
St. Catherine of Siena Medical Center 50 Route 25A Smithtown, NY 11787	316495	09/01/2006	NY	ASBS
Barnes Jewish Hospital One Barnes-Jewish Hospital Plaza St. Louis, MO 63110	260032	09/06/2006	MO	ASBS
Baptist Memorial Hospital Memphis 6025 Walnut Grove Road Memphis, TN 38120	440048	09/07/2006	TN	ASBS
Norwalk Hospital 24 Stevens Street Norwalk, CT 06856	070034	09/07/2006	CT	ASBS
North Shore University Hospital at Manhasset 300 Community Drive Manhasset, NY 11530	330106	09/08/2006	NY	ASBS
St. Vincent's Medical Center 2800 Main Street Bridgeport, CT 06606	070028	09/08/2006	CT	Level 3-Department of Surgery ASBS
Faxton-St. Luke's Healthcare 1656 Champlin Avenue Utica, NY 13503	330044	09/14/2006	NY	ASBS
St. Joseph's Hospital 69 West Exchange St. Paul, MN 55102	N/A	09/14/2006	MN	ASBS
Johns Hopkins Bayview Medical Center 4940 Eastern Avenue	210029	09/15/2006	MD	ASBS

Baltimore, MD 21224				
University Hospitals of Cleveland 11100 Euclid Avenue Cleveland, OH 44106	N/A	09/15/2006	OH	ASBS
Yale-New Haven Hospital 20 York Street New Haven, CT 06510	070022	09/20/2006	CT	ASBS
Avera McKennan Hospital 800 East 21st Street, Box 5045 Sioux Falls, SD 57117-5045	430016	09/25/2006	SD	ASBS
Memorial Hospital Jacksonville 3625 University Boulevard South Jacksonville, FL 32216	100179	09/26/2006	FL	ASBS
Fountain Valley Regional Hospital 17100 Euclid Street Fountain Valley, CA 92708	050570	09/27/2006	CA	ASBS
Sentara Norfolk General Hospital 600 Gresham Drive Norfolk, VA 23507	4900073	09/29/2006	VA	ACS
St. Mary's Medical Center 450 Stanyan Street San Francisco, CA 94117	050457	10/02/2006	CA	ASBS
Trinity Medical Center 800 Montclair Road Birmingham, AL 35213	010104	10/03/2006	AL	ASBS
MeritCare Health System 720 4th Street North Fargo, ND 58122	350011	10/11/2006	ND	ASBS
St. Lukes's/Roosevelt 1090 Amsterdam Avenue New York, NY 10025	330046	10/11/2006	NY	10th Floor ACS
Benefis Healthcare 1101 26th Street South Great Falls, MT 59405	270012	10/13/2006	MT	ASBS
Mason General Hospital 901 Mountain View Drive	501336	10/13/2006	WA	ASBS

Shelton, WA 98584				
Norton Hospital 200 East Chestnut Louisville, KY 40202	180088	10/16/2006	KY	ASBS
Port Huron Hospital 1221 Pine Grove Avenue Port Huron, MI 48060	230216	10/16/2006	MI	ASBS
Harper University Hospital 3990 John R. Street Detroit, MI 48201	230104	10/17/2006	MI	ASBS
St. Luke Hospital 7380 Turfway Road Florence, KY 41042	195001	10/18/2006	KY	ASBS
Twelve Oaks Medical Center Hospital 4200 Twelve Oaks Drive Houston, TX 77027	N/A	10/18/2006	TX	ASBS
Cleveland Clinic Florida 3100 Weston Road Weston, FL 33331-3602	100289	10/19/2006	FL	ACS
Grinnell Regional Medical Center 210 Fourth Avenue Grinnell, IA 50112	N/A	10/19/2006	IA	Provider Numbers: Hospital: 160147, Surgical Group: 03108 ACS
Conway Medical Services 300 Singleton Ridge Road Conway, SC 29528	420049	10/20/2006	SC	ASBS
Alta Bates Medical Center 350 Hawthorne Avenue Oakland, CA 94609	050043	10/23/2006	CA	ASBS
Massachusetts General Hospital 55 Fruit Street Boston, MA 02114-2696	220071	10/23/2006	MA	ACS
Mayo Clinic-Saint Mary's Hospital 200 First Street SW Rochester, MN 55905	N/A	10/23/2006	MN	SMH: 24-0010 Part B General Medical: C01384

				ACS
Saint Francis Hospital 6465 South Yale Avenue, #900 Tulsa, OK 74136	372308	10/23/2006	OK	ACS
Newton-Wellesley Hospital 2014 Washington Street Newton, MA 02462	220101	10/26/2006	MA	ACS
Mobile Infirmary Medical Center 5 Mobile Infirmary Circle Mobile, AL 36007	010113	10/27/2006	AL	ASBS
Maine Medical Center 22 Bramhall Street Portland, ME 04102	200009	11/06/2006	ME	ASBS
Magee Womens Hospital of UPMC 3000 Halket Street Pittsburgh, PA 15213	390114	11/13/2006	PA	ASBS
Saint Francis Hospital and Medical Center 114 Woodland Street Hartford, CT 06105	070002	11/15/2006	CT	ASBS
South Jersey Healthcare-Regional Medical Center 1505 West Sherman Avenue Vineland, NJ 08360	310032	11/20/2006	NJ	ASBS
Overlook Hospital 99 Beauvoir Avenue Summit, NJ 07902	310051	11/21/2006	NJ	Nursing Administration Office ASBS
Cedars Medical Center 1400 Northwest 12th Avenue Miami, FL 33136	100009	11/23/2006	FL	ASBS
Memorial Hermann Memorial City Hospital 921 Gessner Road Houston, TX 77024	450610	11/27/2006	TX	ASBS

Tufts-New England Medical Center 750 Washington Street Boston, MA 02111	220116	11/27/2006	MA	ASBS
Allegheny General Hospital 320 East North Avenue Pittsburgh, PA 15212	390050	11/30/2006	PA	Fifth Floor, South Tower ASBS
Northwest Medical Center 2801 North State Road 7 Margate, FL 33063	100189	11/30/2006	FL	ASBS
Potomac Hospital 2300 Opitz Boulevard Woodbridge, VA 22191	490113	11/30/2006	VA	ASBS
Baptist Health Medical Center - Little Rock 9601 I-630, Exit 7 Little Rock, AR 72205	040114	12/01/2006	AR	ASBS
University of Washington Medical Center 1959 NE Pacific Street PO Box 356151 Seattle, WA 98195-6151	1326002049	12/05/2006	WA	ACS
St. Luke's Regional Medical Center 333 North 1st Street Suite 120 Boise, ID 83702	130006	12/06/2006	ID	ASBS
University of Alabama at Birmingham Hospital 1530 3rd Avenue South Kracke Building 404 Birmingham, AL 35294-0016	010033	12/07/2006	AL	ACS
Hackensack University Medical Center 30 Prospect Avenue Hackensack, NJ 07601	310001	12/08/2006	NJ	ACS

Hialeah Hospital 651 East 25th Street Hialeah, FL 33013	100053	12/13/2006	FL	ASBS
Sts. Mary and Elizabeth Hospital 1850 Bluegrass Avenue Louisville, KY 40215	180040	12/15/2006	KY	Bariatric Office ASBS
Bon Secours Surgical Weight Loss-Maryview Medical Center 3636 High Street Portsmouth, VA 23707	490017	12/18/2006	VA	ASBS
Pomerado Hospital 15615 Pomerado Road Poway, CA 92064	050636	12/18/2006	CA	ASBS
Boston Medical Center 88 E. Newton Street D507-Department of Surgery Boston, MA 02118	220031	12/19/2006	MA	ACS
Medcenter One, Inc. 300 North 7th Street Bismarck, ND 58501	350015	12/19/2006	ND	ASBS
Meriter Hospital 202 South Park Street Madison, WI 53715	520089	12/19/2006	WI	ASBS
University of Wisconsin Hospital & Clinics 600 Highland Avenue Madison, WI 53792	520098	12/19/2006	WI	ASBS
Women and Children's Hospital 4200 Nelson Road Lake Charles, LA 70605	190201	12/19/2006	LA	ASBS
Mount Carmel West Hospital 793 West State Street Columbus, OH 43222	360035	12/20/2006	OH	ASBS
Southcoast Hospitals Group-Tobey Hospital 43 High Street Wareham, MA 02571	220074	12/21/2006	MA	ASBS

Carilion Roanoke Memorial Hospital 1906 Belleview Avenue Roanoke, VA 24014	N/A	12/26/2006	VA	ASBS
Mercy General Health Partners 1500 Sherman Boulevard Muskegon, MI 49444	230004	12/26/2006	MI	ASBS
Mountainside Hospital 1 Bay Avenue Montclair, NJ 07042	310054	12/26/2006	NJ	ASBS
Park Plaza Hospital 1313 Hermann Drive Houston, TX 77004	450659	01/09/2007	TX	ASBS
Renaissance Hospital Houston 2807 Little York Houston, TX 77093	450795	01/12/2007	TX	ASBS
Penn State Milton S. Hershey Medical Center 500 University Drive Hershey, PA 17033	390256	01/18/2007	PA	ASBS
Shawnee Mission Medical Center 9100 West 74th Street Shawnee Mission, KS 66204	170104	01/24/2007	KS	ASBS
Morristown Memorial Hospital 100 Madison Avenue Morristown, NJ 07962	31-0015	01/25/2007	NJ	ACS
Alvarado Hospital 6655 Alvarado Road San Diego, CA 92120	050583	01/26/2007	CA	Alvarado Surgical Weight-Loss Program ASBS
St. Francis Hospital 7th and Clayton Streets Wilmington, DE 19805	080003	01/29/2007	DE	ASBS
Sacred Heart Medical Center 101 West 8th Avenue Spokane, WA 99220	500054	02/05/2007	WA	ASBS

Ochsner Clinic Foundation 1514 Jefferson Highway New Orleans, LA 70121	190036	02/06/2007	LA	ASBS
Northwest Specialty Hospital 1593 East Polston Avenue Post Falls, ID 83854	130066	02/07/2007	ID	ASBS
Sacred Heart Hospital 421 Chew Street Allentown, PA 18102	390197	02/07/2007	PA	ASBS
Rio Grande Regional Hospital 101 East Ridge Road McAllen, TX 78503	450711	02/12/2007	TX	ASBS
Gundersen Lutheran Medical Center 1900 South Avenue La Crosse, WI 54601	520087	02/13/2007	WI	ASBS
Kettering Medical Center 3535 Southern Boulevard Kettering, OH 45429	360079	02/16/2007	OH	ASBS
Beth Israel Deaconess Medical Center 330 Brookline Avenue Boston, MA 02215	N/A	02/17/2006	MA	ACS
Shady Grove Adventist Hospital 9901 Medical Center Drive Rockville, MD 20850	210057	02/19/2007	MD	ASBS
Pitt County Memorial Hospital 2100 Stantonsburg Road Greenville, NC 27835	340040	02/20/2007	NC	ASBS
St. Cloud Hospital 1406 Sixth Avenue, North St. Cloud, MN 56303	240036	02/23/2007	MN	ASBS
Virginia Mason Medical Center 1100 Ninth Avenue Seattle, WA 98101	500005	03/01/2007	WA	ASBS

Southeast Georgia Health System 2415 Parkwood Drive Brunswick, GA 31520	110025	03/06/2007	GA	ASBS
Baystate Medical Center 759 Chestnut Street Springfield, MA 01199	220077	03/13/2007	MA	ACS
PinnacleHealth Community Campus 4300 Londonderry Road c/o PO Box 8700 Harrisburg, PA 17109	390067	03/29/2007	PA	ASBS
The Valley Hospital 223 North Van Dien Avenue Ridgewood, NJ 07450	310012	03/30/2007	NJ	ASBS
Charleston Area Medical Center 800 Pennsylvania Avenue Charleston, WV 25302	510022	04/16/2007	WV	ASBS
Presbyterian Hospital of Dallas 8200 Walnut Hill Lane Dallas, TX 75231	450462	04/16/2007	TX	ASBS
Dekalb Medical Center 2701 North Decatur Road Decatur, GA 30033	110076	04/26/2007	GA	ASBS
St. Francis Health Center 1700 SW 7th Street Topeka, KS 66606	170016	04/26/2007	KS	ASBS
St. Mark's Hospital 1200 East 3900 South Salt Lake City, UT 84124	47007	04/26/2007	UT	ASBS
George Washington University Hospital 9000 23rd Street NW Washington, DC 20037	090001	08/14/2006	DC	ASBS
William Beaumont Hospital - Royal Oak 3601 West Thirteen Mile Road Royal Oak, MI 48073-6769	230130	04/20/2007	MI	ACS

University Medical Center at Princeton 253 Witherspoon Street Princeton, NJ 08542	N/A	02/24/2006	NJ	ASBS
Winchester Hospital 41 Highland Avenue Winchester, MA 01890	220105	05/31/2007	MA	ASBS
Lawrence Memorial Hospital - Hallmark Health System 170 Governors Avenue Medford, MA 02155	220070	05/31/2007	MA	ASBS
The Methodist Hospital 6565 Fannin, NB1-001 Houston, TX 77030	450358	03/22/2007	TX	ACS
ValleyCare Health System 1111 East Stanley Boulevard Livermore, CA 94550	050283	06/07/2007	CA	ASBS
The Presbyterian Hospital 200 Hawthorne Lane Charlotte, NC 28204	340053	06/06/2007	NC	ASBS
Nix Hospital 414 Navarro Street San Antonio, TX 78205	450130	06/08/2007	TX	ASBS
Huntsville Hospital 101 Sivley Road Huntsville, AL 35801	010039	05/11/2007	AL	ASBS
The Jewish Hospital 4777 Galbraith Road Cincinnati, OH 45236	360016	06/07/2007	OH	ASBS
UCI Medical Center 101 The City Drive South Orange, CA 92868	050348	05/25/2007	CA	ACS
Kaiser Permanente Medical Center Richmond 901 Nevin Avenue Richmond, CA 94801	050075	05/24/2007	CA	ACS

Green Hospital 12395 El Camino Real San Diego, CA 92130	050424	06/21/2007	CA	ASBS
Sutter Roseville Medical Center One Medical Plaza Roseville, CA 95661	050309	06/22/2007	CA	ASBS
Munroe Regional Medical Center 1500 Southwest 1st Avenue Ocala, FL 34471	100062	06/05/2007	FL	ASBS
Enloe Medical Center 251 Cohasset Road Chico, CA 95926	050039	06/11/2007	CA	ASBS
St. Francis Hospital & Health Centers 1600 Albany Street Beech Grove, IN 46107	150033	06/15/2007	IN	ASBS
Southern Surgical Hospital 1700 West Lindberg Drive Slidell, LA 70458	190270	06/21/2007	LA	ASBS
Creighton University Medical Center 601 North 30th Street Omaha, NE 68131	280030	06/20/2007	NE	ASBS
Peninsula Regional Medical Center 100 East Carroll Street Salisbury, MD 21801	210019	06/20/2007	MD	ASBS
Wadley Regional Medical Center 1000 Pine Street Texarkana, TX 75501	450200	06/08/2007	TX	ASBS
Vista Medical Center Hospital 4301 Vista Road Pasadena, TX 77504	450831	06/22/2007	TX	ASBS
St. David's Medical Center 919 East 32nd Street Austin, TX 78705	450531	06/22/2007	TX	ASBS

Sanford USD Medical Center 1305 West 18th Street Sioux Falls, SD 57117	430027	01/17/2006	SD	ASBS
Weight Loss Surgery Program at Baylor 3600 Gaston Avenue Suite 360 Wadley Tower Dallas, TX 75246	N/A	06/20/2007	TX	ASBS
Shelby Baptist Medical Center 1000 First Street N. Alabaster, AL 35007	010016	05/18/2007	AL	ACS
Lehigh Valley Hospital and Health Network Cedar Crest & I-78 PO Box 689 Allentown, PA 18105-1556	390133	05/29/2007	PA	ACS
West Hills Hospital 7300 Medical Center Drive West Hills, CA 91307	050481	06/27/2007	CA	ASBS
Adirondack Medical Center 2233 State Route 86 Saranack Lake, NY 12983	330079	06/26/2007	NY	ASBS
Middletown Regional Hospital 105 McKnight Drive Middletown, OH 45044	360076	06/25/2007	OH	ASBS
Kaleida Health, Buffalo General 100 High Street Buffalo, NY 14203	300005	06/25/2007	NY	ASBS
Miami Valley Hospital One Wyoming Street Dayton, OH 45409	N/A	06/25/2007	OH	ASBS
Minimally Invasive Surgery Hospital 11217 Lakeview Avenue Lenexa, KS 66219	N/A	06/25/2007	KS	ASBS

Addendum XVI—FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials

In a National Coverage Determination for fluorodeoxyglucose positron emission tomography (FDG-PET) for Dementia and Neurodegenerative Diseases (220.6.13) we indicated that an FDG-PET scan is considered reasonable and necessary in patients with mild cognitive impairment or early dementia only in the context of an approved clinical trial that contains patient safeguards and protections to ensure proper administration, use, and evaluation of the FDG-PET scan.

Facility name	Provider Number	Date approved	State	Name of Trial	Principal Investigator
UCLA Medical Center 10833 Le Conte Avenue Los Angeles, CA 90095	HW13029	06/07/2006	CA	Early and Long-Term Value of Imaging Brain Metabolism	Dr. Daniel Silverman
Santa Monica-UCLA Medical Center 1245 16th Street Suite 105 Santa Monica, CA 90404	W11817A	01/12/2007	CA	N/A	N/A
University of Buffalo 3435 Main Street Buffalo, NY 14214	14414A	03/12/2007	NY	Metabolic Cerebral Imaging in Incipient Dementia (MCI-ID)	Dr. Daniel Silverman

[FR Doc. E7–18733 Filed 9–27–07; 8:45 am]
BILLING CODE 4120–01–P

Federal Register

Friday,
September 28, 2007

Part III

Department of Transportation

Federal Transit Administration

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2007–29123]

Capital Investment Program: Proposed Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed circular and request for comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance in the form of a circular to assist grantees in implementing the Capital Investment Program. The Capital Investment Program includes projects such as bus and bus facilities, new fixed guideway systems, and fixed guideway modernization, as authorized by 49 U.S.C. 5309. By this notice, FTA invites public comment on the proposed circular for this program.

DATES: Comments must be submitted by November 27, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [FTA–2007–29123] by any of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. [**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments. All electronic submissions must be made to the U.S. Government electronic docket site at www.regulations.gov. For mailed and hand-delivered comments, commenters should follow the directions below.]

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2007–29123) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kimberly Sledge, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave., SE., East Building, Fourth Floor, Washington, DC 20590, phone: 202–366–2053, fax: 202–366–7951, or e-mail, *Kimberly.Sledge@dot.gov;* or Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave., SE., East Building, Fifth Floor, Washington, DC 20590, phone: 202–366–0944, fax: 202–366–3809, or e-mail, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview

This notice provides a summary of proposed changes to FTA Circular 9300.1A, Capital Program: Grant Application Instructions. This program was affected by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59), signed into law August 10, 2005. FTA is updating the existing circular, developed in 1998, to reflect changes in the law. The final circular, when adopted, will supersede the existing circular.

This document does not include the proposed circular; an electronic version may be found on FTA's Web site, at *http://www.fta.dot.gov.* Paper copies of the circular may be obtained by contacting FTA's Administrative Services Help Desk, at 202–366–4865. FTA seeks comment on the proposed circular.

Readers familiar with the existing FTA Circular 9300.1A will notice a number of changes to the proposed circular. For example, we have changed the name of the circular to "Capital Investment Program" to reflect a focus on the capital investment nature of eligible activities in 49 U.S.C. 5309 ("Section 5309"), as amended by SAFETEA–LU. In addition, we changed the format to make this circular consistent with the style of other circulars FTA is updating. At the same time, we have tried to maintain some consistency with the previous document; for example, information about the Bus program is still in Chapter III, Fixed Guideway Modernization continues to be in Chapter IV, with New Starts/Small Starts information in Chapter V. Substantive changes in content are discussed in the chapter-by-chapter analysis.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

Chapter I of the proposed circular is an introductory chapter and covers general information about FTA and our contact information, briefly reviews the authorizing legislation for the Capital Investment Program (a.k.a. "Section 5309 Program"), provides information about Grants.gov, includes definitions applicable to the program, and provides a brief program history. The Definitions section is new to this circular, and includes definitions related to the Section 5309 program, as well as the Section 5308, Clean Fuels Grant program. Where applicable, we have used the same definitions found in rulemakings or other circulars to ensure consistency. In the existing circular, eligible projects are included in Chapter I. Eligible projects have been moved to Chapter II in the proposed circular, and will be discussed further there.

B. Chapter II—Program Overview

Chapter II of the existing circular is titled, "How to Use This Circular." The content of this chapter has been eliminated or moved to other chapters. Chapter II of the proposed circular provides more detail about the Capital Investment program. This chapter starts with the statutory authority for the Capital Investment program, followed by the goals of the program, and a list of eligible projects. Also included in the

proposed Chapter II is information on apportionment, funds availability, Federal/local matching requirements, relationship to other FTA programs, and the requirements to ensure a recipient has the legal, financial, and technical capacity to carry out a Capital Investment project.

As stated previously, eligible projects have been moved to the proposed Chapter II. There were significant changes to eligible projects under 49 U.S.C. 5309 with the enactment of SATETEA–LU. Under the previous statute (The Transportation Equity Act for the 21st Century (TEA–21)), there were eight categories of eligible projects in 49 U.S.C. 5309. These included bus and bus facilities, new fixed guideways, fixed guideway modernization, development of corridors to support fixed guideway systems, projects designed to meet the needs of elderly and disabled passengers, projects to introduce new technology, the capital costs of coordinating public transportation with other transportation, and capital projects needed for an efficient and coordinated public transportation system. Under SATETEA–LU, there are only four categories of eligible projects in 49 U.S.C. 5309: bus and bus facilities, new fixed guideways, fixed guideway modernization, and corridor improvements. Therefore, the list of eligible projects in the proposed circular has changed, as well. We have defined the four categories of eligible projects as "capital investment projects" and listed them in this proposed chapter as "assets for which FTA provides assistance." In addition to these "capital investment projects," however, we have included a list of projects that, "when integral to a capital investment project," would be eligible for Section 5309 funding. This includes the introduction of new technology, previously eligible under TEA–21. While not specifically listed as an eligible project, bus purchases to meet the needs of elderly persons and persons with disabilities would be eligible, since bus purchases generally are eligible. We note that the purpose of the Section 5310 Program is to purchase buses to meet the special transportation needs of these populations, and Section 5310 funding is available to private non-profit organizations where public transportation is unavailable, insufficient, or inappropriate.

In keeping with the purpose of Section 5309 as a capital "investment" program, we propose removing two previously eligible projects from the proposed circular: The capital cost of contracting and preventive maintenance for the bus program. Both of these capital expenditures are eligible for funding under other FTA programs, including the Urbanized Area Formula program (Section 5307) and the Nonurbanized Area Formula program (Section 5311). The capital cost of contracting allows recipients to fund the capital portion of contracts, thus acquiring the use of capital assets for the short-term. The purpose of the Section 5309 program is long-term investment, and the purchase of assets for short-term use is not consistent with the program's purpose. "Capital projects" are defined in 49 U.S.C. 5302, and preventive maintenance is included in that definition. Sections 5307 and 5311 broadly permit the Secretary to make grants for capital projects (e.g., "the Secretary may make grants for capital projects"). Under Section 5309, however, capital projects are more narrowly defined, and in the bus program, the Secretary is permitted to make grants for "capital projects to replace, rehabilitate, and purchase buses and related equipment." In light of Congress' generally limiting the list of Section 5309 eligible projects to those with an "investment" purpose, FTA proposes similarly limiting the bus program to projects that provide an investment in future transportation, and removing preventive maintenance since it does not fall within the statutory eligibility of "capital projects to replace, rehabilitate, and purchase buses." Bus-related equipment remains an eligible project. FTA seeks comment on the proposed list of eligible projects.

The Federal/local matching requirements, found in Chapter I of the existing circular and Chapter II of the proposed circular, are consistent with 49 U.S.C. Chapter 53; namely, the Federal share is 80 percent of an eligible project unless the applicant requests a lower percentage. Exceptions include Clean Air Act (CAA), Americans with Disabilities Act (ADA), and bicycle projects, all of which have a 90 percent Federal share.

In 1992, under the provision allowing the Secretary "to determine through practicable administrative procedures, the costs attributable to compliance with those Acts," FTA computed an 83 percent composite Federal match for bus or van related equipment, which reflects a blend of 80 percent for the bus or van and 90 percent for the incremental cost of equipment added to the bus or van and associated with CAA and ADA compliance. For all other vehicles, including rail vehicles, a detailed accounting of the incremental cost required for CAA and ADA compliance must be provided in the grant application to determine the Federal share.

Beginning with Fiscal Year 2006, recipients may apply for a 90 percent share of the actual incremental costs of vehicle-related facility improvements related to ADA or CAA compliance. FTA is requesting that recipients provide documentation supporting these requests. The 83 percent Federal share does not apply to facilities, for which the costs are more variable. The eligibility of facility-related cost elements at the 90 percent share will be reviewed on a case-by-case basis as part of the grant application process. FTA seeks comment on this proposal.

Finally, the proposed Chapter II includes information on how a recipient demonstrates that it has the legal, financial, and technical capacity required to carry out a Capital Investment project. This information is found in Chapter VI of the existing circular, and FTA did not substantively change the language of this section.

C. Chapter III—Buses and Related Acquisitions

Chapter III addresses buses and related acquisitions, commonly known as "the bus program." The information in the proposed circular compares to information found in Chapter III of the existing circular, and the proposed Chapter III has been completely reworked, while retaining much of the information in the existing circular. The proposed circular contains information on how funds are allocated, examples of eligible projects, environmental considerations, requirements related to vehicles, equipment, and facilities, and the Clean Fuels Grant program. Information in the existing circular that was not retained in the proposed circular includes the following: information about other programs available for funding buses and bus-related facilities (some of this information is retained in the proposed Chapter II—Relationship to Other FTA Programs); the lead time needed for purchasing new buses; and an expected time frame for a bus facilities project. FTA removed the lead time and time frame as they were at best speculative in nature. Further, individuals or agencies seeking Section 5309 funds generally understand the lead time and time frames involved in these projects, and FTA regional office staff can assist interested parties in determining how long a particular project will take.

Language from the existing Chapter III that was retained in the proposed Chapter III remains largely unchanged, with some exceptions to bring the circular up to date with changes in the

law. For example, 49 U.S.C. 5323(m) was amended so rolling stock procurements of 20 vehicles or fewer for use in areas under 200,000 population are not required to have an inspector on-site; this is reflected in paragraph 6(c)(3) in the proposed circular. Paragraph 6(a)(2) states the current status of the charter rule, and notes that the paragraph may change if a final charter rule is published before the final FTA Circular 9300 is issued. In addition, paragraph 6(d) reflects passage of the Presidential Coin Act of 2005, requiring that as of January 1, 2008, all transit systems that receive Federal funding shall be capable of accepting and dispensing $1 coins.

Since Section 5309 bus funds may be used to purchase buses that use clean fuels, the proposed Chapter III contains a paragraph on the Section 5308 Clean Fuels Grant program. This section of the chapter describes the purpose of the program, and, in the event Congress appropriates funds under Section 5308, describes eligible recipients, eligible projects, funds availability, and Federal share. We note also that FTA has promulgated a final rule for the Clean Fuels Grant program at 49 CFR part 624 (72 FR 15049, March 30, 2007).

D. Chapter IV—Fixed Guideway Modernization

Chapter IV addresses fixed guideway modernization. The information in the proposed circular compares to information found in Chapter IV of the existing circular, with only minor changes. For example, paragraph 6(c) Clean Air Act Compliance has been updated. Further, as in the bus chapter, the change in 49 U.S.C. 5323(m) to forgo on-site inspections for rolling stock procurements of 20 vehicles or fewer for use in areas under 200,000 population is reflected in paragraph 6(e). The Buy America requirement was updated in paragraph 6(g), as was the Major Capital Project paragraph 6(h).

E. Chapter V—New Starts

The proposed Chapter V addresses New Starts, and compares to information found in Chapter V of the existing circular. In addition to the information found in Chapter V of the proposed circular, FTA maintains a New Starts Web page, at *http://www.fta.dot.gov/planning/planning_environment_5221.html* that contains the most up-to-date guidance for this program. In addition, there is a New Starts rule, found at 49 CFR part 611, and FTA published a notice of proposed rulemaking in the **Federal Register** (72 FR 43328, Aug. 3, 2007), which proposes a number of changes to the current rule. Interested readers are encouraged to review the proposed rule at *http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-14285.pdf.*

The format of the proposed Chapter V remains similar to that of the existing circular, and FTA proposes several changes to this chapter, largely due to changes in the law. For example, FTA draws a distinction between a "New Start"—a project that has a total cost of $250 million or more, or for which the project sponsor is requesting more than $75 million in Federal funds; and a "Small Start"—a project that has a total cost of less than $250 million that requests less than $75 million in Federal funds. The various requirements for both projects are described throughout the chapter. There is a new phase in the project development process—alternatives analysis—which is described at length.

The sections on Environmental Protection, Clean Air Act Compliance, Available Funding, Project Management Plan, and Value Engineering Requirements contain only minor edits. The section titled, "FTA Rating System" has been enhanced for greater clarification of how FTA rates projects. Readers are encouraged also to review FTA's recently published, "Proposed Policy Guidance on Evaluation Measures for New Starts/Small Starts," available on the FTA Web site at *http://www.fta.dot.gov/documents/NPRM_Policy_Guidance_7-18-07_v_3.doc.* A **Federal Register** notice (72 FR 43378, Aug. 3, 2007) accompanied publication of the proposed policy guidance.

F. Chapter VI—Other Provisions

This chapter is similar to the "Other Provisions" chapters in other FTA circulars, and summarizes a number of FTA-specific and other Federal requirements that FTA grantees are held to, in addition to the program-specific requirements and guidance provided in the circular. The proposed chapter compares to the information found in the existing Chapter VI, "Requirements Common to All Capital Program Grant Applications." Much of the information has been retained and reorganized. As mentioned, the sections on legal, financial, and technical capacity in the existing Chapter VI have been moved to the proposed Chapter II. In addition, the "Relationship to Other Programs" sections in the existing Chapter VI have been moved to the proposed Chapter II. Recipients should use this chapter in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" to assure that they have met all requirements. Recipients may contact FTA Regional Counsel for additional information about these requirements.

G. Appendices

The proposed appendices are intended as tools for developing a grant application. Appendix A specifically addresses steps and instructions for preparing a grant application, including pre-application and application stages. This information is comparable to Chapter VII, Grant Application Contents, in the existing circular, although it has been updated and reorganized. Appendix A also includes an application checklist and information for registering with the Electronic Clearing House Operation (ECHO) payment system. Proposed Appendix B provides budget information, including a sample budget, and compares with the information found in Chapter VIII, Instructions for Preparing a Project Budget, in the existing circular. Proposed Appendix C, which compares with Chapter IX, Examples, in the existing circular, contains samples of an Authorizing Resolution, a Transaction for Mid-life Sale of a Transit Bus, an Opinion of Counsel, a Project Milestone Schedule, and Proceeds from the Sale of Assets. Proposed Appendix D contains contact information for all of FTA's regional and metropolitan offices, and is new information for this circular.

We propose removing the existing Appendix A, Relationship Between Capital Program Grants and the Metropolitan and Statewide Planning Process; Appendix B, Joint Development Projects; and Appendix C, Annual Certifications and Assurances. Readers will find information on planning requirements throughout the proposed circular, and the information on Certifications and Assurances has been consolidated into one paragraph in Chapter VI. Historically, FTA has included guidance on Joint Development in three circulars: 5010.1, Grants Management; 9030.1, Formula Capital Grants; and 9300.1, Major Capital Investments. However, FTA issued separate Joint Development guidance in a **Federal Register** notice (72 FR 5788, Feb. 7, 2007) and, as FTA stated in that notice, we have decided to consolidate the appendices in FTA Circulars 5010.1, 9030.1, and 9300.1 into one circular on the eligibility of joint development improvements. This circular is scheduled for publication in 2008, but until it is published, readers should refer to the **Federal Register**

notice for guidance on joint development projects.

Issued in Washington, DC, this 24th day of September, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–19111 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2007–29126]

Program Guidance for Metropolitan Planning Program and State Planning and Research Program Grants (49 U.S.C. 5305): Notice of Program Guidance

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Availability of proposed program guidance and request for comments.

SUMMARY: This notice proposes guidance in the form of a revised program circular for the Federal Transit Administration's (FTA) planning programs. The proposed circular revises and combines into one document the contents of existing Circulars 8100.1B for the Metropolitan Planning Program (MPP) and 8200.1 the Statewide Planning and Research Program (SPRP). The proposed circular also provides information on the Consolidated Planning Grant Program between the FTA and the Federal Highway Administration (FHWA).

DATES: Comments should be submitted by October 29, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure your comments are not entered more than once into the docket, submit comments identified by the docket number [FTA–2007–29126] by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. [NOTE: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments. All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.]
2. *Fax:* 202–493–2251.
3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* To the Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

See the **SUPPLEMENTARY INFORMATION** section for detailed instructions on how to submit comments and access docket information.

FOR FURTHER INFORMATION CONTACT: Victor Austin, Office of Planning and Environment (TPE), Federal Transit Administration, 1200 New Jersey Ave., SE., Washington, DC 20590, phone: 202–366–2996, or e-mail, *victor.austin@dot.gov.* Legal questions may be addressed to Christopher Van Wyk, Office of Chief Counsel (TCC), Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, phone: 202–366–1733, or e-mail *christopher.vanwyk@dot.gov.*

SUPPLEMENTARY INFORMATION:

Comment Instructions and Docket Access Information

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2007–29126) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. Due to security procedures in effect since October 2001 regarding mail deliveries, 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. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be available to Internet users and will be posted without change to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, April 11, 2000).

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

This proposed circular revises existing Circular 8100.1B, "Program Guidance and Application Instructions for Metropolitan Planning Program Grants," dated October 25, 1996. FTA proposes to revoke Circular 8200.1, "Program Guidance and Application Instructions for State Planning and Research Program Grants," dated December 27, 2001, and place the updated content from this document, along with the updated content from the Metropolitan Planning Program (MPP), into the revised Proposed Circular 8100.1C, which will be renamed as "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."

Table of Contents

I. Overview

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) updated Chapter 53 of Title 49 of the United States Code incorporating new requirements for metropolitan and statewide transportation planning (49 U.S.C. 5303 and 5304). On February 14, 2007, FTA and the Federal Highway Administration (FHWA) published a **Federal Register** notice announcing a final rule, "Statewide Transportation Planning; Metropolitan Transportation Planning," (72 FR 7224, February 14, 2007) which updated 23 CFR parts 450 and 500 and 49 CFR part 613 to include new provisions required by SAFETEA–LU.

Over the past two years, FTA and FHWA worked cooperatively to prepare a new joint regulation on Metropolitan Transportation Planning and Statewide Transportation Planning which governs the work performed under the Metropolitan Planning Program (MPP) at 23 CFR part 450 and the State Planning and Research Program (SPRP) at 23 CFR part 420 (adopted by FTA at 49 CFR part 613). The final rule was published in the **Federal Register** February 14, 2007, and provides the procedural basis for fully implementing the planning provisions set forth in legislation and makes the Metropolitan Transportation Planning and Statewide Transportation Planning regulations

consistent with current statutory requirements.

The rulemaking process included extensive public outreach conducted jointly by FTA and FHWA. This involved preparation of a Notice of Proposed Rulemaking and a 90-day comment period during which 1600 individual comments were received. This outreach was supported by six public outreach sessions, two national telecasts on the Internet, and a series of "tag-on" informational sessions with various transportation stakeholder association events, including the Association of State Highway and Transportation Officials (AASHTO), American Public Transportation Association (APTA), the National Association of Regional Councils (NARC), the Association of MPO's (AMPO), and State DOTs.

While SAFETEA–LU made a number of changes to the requirements for metropolitan and statewide transportation planning, the legislation did not make substantive changes to the eligibility and grant-award aspects of the Metropolitan Planning Program (MPP). SAFETEA–LU did change the funding eligibility of the State Planning and Research Program (SPRP) to include only funds from Sections 5304, 5306, 5315, and 5322. Therefore funding activities under Sections 5312 and 5317, allowable under the previous legislation for SPRP, are no longer eligible activities.

Another notable change that SAFETEA–LU made to the MPP and SPRP was unifying both programs under the same chapter, 49 U.S.C. 5305. Before SAFETEA–LU, program eligibility and criteria for the MPP could be found in 49 U.S.C. 5303(g) while program eligibility and criteria for the SPRP was found in 49 U.S.C. 5313(b). Additionally, SAFETEA–LU restricted the use of planning funds, under both the MPP and SPRP, to the States, the District of Columbia, and Puerto Rico and places responsibilities for such funds to these entities.

The proposed circular adds information on the Consolidated Planning Grants (CPG) Program, a program administered by FTA and FHWA. This program allows FTA and FHWA metropolitan and statewide planning funds to be combined into a single consolidated grant. This program fosters a cooperative effort between the Federal agencies and the participating States to streamline the delivery of their planning programs providing the flexibility to transfer the planning funds to either FTA or FHWA for processing. Under CPGs, only one Federal agency, either FTA or FHWA, will administer grants.

FTA reserves the right to make changes to this circular in the future to update references to requirements contained in other revised or new guidance and regulations without further notice and comment on this circular.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

This introductory chapter is a general introduction to FTA that is proposed to be included in all the new and revised program circulars for the orientation of readers new to FTA programs. Chapter I also includes definitions and a history of FTA's planning programs.

B. Chapter II—Metropolitan Planning Program

This chapter replaces the former Chapter II, "Eligibility," in Circular 8100.1B and consolidates Chapter I "General Overview," Chapter II "Eligibility," Chapter III "Metropolitan Planning and Assistance: Formula and Notification," Chapter IV "Unified Planning Work Program," Chapter V "Application Instructions," Chapter VII "Grant Agreement," and Chapter VIII "State Management" of the existing Circular 8100.1B, with minor updates. This chapter provides an overview of the entire MPP in terms of its statutory authority and program goals. It defines the role of FTA and the individual States, explains the program's relationship to other FTA-funded programs, provides information on eligible planning activities, and offers detailed required steps for preparing a Unified Planning Work Program (UPWP).

C. Chapter III—Statewide Planning and Research Program

This chapter replaces the former Chapter III, "Metropolitan Planning and Assistance: Formula and Notification," in Circular 8100.1B. This chapter consists of information found in Chapter II "State Planning and Research: Formula and Notification," Chapter IV "State Planning," Chapter VI "Training Activities," and Chapter VIII "Human Resource Activities" of existing Circular 8200.1, with minor updates. It provides an overview of the SPRP in terms of its statutory authority and program goals. It defines the role of FTA and the individual States, and explains the program's relationship to other FTA-funded programs, as well as its coordination with other Federal programs.

D. Chapter IV—Consolidated Planning Grants (CPG)

This chapter replaces the former Chapter IV, "Unified Planning Work Program," in Circular 8100.1B. This chapter provides information on the Consolidated Planning Grant (CPG) Program.

E. Chapter V—Application Instructions

This chapter updates Chapter V, "Application Instructions," and Chapter VI, "Certifications and Assurances," in Circular 8100.1B and merges them into one chapter. While providing minor updates to information on the MPP, this chapter also incorporates relevant information, with minor updates, from Chapter III "Application Instructions," of existing Circular 8200.1. This section details the application process for both MPP and SPRP grants. This section also discusses the certifications and assurances and its location within FTA's Transportation Electronic Award and Management (TEAM) system, a streamlined electronic interface among grant applicants, recipients, and FTA that allows complete electronic grant application submission, review, approval, and management of all grants.

F. Appendices

Appendices A–C of Circular 8100.1B have been relabeled and reorganized. FTA is also adding an index of common terms used throughout the circular following Appendix C. The new Appendix A contains an outline of a Unified Planning Work Program document and replaces the former Definitions section which has been moved to Chapter I. Appendix B is a revised "MPP Sample Project Budget" that was found in Appendix B of Circular 8100.1B, as well as a revised "SPRP Sample Project Budget," that was formerly located in Appendix B of Circular 8200.1. Appendix C contains references to other documents relevant to the planning programs.

Issued in Washington, DC, this 24th day of September, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–19113 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2007–29122]

Notice of Proposed Guidance and Request for Comment on the Federal Transit Administration's Grant Management Requirements (FTA Circular 5010.1D)

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed guidance and request for comment.

SUMMARY: This notice proposes guidance in the form of a revised circular on the Federal Transit Administration's Grant Management Requirements and seeks comment thereon. Proposed Circular 5010.1D modifies FTA's existing Grants Management Circular 5010.1C in several material respects. Among other things, Circular 5010.1D proposes to expand the circumstances under which a grantee may request budget revisions and grant amendments, to identify useful life standards for trolleys, ferry boats, and facilities, and to increase the threshold triggering FTA review and approval for appraisals of real property. In addition to the foregoing substantive changes, proposed Circular 5010.1D updates FTA's guidance to reflect current policy and new FTA programs; restructures the circular; and clarifies FTA's requirements and processes.

DATES: Comments must be received by November 27, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure your comments are not entered more than once into the docket, submit comments identified by the docket number [FTA–2007–29122] by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. [**NOTE:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments. All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.]
2. *Fax:* 202–493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

See the **SUPPLEMENTARY INFORMATION** section for detailed instructions on how to submit comments and access docket information.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact Jamie Pfister at 404–865–5632 or *jamie.pfister@dot.gov.* For legal questions, please contact Jayme L. Blakesley at 202–366–0304 or *jayme.blakesley@dot.gov.*

SUPPLEMENTARY INFORMATION:

Comment Instructions and Docket Access Information;

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2007–29122) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. Due to security procedures in effect since October 2001 regarding mail deliveries, 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. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be available to Internet users and will be posted without change to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, April 11, 2000).

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Table of Contents

I. Overview

This notice announces the availability of FTA's Proposed Grants Management Circular (5010.1D) and requests your comment as described below. The text of Proposed Circular 5010.D is available in its entirety on the electronic docket site at www.regulations.gov docket number FTA–2007–29122.

Proposed Circular 5010.1D modifies FTA's existing Grants Management Circular 5010.1C in several material respects. Among other things, Circular 5010.1D proposes to distinguish between grant administration and project management; expand the circumstances under which a grantee may request budget revisions and grant amendments; identify useful life standards for facilities and rolling stock, including trolleys and other assets; and increase the threshold triggering FTA review and approval for appraisals of real property. In addition to the foregoing substantive changes, Proposed Circular 5010.1D updates FTA's guidance to reflect current policy and new FTA programs; restructures the circular for consistency with FTA law, regulation, and guidance; and clarifies FTA's requirements and processes, specifically those related to reporting, acquiring real property, and disposing assets.

FTA seeks comment on the entire Proposed Circular 5010.1D. Comments received will be considered by FTA when it develops its Final Circular 5010.1D. FTA will respond to comments received in response to this notice in a second **Federal Register** notice to be published after the close of the comment period. The second notice will reflect the changes implemented as a result of the comments received in response to this **Federal Register** notice and will announce the availability of the Final Circular 5010.1D.

In particular, FTA seeks comments on Proposed Circular 5010.1D's treatment of grant modifications, useful life of assets, and management of real property.

II. Grant Modifications, Useful Life of Assets, and Management of Real Property Analysis

A. Grant Modifications

With respect to grant modifications, including budget revisions and grant amendments, FTA proposes to expand the circumstances under which a grantee may request a budget revision instead of a grant amendment. These expanded circumstances will require FTA concurrence before a grantee may incur costs pursuant to the proposed change. By requiring prior approval, FTA can confirm that budget revisions are consistent with the National Environmental Policy Act (NEPA),

Statewide Transportation Improvement Plan (STIP), and other legal and programmatic requirements. FTA proposes to include in its review of grant modifications a determination of whether the proposed change will require a certificate from the Department of Labor (DOL) on Employee Protective Arrangements. Also, FTA proposes changes to its use of the term "scope" as it relates to grant modifications, and to place greater emphasis on the Transportation Electronic Award and Management (TEAM) system scope code as an indicator of the project scope.

B. Useful Life of Assets

FTA Circular 5010.1C only includes useful life standards for rolling stock, specifically buses, vans, and rail vehicles. FTA uses these useful life standards to determine when the Federal interest in an asset expires, particularly when giving disposition instructions to a grantee pursuant to the requirements of the Common Grant Rule at 49 CFR 18.31. FTA Circular 5010.1D proposes to include useful life standards in subsequent grant agreements, and proposes useful life standards for trolleys, ferry boats, and facilities. FTA seeks comment on how to develop useful life standards for grant management purposes. In particular, FTA lacks information regarding the useful life of ferry boats and seeks comments on how to devise this standard.

FTA considered using its Standard Cost Category worksheet for Annualized Costs, which is used primarily for New Starts projects, to identify useful life standards for various project components, including facilities. Recognizing, however, that FTA's New Starts Program assesses the useful life of assets for purposes different from Proposed Circular 5010.1D (the New Starts Cost Category worksheet looks to the maximum useful life while Proposed Circular 5010.1D looks to the minimum), FTA proposes to adopt different useful life standards for facilities than those outlined in the New Starts Standard Cost Category worksheet. Rather, FTA proposes the language located at Chapter IV, Section 3 of Proposed Circular 5010.1D.

C. Management of Real Property

With respect to the management of real property, FTA proposes to raise the threshold for an appraisal concurrence from $250,000 to $500,000. Moreover, FTA proposes to update its acquisition, appraisal, and relocation requirements to conform to regulatory changes at 49 CFR part 24.

Issued this 24th day of September, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–19115 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2007–29125]

Third Party Contracting Guidance; Notice of Proposed Program Guidance; Proposed Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed circular and request for comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance pertaining to procurements financed in whole or part with Federal assistance awarded by FTA through grants or cooperative agreements (third party procurements). By this notice, FTA invites public comment on FTA's proposed circular, "Third Party Contracting Guidance."

DATES: Comments should be submitted by November 27, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure your comments are not entered more than once into the docket, submit comments identified by the docket number [FTA–2007–29125] by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. [*Note:* The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments. All electronic submissions must be made to the U.S. Government electronic docket site at www.regulations.gov. Commenters should follow the directions below for mailed and hand-delivered comments.]
2. *Fax:* 202–493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

See the **SUPPLEMENTARY INFORMATION** section for detailed instructions on how to submit comments and access docket information.

FOR FURTHER INFORMATION CONTACT: For issues regarding third party contracting procedures and practices, contact James Harper, Senior Procurement Analyst, Office of Administration, Federal Transit Administration, 1200 New Jersey Avenue, SE., East Building, Room E42–333, Washington, DC 20590, phone: 202–366–1127, fax: 202–366–3808, or e-mail, *James.Harper@dot.gov*. For legal issues, contact Kerry Miller, Assistant Chief Counsel for General Law, Federal Transit Administration, 1200 New Jersey Avenue, SE., East Building, Room E56–314, Washington, DC 20590, phone: 202–366–1936, fax: 202–366–3809, or e-mail, *Kerry.Miller@dot.gov*.

SUPPLEMENTARY INFORMATION:

Comment Instructions and Docket Access Information

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2007–29125) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov*. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov*.

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Table of Contents

I. Overview

This notice announces the availability of revised proposed guidance on conducting procurements financed in whole or part with Federal assistance awarded by FTA through a grant or cooperative agreement (third party procurements). FTA Circular 4220.1E separated Federal statutory and regulatory requirements from policy interpretations, placing those interpretations in footnotes that could be accessed with that circular. Upon enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005), 49 U.S.C. 5334(l), FTA has been required to provide public notice and opportunity for comment on significant policy interpretations. Thus, FTA has broadened the scope of FTA Circular 4220.1E from "Third Party Contracting Requirements," to "Third Party Contracting Guidance," to include within this proposed circular significant FTA policy guidance in addition to information about Federal statutory and regulatory requirements affecting third party procurements.

The bulk of this proposed circular consists of restructuring of the 2003 edition of FTA Circular 4220.1E coupled with updates of Federal statutory and regulatory citations. In addition, there are discussions of topics pertaining to third party procurements that had been previously omitted and new guidance clarifications. We have identified those provisions reflecting a Federal statutory or regulatory requirement and those expressing an FTA interpretation or policy position. With few exceptions, nearly all requirements, interpretations, and policy positions set forth in the text of FTA Circular 4220.1E and its footnotes have been retained, and if not included in this proposed circular or preamble, then added to FTA's "Best Practices Procurement Manual." While the bulk of FTA assistance is awarded to governmental recipients, many recipients participating in cooperative agreements are not governmental authorities. For this reason, the proposed circular places new emphasis on third party procurement requirements for those recipients. FTA's recipients that are educational institutions or private non-profit organizations must comply with the DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 CFR part 19, which in part differ from the provisions of DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR part 18. (FTA refers to regulations 18 and 19 as Common Grant Rules.) To provide a comprehensive listing of procurement procedures for third party contracting, we have supplemented this proposed circular with Common Grant Rule requirements omitted in FTA Circular 4220.1E. To facilitate compliance with substantive requirements that will, or that will be likely to impact the results of third party procurements, we have added references to pertinent requirements.

Because of the increased length of this proposed circular, the circular has been divided into seven Chapters, preceded by a Table of Contents and followed by an Index. Consistent with formats adopted in FTA's latest circulars, references and citations have been consolidated in a separate Appendix A.

This notice does not include the proposed circular; electronic versions of the proposed circular may be found on the docket, at www.regulations.gov docket number FTA–2007–29125, or on FTA's Web site, at *http://www.fta.dot.gov*. Paper copies of the proposed circular may be obtained by contacting FTA's Administrative Services Help Desk, at 202–366–4865.

FTA seeks comments on the proposed circular, in particular those portions of the circular reflecting new guidance, policies, or interpretations.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

The first four sections of this chapter are a general introduction to FTA that is proposed to be included in all new and revised program circulars for the orientation of readers new to FTA programs.

Section 5 of this chapter sets forth definitions of terms appearing in the proposed circular. While many definitions within the Definitions section or elsewhere in FTA Circular 4220.1E or its footnotes have been retained, the following new definitions have been added:

a. A definition of *Approval, Authorization, Concurrence, and Waiver* has been added to emphasize that these must be in writing.

b. We are defining *Common Grant Rule* to encompass both the uniform administrative regulations applicable to governmental recipient and the uniform administrative regulations for institutions of higher education and private non-profit organizations.

c. A definition of *Cooperative Agreement* has been added in light of our emphasis on ensuring our recipients understand that the proposed circular applies to recipients of cooperative agreements as well as to grantees.

d. Definitions of *Governmental Recipient* and *Non-Governmental Recipient* have been added.

e. The definition of *Electronic Commerce* has been added.

f. *Property*, a term used frequently within this proposed circular, has been defined.

g. *Recipient*, a term used frequently within this proposed circular in lieu of *Grantee*, has been added to accommodate recipients of cooperative agreements as well as grants.

Because the terms *piggybacking* and *tag-on* tend to be unfamiliar jargon used chiefly by some participants in FTA projects, those terms have been transferred from the formal definitions section of the proposed circular to the discussion of use of existing contracts in Chapter V of the proposed circular.

Section 6 consolidates FTA's role in complying with the various third party procurement requirements, policies, and practices. The subsections addressing third party contract reviews, procurement system reviews, and training and technical assistance are substantially similar to those of FTA Circular 4220.1E. The text on self-certification has been revised for greater consistency with the Common Grant Rules. Part 18 permits recipients to seek self-certification, but does not require them to do so, nor does that Common Grant Rule permit FTA to require self-certification. Part 19 has no provisions addressing self-certification. When this came to our attention a few years ago, we made the Procurement certification optional, but strongly encourage applicants and recipients to self-certify their procurement systems. A new subsection discussing FTA's prerogatives with respect to audits has been added. New subsections addressing the Master Agreement and FTA's "Best Practices Procurement Manual" expand the discussion on these topics in this proposed circular.

B. Chapter II—Applicability

1. Section 1 of this Chapter consolidates the types of recipients and the types of projects to which this circular applies. Those provisions are

substantially similar to their counterpart provisions within FTA Circular 4220.1E or its footnotes, with a few important exceptions set forth below:

a. FTA Circular 4220.1E inadvertently misstated FTA's long-standing practice in administering its State-managed programs when it took the position that only States and State instrumentalities could use State procedures when undertaking procurements financed with FTA's funding for State managed programs. Changes have been made to the applicability of State procedures to governmental subrecipients to conform to FTA's years-long practice with respect to State managed programs. Whether subrecipients other than States could use State procurement procedures had been a matter of some controversy for many years. That matter was resolved as set forth in the preamble to DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non Profit Organizations," 49 CFR part 19, published (59 FR 15639, April 4, 1994). OMB authorized governmental subrecipients of States to use State procedures for procurements financed with funds provided through FTA's State managed programs. OMB, however, did not authorize non-governmental subrecipients of States to use State procedures, but required them to use the procedures of part 19 for procurements financed through the same State managed programs. Consequently, the guidance in this circular has been amended to comport with these OMB decisions.

b. FTA is revisiting its policy on permitting recipients to separate FTA assisted operations procurements from operations procurements that do not receive FTA assistance. For that reason, Chapter II, Subsection 1.b(2)(b) of the circular with the heading "Operations Contracts Financed Entirely Without FTA Assistance" is RESERVED in the proposed circular. The reason for this review is that the current FTA Circular 4220.1E expressly states that "Congestion Mitigation and Air Quality (CMAQ) and Job Access/Reverse Commute (JARC) funds may be used for operations by all grantees. The circular must be applied to all contracts that are funded, in part, by CMAQ or JARC funds. Using CMAQ or JARC funds for a specific operating contract or contracts does not trigger the requirement to apply the circular to other operating contracts." In contrast, Footnote 2 to FTA Circular 4220.1E states, "Those grantees authorized to use formula funds for operating assistance must apply the circular to all operating contracts-even if they are able to administratively segregate the federal funds to non-contract operating expenses. The ability to use formula funds for operating assistance hinges upon a grantee's total operating expenses and the portion of those expenses not offset by operating income."

Now, however, because the JARC program is a "formula" program, and because the New Freedom Program is a new formula program, FTA must reconsider the issue of whether and to what extent recipients of formula assistance should be able to separate Federal funds so that operations contracts not financed with FTA funding may be exempt from FTA procurement requirements.

In addition to contracts financed entirely without FTA assistance by grantees that receive operating assistance only from the JARC and CMAQ programs and which FTA determined are not subject to FTA procurement requirements, FTA must determine the extent to which FTA requirements should apply to operations contracts financed entirely without FTA assistance by recipients of operating assistance under the New Freedom program, 49 U.S.C. Section 5317, the Elderly Individuals and Individuals with Disabilities Pilot program, 49 U.S.C. Section 5310 note, and even the Nonurbanized Area Formula program, all of which involve some recipients or subrecipients that receive only a small portion of their support from FTA.

At this time, recipients in large urbanized areas are generally ineligible to use Urbanized Area Formula assistance to support operations, apart from capital funding for preventive maintenance funds, FTA has permitted those recipients to exempt all their operations contracts from FTA requirements provided they are able to trace their use of preventive maintenance funding to specific contracts. If, however, they are unable to do so, and use FTA assistance for general support of preventive maintenance costs, then FTA requirements will apply to all their operations procurements. In contrast, recipients in smaller urbanized areas currently must apply FTA requirements to all their operations procurements, whether or not they are financed with FTA assistance, if they use any of their Urbanized Area Formula assistance to support operations.

FTA is seeking comments about the extent to which FTA requirements should be applied to the operations contracts of recipients and subrecipients financed entirely without Federal assistance, in particular comments on the rationale for excluding other operating contracts from the applicability of FTA requirements, technical examples of how operating expenses could be tracked and managed to segregate FTA funded expenses from other operating costs, and examples of possible unintended consequences of a change in FTA policy. FTA also seeks comments on the extent of agency operating expenses that are not related to transit but are subject to FTA procurement requirements under the concept that one dollar of FTA operating assistance brings an agency's entire operating budget under the FTA requirements. If determinations are made on a program by program basis, FTA seeks comments on which programs should permit separation of operations contracts funded entirely without FTA assistance from FTA-funded operations contracts, and which programs should prohibit separation of operations contracts funded entirely with FTA assistance from FTA requirements, and reasons in support of those comments.

FTA is also seeking comments estimating the level of impact on disadvantaged business enterprises if FTA approves separation of operations contracts financed entirely without FTA funding, and reasons in support of those estimates. Nevertheless, a recipient that enters into third party contracts for operations or planning must comply with the requirements of DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 46 CFR Part 26, applicable to those contracts, regardless of the allocation of its FTA assistance to contracting or other purposes.

c. A new category for Public-Private Partnerships has been added to accommodate FTA's support for innovative project development arrangements. FTA will work with the recipient to craft appropriate procurement procedures when public-private partnerships are involved.

d. The text pertaining to leveraged leasing in a footnote to FTA Circular 4220.1E has been modified to cover complex innovative finance transactions in which FTA might participate.

Sections 2 and 3 discussing the applicability of Federal laws and regulations and State laws and regulations remain substantially similar to those of FTA Circular 4220.1E. A reference to the new SAFETEA–LU requirement imposing Federal Acquisition Regulation standards on audits connected with procurements of architect engineering services is used.

C. Chapter III—The Recipient's Responsibilities

Apart from specific procurement procedures discussed at length in Chapter VI, this chapter consolidates the recipient's procurement responsibilities. While much information has been retained from FTA Circular 4220.1E, Common Grant Rule requirements not included in that circular have been addressed in this proposed circular.

Section 1, discussing Written Standards of Conduct, is substantially similar to the text of FTA Circular 4220.1E.

Section 2.a, pertaining to Self-Certification, has been modified to conform more closely to the requirements of the Common Grant Rule for governmental recipients in that recipients may, but are not compelled to, self-certify their procurement systems, and that FTA strongly encourages them to do so.

Section 3 contains many subsections, such as Procurement Capacity, Requirements for Adequate Contract Provisions, Procurement History, and Use of Electronic Commerce, which are substantially similar to their counterparts in FTA Circular 4220.1E. Other subsections, such as Record-Keeping, that were omitted from FTA Circular 4220.1E but addressed in the Common Grant Rules, have been included in this proposed circular.

One major change is that SAFETEA–LU expanded FTA and the Comptroller General's authority to review all contract documents pertaining to procurements financed under 49 U.S.C. Chapter 53. Previously, the Comptroller General's authority to review contract documents was limited to non-competitive procurements.

Another change is that the Special Notification Requirements, formerly applicable to all recipients as provided in Federal appropriations acts applicable to the entire Federal Government, have been narrowed recently to apply exclusively to States. We caution, however, that future appropriations acts may further amend the notification requirements for recipients.

A new subsection has been added to caution the recipient to take care when adopting an industry-prepared contract to assure that all required Federal requirements and clauses have been addressed or appended as a part of that contract.

Section 4 includes Audit provisions that have been added to the proposed circular, with information about the use and restrictions of use of the recipient's own auditors and the need for auditors independent of the recipient to perform certain federally required audits. The role Federal audit agencies might play is briefly noted.

D. Chapter IV—The Recipient's Needs and Federal Requirements Affecting Those Needs

Section 1 of this chapter specifies that any federally-assisted acquisition must be within the scope of the project from which funding is derived. The amount or quantity of property or services to be acquired can affect the procurement's eligibility for Federal assistance. These provisions addressing necessity, procurement size, options, lease vs. purchase, and specifications, while arranged differently from the format of FTA Circular 4220.1E contain substantially similar provisions supplemented by additional relevant provisions of the Common Grant Rules. A new reference to FTA's spare ratio standards requirements for vehicles has been added, as well as a general prohibition on using FTA funds to finance unnecessary reserves.

In Section 2, FTA has identified the various Federal requirements that will have an effect on the property and services a recipient acquires. To facilitate compliance with those requirements, FTA has compiled a list of Federal requirements and policies for contractors, a list of Federal requirements and policies that are applicable to all acquisitions, and lists of specific requirements and policies applicable to some, but not all, acquisitions. FTA hopes these lists will serve as useful reminders to a recipient seeking to acquire property and services with Federal assistance. Again, the bulk of the provisions set forth in this section have been included in FTA Circular 4220.1E or are part of the Procurement section of the Common Grant Rules. Consequently, we are identifying in this preamble only those provisions of the proposed circular that are new or that amend previously established requirements and policies.

Section 2.a. contains requirements pertaining to the contractor's internal operations in order to qualify for FTA assisted contracts. While the Common Grant Rules require recipients to engage with "responsible" contractors, a statutory provision within SAFETEA–LU expressly established a requirement restricting awards only "to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement." For fixed guideway projects, SAFETEA–LU expressly requires that contractors must be considered in light of their past performance.

Along with a discussion of provisions in support of disadvantaged business enterprise (DBE), we have also included the Common Grant Rule's provisions requiring support for small and minority firms and women's business enterprises, irrespective of whether or not they qualify as DBEs.

We have also added provisions pertaining to the contractor's obligation to protect sensitive security information consistent with DOT and Homeland Security regulations. We have also included guidance encouraging seat belt use required by Executive Order. While these provisions have been in FTA's Master Agreement for the last few years, they have not been addressed until now in the Common Grant Rules or in FTA's third party contracting publications.

Section 2.b. contains lists of Federal requirements or policies applicable to the 19 categories of procurement issues. While most of the requirements applicable to each category have appeared in FTA Circular 4220.1E or the Common Grant Rules, new provisions and amended interpretations in the proposed circular are identified for each category:

(1) Scope of the Project. This provision is now explicitly stated in the proposed circular.

(2) Period of Performance. These provisions are derived from FTA Circular 4220.1E.

(3) Federal Cost Principles. These requirements in FTA Circular 4220.1E and the Common Grant Rules are unchanged.

(4) Payment Provisions. These provisions are derived from FTA Circular 4220.1E.

(5) Domestic Preference for Property—Buy America. Recipients are cautioned that FTA's Buy America regulations for third party procurements differ from Federal "Buy American Act" regulations that apply to direct Federal procurements.

(6) Shipments of Property—U.S. Flag Requirements. Added to the proposed circular are these domestic requirements as set forth in the Common Grant Rules and the Master Agreement.

(7) Project Travel—Use of U.S. Flag Air Carriers. Added to the proposed circular are these domestic requirements as set forth in the Common Grant Rules and the Master Agreement.

(8) Wage and Hour Requirements. The proposed circular updates the thresholds to $100,000 resulting from amendment of the Contract Work Hours and Safety Standards Act. Previously, the Act's thresholds were $2,000 for construction work and $2,500 for

Federal purchases and contracts other than construction.

(9) Environmental Protections. The Common Grant Rules indicate that environmental requirements may well affect certain procurements, but only refer to a few, such as Clean Air and Clean Water laws and regulations. We recognize that many other requirements may impact the implementation of procurement, and are including a list of those set forth in our current Master Agreement to facilitate compliance.

(10) Energy Conservation. Energy conservation was not included as a topic in FTA Circular 4220.1E, but we are adding it to the proposed circular. These requirements in the Common Grant Rules remain unchanged.

(11) Metric Measurements. Added to the proposed circular are these metric use provisions as set forth in the Common Grant Rules and the Master Agreement.

(12) Intelligent Transportation Systems. Added to the proposed circular are these intelligent transportation system architectural compatibility requirements as set forth in the Master Agreement.

(13) Electronic Reports and Information. Added to the proposed circular are these accessibility requirements as set forth in the Master Agreement.

(14) Rolling Stock—Special Requirements. These requirements applicable to the types of rolling stock and procurements thereof have been applicable to FTA-assisted projects for many years. Except for procedural requirements pertaining to the five-year limitation and the provisions authorizing award to other-than the low bidder, these provisions have not been included in FTA Circular 4220.1E. But to facilitate compliance, we have listed these requirements within the proposed circular. The following are particularly notable:

(a) In consolidating procurement requirements of 49 U.S.C. Section 5325 and former Section 5326 into Section 5325, Congress did not retain the provisions of former 49 U.S.C. 5326(d) authorizing a recipient's sole source purchases of associated capital maintenance items from the original manufacturer. Consequently, this circular does not include discussions of associated capital maintenance items.

(b) SAFETEA–LU added a prohibition at 49 U.S.C. Section 5325(i) against restricting bus procurements to in-State dealers.

(c) We are also adding a reference to FTA's minimum service life requirements for buses that appear in FTA Circulars 5010.1, 9030.1, and 9300.1 to alert the recipient of its need to buy vehicles with an adequate useful life.

(15) Architectural/Engineering and Related Services—Special Requirements. Two important changes are included in the proposed circular.

(a) We are clarifying the requirements as set forth in FTA Circular 4220.1E to stress that FTA considers the use of qualifications-based procurement procedures appropriate only for contracts for services involving construction or leading to or related to construction. FTA's policy is that procurements for similar services not leading to construction may not be undertaken using qualifications-based procurement procedures.

(b) The SAFETEA–LU requirement for the use of Federal Acquisition Regulation (FAR) standards for determining indirect costs for architect engineering contracts set forth at 49 U.S.C. Section 5325(b)(3) has been added.

(16) Construction—Special Requirements. These requirements have been applicable to FTA-assisted construction projects for many years. Some, but not all have been addressed in FTA Circular 4220.1E. Others set forth in the Common Grant Rules and the Master Agreement are listed to facilitate compliance. Except for the following, those requirements remain unchanged. We have included notice that the threshold of $2,000 for construction safety requirements has been increased by law so that those requirements apply only to federally-assisted construction contracts in excess of $100,000.

(17) Public Transportation Services—Special Requirements. Added to the proposed circular are requirements that apply to a recipient's project involving transit services as set forth in the Master Agreement.

(18) Research, Development, Demonstration, Deployment, and Special Studies—Special Requirements. Added to the proposed circular are provisions that might apply to a recipient's research and development project as set forth in the Master Agreement.

(19) Audit Services—Special Requirements. FTA has consolidated various procurement concerns the recipient needs to consider when acquiring audit services for various purposes. The recipient is cautioned to avoid duplicative audits. In addition, SAFETEA–LU added a provision to 49 U.S.C. Section 5325(b)(3) expressly requiring the use of FAR standards for determining indirect costs for architect engineering contracts of the types listed in Section 5325(b)(1).

(20) Use of $1 Coins. To facilitate compliance with Section 104 of the Presidential $1 Coin Act of 2006, 31 U.S.C. Section 5312(p), FTA-assisted property that requires the use of coins or currency in public transportation service or supporting service must be fully capable of accepting and dispensing $1 coins.

Section 2(c) consolidates in the proposed circular various provisions within the Common Grant Rules and Master Agreement that address difficulties that the recipient may encounter during contract performance. Except for the mention of contract termination, these were not included in FTA Circular 4220.1E. But because they express FTA policy, we are including them in the proposed circular.

E. Chapter V—Sources

This chapter consolidates information about the various sources from which a recipient may acquire property or services. Most of the information has been derived from the Common Grant Rules and FTA Circular 4220.1E, with supplementary material describing recent laws and regulations as described below:

Section 1, Force Account, adds a discussion of the recipient's use of its own workforce to perform necessary services. FTA's concerns are that those employees have sufficient technical capacity to perform the work.

Section 2, Shared Use, encourages the recipient to consider whether property or services might be shared.

Section 3, Joint Procurement, lists the advantages to be obtained when recipients are able to acquire larger quantities by procuring property and services for the use of all.

Section 4, State Purchasing Schedules, acknowledges the availability of such sources, but cautions the recipient to assure that all Federal requirements are met.

Section 5, Federal Excess and Surplus Property, identifies a potential source of property endorsed by the Common Grant Rules.

Section 6, Federal Supply Schedules, has been modified to describe changes resulting from enactment of laws expanding the types of entities and types of property and services that may be obtained from the General Services Administration's (GSA's) supply schedules compiled for use by Federal agencies. GSA has granted unlimited use of the Federal Supply Schedules to the District of Columbia and four U.S. insular areas. State and local governments have unlimited access to

GSA's Information Technology supply schedules. In addition, State and local governments have access to all GSA supply schedules when procuring property or services for disaster or emergency relief.

Section 7, Exiting Contracts, recognizes that a recipient will often find it advantageous to gain access to a contract between another recipient and a vendor. In addition to describing permissible and impermissible uses, this section highlights the pitfalls and disadvantages of accessing existing contracts of other entities.

Section 8, the Open Market, will be addressed in detail in Chapter VI of this circular.

F. Chapter VI—Procedural Requirements for Open Market Procurements

This chapter consolidates the various procurement procedures of the Common Grant Rules and FTA Circular 4220.1F and its Footnotes, supplemented by related information. Additions and changes are highlighted below:

Section 1 describes "full and open competition" now broadened by SAFETEA–LU to apply to all procurements supported by 49 U.S.C. Chapter 53, rather than specifically addressed to procurements supported by 49 U.S.C. Section 5307. In addition, information about the appropriate treatment of unsolicited proposals has been added.

Section 2 sets forth requirements and prohibitions to assure appropriate solicitations. A new reference to the Stafford Act has been added because that Act permits local preferences for firms and individuals using Stafford Act funding for major disaster or emergency relief. Illustrations of acceptable descriptions of salient characteristics of technical items have been transferred to the "Best Practices Procurement Manual."

Section 3 describes eight methods of procurement: (a) Micro-purchases, (b) small purchases, (c) sealed bids, (d) competitive proposals, (e) architectural and engineering services, (f) design-bid-build, (g) design-build, and (h) other than full and open competition. These procedures are substantially similar to those set forth in the Common Grant Rules and FTA Circular 4220.1E and its Footnotes accompanied by closely related information. The most significant modifications are in Section 3.e, pertaining to architectural and engineering procurements. Requirements pertaining to the use of qualifications-based procedures in architectural and engineering procurements set forth in SAFETEA–LU have been modified. Audit and indirect cost provisions, particularly with respect to the use of Federal Acquisition Regulation standards and confidentiality of data, applicable to architectural and engineering procurements have also been modified to accommodate the new provisions of SAFETEA–LU. In addition, FTA stresses its position that qualifications-based competitive proposal procedures are suitable for use in procurements related to or leading to a construction project. Qualifications-based competitive procurement procedures are not to be used in connection with procurements that are not related to or lead to construction.

Section 4 identifies as prohibited the cost plus a percentage of cost procedure, and also sets forth restrictions pertaining to use of time and materials contracts, but does not change previous requirements.

Section 5 serves as a reminder that costs must be eligible under the applicable Federal standards.

Section 6 discusses costs and price analysis as set forth in the Common Grant Rules and FTA Circular 4220.1E and its Footnotes. In addition, Section 6 adds a provision authorizing the payment of incentive payments in furtherance of new SAFETEA–LU provisions addressing incentives.

Section 7 discusses options as set forth in the Common Grant Rules and FTA Circular 4220.1E and its Footnotes.

Section 8 consolidates requirements pertaining to contract award. The new SAFETEA–LU requirements pertaining to awards to responsible contractors are included in this section, along with SAFETEA–LU's continued authority permitting recipients to award contracts to other-than the lowest bidder if the award furthers an objective consistent with the purposes of FTA's enabling legislation.

G. Chapter VII—Protests, Changes and Modifications, Claims, Disputes, and Settlements

This chapter consolidates FTA guidance pertaining to third party procurement protests with guidance pertaining to third party contract changes and modifications, claims, disputes, and settlements.

Section 1 addresses FTA and the recipient's responsibilities pertaining to the adjudication of protests of third party contract decisions. These provisions are substantially similar to those within FTA Circular 4220.1E, with the new addition explaining FTA's practice of reviewing only those protests of an "interested party," that is an actual or prospective bidder or offeror with a direct economic interest in the third party contract award.

Sections 2 through 5 add FTA guidance pertaining to third party contract changes and modifications, claims, disputes, and settlements, respectively. This guidance has been transferred from FTA Circular 5010.C, "Grant Management Guidelines," and remains essentially unchanged.

F. Appendix A—References

References that have appeared on the first pages of FTA Circular 4220.1E have been consolidated in Appendix A. This proposed circular contains many more references than FTA Circular 4220.1E due to identification of Federal substantive requirements that affect or are likely to affect the results of procurements. The following references within FTA Circular 42201.E have been omitted either because they have been repealed or superseded:

1. Section 1555 of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. 481, pertaining to use of GSA supply schedules, has been repealed, revised by law, and re-codified at 40 U.S.C. 502.

2. Executive Order No. 12612, "Federalism" dated 10–26–87 has been superseded by Executive Order No.13132, "Federalism," 8–4–99, 5 U.S.C. Section 601 note.

I. Appendix B—FTA Regional and Metropolitan Contact Information

FTA's contact list has been updated to the date of publication of the circular.

Issued in Washington, DC, this 24th day of September, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–19116 Filed 9–27–07; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Friday,
September 28, 2007

Part IV

Department of Housing and Urban Development

24 CFR Part 214
Housing Counseling Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. FR–4798–F–02]

RIN 2502–AH99

Housing Counseling Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes regulations for HUD's Housing Counseling program, as authorized by the Housing and Urban Development Act of 1968, and for which, for the past several years, notices of funding availability have been issued on an annual basis. This final rule follows publication of a December 23, 2004, proposed rule that adopted and augmented the Housing Counseling program requirements with which grantees and housing counseling agencies are already familiar. This final rule takes into consideration the public comments that were received in response to the proposed rule and makes several changes to the proposed regulatory text at this final rule stage.

DATES: *Effective Date:* October 29, 2007.

FOR FURTHER INFORMATION CONTACT: Ruth Roman, Director, Office of Program Support, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9274, Washington, DC 20410–8000, telephone, (202) 708–0317. (This is not a toll-free number.) Individuals with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2004 (69 FR 77118), HUD published a proposed rule that would establish regulations for its Housing Counseling program. HUD's Housing Counseling program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (Section 106). Section 106(a) authorizes HUD to provide or contract with organizations to provide "counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of homeownership." Further, section 106 authorizes HUD to provide counseling directly or to enter into contracts with, or make grants to, and provide other types of assistance to eligible private or public organizations (including grassroots, faith-based, and other community-based organizations) with special competence and knowledge in providing housing counseling to low- and moderate-income families.

HUD's Housing Counseling program offers the counseling services authorized by Section 106 by making grants to, or contracting with, HUD-approved housing counseling agencies to provide this counseling. Housing counseling services offered under HUD's program may include, but are not limited to, the following: Assisting eligible homebuyers to find and purchase homes; helping renters locate and qualify for assisted rental units; helping eligible homebuyers obtain affordable housing; assisting homeowners to avoid foreclosures; assisting renters to avoid evictions; helping the homeless find temporary or permanent shelter; reporting fair housing and discrimination complaints; and addressing housing problems.

In the December 23, 2004, rule, HUD proposed the codification of the requirements of the Housing Counseling program. In addition, HUD proposed additional requirements and procedures to improve and strengthen the Housing Counseling program. The preamble to the proposed rule, at 69 FR 77118–77125, provides a more detailed discussion of the regulations proposed for codification for the Housing Counseling program.

II. This Final Rule

This final rule takes into consideration the public comments received on the December 23, 2004, proposed rule. The following highlights some of the more notable changes made in the final rule.

A. Definitions

In this final rule, HUD has revised definitions for affiliate, branch or branch office, education, HUD-approved housing counseling agency, housing counseling work plan, housing counseling action plan, housing goal, intermediary, local housing counseling agency, and subgrantee, and added definitions of housing counselor, multi-state organization (MSO), and participating agency.

As discussed in more detail in section III of this preamble, HUD created the term "multi-state organization" because of the increasing number of local housing counseling agencies that have expanded beyond the definition of a local agency. The MSOs provide housing counseling services through a main office and branches, if applicable, in one state and branch offices located in two or more additional states. This definition was necessary because of the emergence of organizations that did not meet the existing definitions.

For clarity, HUD has added the new definition of "participating agency" and used the new term throughout the regulatory text. Participating agencies are all housing counseling and intermediary organizations that participate in HUD's Housing Counseling program, including HUD-approved agencies, and affiliates and branches of HUD-approved intermediaries, HUD-approved MSOs, and state housing finance agencies. HUD added this definition because the term "HUD-approved agency" does not adequately describe all organizations that participate in the program.

In this final rule, HUD also included a definition of "reverse mortgage," which means a mortgage that pays a homeowner loan proceeds drawn from accumulated home equity and that requires no repayment until a future time. The increasing demand for reverse mortgages, including Home Equity Conversion Mortgages (HECMs), demonstrates a related need for housing counseling about additional types of reverse mortgages. As a result, the term "reverse mortgage" has been utilized throughout this final rule.

B. Counseling Settings

Although HUD believes that in-person, face-to-face counseling is ideal, HUD has revised the regulations at § 214.300 to allow for alternative counseling settings when it is in the best interests of the client. Several commenters explained that when clients are facing foreclosure or eviction, they often do not have time or resources to meet face-to-face with a housing counselor at the agency's offices. Under these circumstances, the agency must arrange to meet with such persons at an alternative location or through an alternative format.

In addition, agency facilities must meet, when applicable, accessibility requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR parts 8 and 9, as well as Title III of the Americans with Disabilities Act. There may also be circumstances where an agency will have to provide a person with a disability counseling in an alternative format or at an alternative location as a reasonable accommodation to the person's disability. The final rule requires that an agency's housing counseling work plan address

alternative settings for the provision of housing counseling services.

C. Approval Criteria

HUD has revised § 214.103(f)(2) (Staff) of the proposed rule to provide greater flexibility to agencies in hiring staff, and the provision is now located at § 214.103(g)(2). Under this final rule, for agencies seeking HUD approval, to maintain HUD approval, and to participate in HUD's Housing Counseling program, at least one-half of an agency's counselors must have the minimum 6 months counseling experience.

Recognizing the expanding roles of housing counseling agencies, HUD also revised § 214.103(k) of the proposed rule by removing the requirement that housing counseling agency facilities be located in the communities they serve. In this final rule, proposed § 214.103(k) has been redesignated at § 214.103(l). In addition, HUD has revised § 214.103(l) to provide that agencies must make space available to provide housing counseling services, but are not required to limit the use of the space solely for the purpose of providing housing counseling services.

HUD made an additional clarification in the list of ineligible activities at § 214.103(c)(2). The final rule has been revised to provide that offenses that reflect upon the responsibility, integrity, or ability of housing counseling agencies to participate in housing counseling activities refers to a criminal offense that can be prosecuted at the local, state, or federal level. An example of such an offense would be if a member of the board of directors, the executive director, or an employee has been indicted or convicted of embezzling city, state, or federal funds.

D. Inactive Status for Housing Counseling Agencies

This final rule also adds a new status for HUD-approved agencies that, for certain reasons, are temporarily unable to comply with the requirements necessary to be a HUD-approved counseling agency. When an agency is unable to continue to meet the requirements for a HUD-approved counseling agency, HUD will remove an agency from the list of participating agencies until such time as the impediment to compliance is removed. Under current procedures, the HUD-approved agency that fails to meet the program requirements may be terminated and have to reapply for HUD approval. Therefore, this temporary inactive status would be less burdensome for agencies. The new provisions are located in § 214.200 and are described in additional detail in section III of this final rule.

E. Client Management System

The requirements for a client management system, proposed at § 214.319, were consolidated into the approval criteria in § 214.103. In addition, HUD revised the requirements for a client management system so that participating agencies will utilize such a system for the collection of client-level information including, but not limited to, financial and demographic data, counseling services provided, and outcomes data. The system used must provide the counseling agency with the tools necessary to track and manage all counseling and educational activities associated with each client. Agencies must utilize a system that satisfies HUD's requirements and interfaces with HUD's databases.

F. Agency Workload

Under § 214.303 (Performance Criteria), HUD proposed that an agency's workload would be a minimum of 50 clients annually and also that an agency maintain funding that enables the agency to provide housing counseling to a minimum workload of 50 clients. In reviewing these related provisions, HUD determined that clarification and changes were necessary. First, HUD revised § 214.303(b) to provide that the workload determination would be changed to a minimum of 30 clients annually. Similarly, HUD redesignated and revised § 214.303(i) by restating the 30-client requirement and requiring that the agency maintain a level of funds that enables it to provide housing counseling to at least this required 30-client workload every year, whether or not the agency receives HUD funding.

G. Conflicts of Interest

HUD has revised and redesignated the conflicts-of-interest provision in this final rule at § 214.303(f) to make the provisions easier to understand and provide additional flexibility. The revised regulations prohibit directors, employees, and officers of HUD-approved housing counseling agencies and intermediaries from engaging in activities that create a real or apparent conflict of interest. A conflict, for example, could arise if these individuals or their spouse, child, general partner, or organization in which he or she serves as employee (other than with the HUD-approved counseling agency), or with whom he or she is negotiating future employment, has a direct interest in the client as landlord or creditor, or originates, has a financial interest in, services, or underwrites a mortgage on the client's property, owns or purchases a property that the client seeks to rent or purchase, or serves as a collection agent for the client's mortgage lender, landlord, or creditor.

Further, the revised regulations prohibit the director, employee, or officer of a HUD-approved housing counseling agency or intermediary from referring clients to mortgage lenders, brokers, builders, or real estate sales agents or brokers in which the individual, his or her spouse, minor child, or general partner has a financial interest.

The provisions require the agency, its staff, or any member of his or her immediate family to avoid any action that might result in, or create the appearance of, administering the housing counseling operation for personal or private gain, which includes providing preferential treatment to any organization or person; or undertaking any action that might compromise the agency's ability to ensure compliance with the requirements of this part and to serve the best interests of its clients. HUD may investigate agency practices and may take action to suspend or terminate the agency's approval.

H. Housing Counseling Fees

Funding for housing counseling is a major concern among participating agencies. In a change in this final rule, HUD is clarifying that it will allow for participating agencies to accept funding from lenders, as long as the relationship does not create a conflict of interest and that the relationship is disclosed to the client (see §§ 214.303 and 214.313).

In addition, in the final rule, HUD revised the provisions for charging fees to clients. Under this final rule, agencies may charge reasonable fees to clients, as long as the fee does not place a hardship on the client. Acknowledging that a client's ability to pay a fee is based on factors beyond the client's income, HUD revised the requirement that a fee be based solely on the client's income. The housing counseling agency may make a determination about a client's ability to pay based on factors, including, but not limited to, income and debt obligations. Clients should not be turned away because of an inability to pay. Agency fee schedules, as well as determinations of clients' ability to pay, are subject to review by HUD during periodic monitoring conducted in accordance with § 214.307. In another change from the proposed rule, HUD removed the provision that HUD would pre-approve an agency's fee schedule. Instead, HUD will review fee schedules during a review of an agency's application for

approval or a performance review, in order to ensure that the fees are consistent with fees charged by similar agencies providing similar services.

If a housing counseling client believes that he or she has been unreasonably denied access to counseling because of a fee or other dispute, the client should contact the local HUD field office or HUD Headquarters.

I. Recordkeeping

HUD has removed the client and counselor signature requirement from § 214.315. Although the action plan is an important document required under § 214.300(a)(2), it is unnecessary and burdensome to require the plan to be signed by both client and counselor. HUD also removed the intake interview requirements at § 214.315.

In addition, HUD has revised § 214.315(b) to expand the recordkeeping requirements so that the client file can be a paper file, an electronic file, or a combination. HUD believes that as housing counseling agencies increasingly utilize client management systems, client files will be a combination of electronic and paper files. HUD also revised §§ 214.315(e) and (f) to clarify the requirements for client files and education files. Finally, HUD modified § 214.315(d) to include client income data among the client information that agencies collect.

J. Phased-In Implementation of New Regulations for Approved Counseling Agencies

HUD recognizes that HUD-approved housing counseling agencies will be required to modify their procedures or adopt new protocols as a result of the regulatory changes made by this final rule. Although HUD believes the new requirements are necessary to increase the effectiveness of the Housing Counseling program, the Department also wishes to minimize the costs and regulatory burden of complying with the final rule on agencies that have been approved by HUD and are currently in full compliance with existing requirements. Accordingly, this final rule provides that housing counseling agencies approved by HUD on or before the effective date of this final rule have until October 1, 2007, to comply with the requirements of this final rule. Additionally, housing counseling agencies that have submitted applications to HUD as of the publication date of this final rule under the existing requirements and that are subsequently approved, even if the agency is notified of the approval after the effective date of the rule, also will have until October 1, 2007, to comply with the requirements in this final rule. All other agencies approved after the effective date must comply with the requirements of this part.

K. Other Changes

Finally, in an effort to improve organization, HUD made minor changes in 24 CFR part 214 in this final rule. For example, HUD consolidated proposed subpart E, entitled Grants, into the funding requirements in § 214.311. In addition, HUD clarified that compliance with applicable civil rights laws will be reviewed as part of the performance review under § 214.307. Other minor changes to organization were made in subsections to improve organization of the regulations, but do not effectuate substantive changes.

III. Discussion of Public Comments on the December 23, 2004, Proposed Rule

The public comment period on the proposed rule closed on February 22, 2005. HUD received 16 public comments on the proposed rule. Comments were received from housing counseling agencies, trade associations, and other interested organizations. The following provides a discussion of key issues raised by public commenters, and HUD's responses to these issues.

A. Definitions

Comment: For consistency, HUD should revise the definition of "affiliate" in the final rule to require that an affiliate be "duly organized and existing as a tax exempt, nonprofit, 501(c)(3) organization."

HUD response: HUD agrees with the commenter that the regulatory language concerning definitions and nonprofit status must be consistent. Therefore, HUD revised § 214.3 in this final rule so that the definition of "affiliate" means an organization connected with, but separately incorporated from, a regional or national intermediary, or state housing finance agency (SHFA), for the purposes of its HUD-related Housing Counseling program. An affiliate is defined as: (1) Duly organized and existing as a tax-exempt nonprofit organization, (2) in good standing under the laws of the state of the organization, and (3) authorized to do business in the states where it proposes to provide housing counseling services.

HUD also clarified § 214.103(a), (Nonprofit and Tax-exempt Status), which applies to affiliates, to require that a housing counseling agency must function as a private or public tax-exempt nonprofit organization, or be a unit of local, county, or state government. The agency must submit evidence of nonprofit status and tax-exempt status under section 501(a), pursuant to section 501(c) of the Internal Revenue Code of 1996 (26 U.S.C. 501). Units of local, county, or state governments must submit proof of their authorization to provide housing counseling services.

Comment: In the final rule, HUD should revise the term "client counseling plan" to "client action plan."

HUD response: HUD agrees with the comment that "action" plan is more descriptive of the type of plan that counseling agencies must produce under these regulations, and has, therefore, replaced the term "Client Counseling Plan" with "Action Plan." The text of the proposed definition remains unchanged; only the label has been revised to "Action Plan."

Comment: The definition of "education" in the proposed rule appears to unintentionally exclude legitimate educational services. In the proposed rule, "education" was defined as "information provided in a group or classroom setting." One commenter suggested removing the phrase "in a group or classroom setting."

HUD response: HUD did not accept this comment. The purpose of this definition is to distinguish between in-person housing counseling services to individuals and members of their household and educational services that are provided to groups of individuals. An education course or workshop differs from counseling in that it is usually conducted in a group setting and it is not tailored to the unique circumstances of the individual. Individualized counseling is more extensive than general education, because it is more rigorous and involves one-on-one and longer-term relationships with a housing counselor.

The commenter requested that the definition be more inclusive of activities such as distance learning and home study programs, which may be the only practical action for people with inflexible schedules or which may be necessary as a reasonable accommodation for persons with disabilities. HUD recognizes that advances in computer technologies allow for the development of distance learning curricula that can potentially reach individuals living in rural areas and individuals with mobility disabilities. HUD believes, however, that the use of distance learning curricula is limited at this time in the housing counseling industry and that the majority of education sessions are held in a group or classroom setting.

Comment: HUD should more narrowly define the term, "housing

goal." One commenter suggested a revised definition that counselors must fully explain to clients the barriers to achieving their goals and work with clients to identify goals more reasonable to their situation. This commenter further recommended that HUD revise the definition to state that counselors could help clients set short- and long-term goals, which may lead to the achievement of their original objective.

HUD response: HUD agrees with the commenter and has revised the definition in this final rule to state that housing goal means a realistic, short-, or long-term objective set by the client, with advice from a housing counselor. This revised definition takes into account that an agency can work with a client to set short-term and long-term goals to meet a housing objective that may be difficult for the client to meet on a short-term basis.

Comment: To reflect more accurately the meaning of the term, in the final rule, HUD should change the term "work plan" to "housing counseling plan."

HUD response: HUD believes the term "work plan," as presented in the proposed rule, accurately describes the function of the document, which describes the proposed housing counseling services of the agency, or the network of agencies associated with an intermediary.

Comment: The rule should provide geographic requirements for maintaining national and regional status. Specifically, the commenter suggested that the definition of national intermediary be revised to indicate that an intermediary serves at least one-half of the states or at least 26 states. The commenter further suggested that the definition of regional intermediary should be revised to indicate that a regional intermediary has a physical office in fewer than 26 states.

HUD response: HUD disagrees with the commenter. HUD believes it is too limiting to define national and regional intermediaries, in this regulation, specifically by the number of states. For example, such a strict definition does not take into account the potential breadth of services a national intermediary may be providing in multiple regions throughout the country. In response to this comment, however, HUD has adopted minor changes to provide clarity in the definition of "intermediary."

Comment: The final rule should define the expectation of what percentage of an intermediary's 12-month award should be designated as pass-through funds to intermediary affiliates.

HUD response: HUD did not adopt this revision as recommended. The primary purpose of HUD housing counseling grant funds is to support the direct delivery of housing counseling services. Since administrative needs vary by intermediary, HUD believes that the establishment of a designated pass-through percentage would be unreasonably restrictive for intermediaries. For example, a newly approved intermediary may need to devote more resources to training and technical assistance than an established intermediary would devote to administrative resources.

Comment: HUD should revise the definition of Local Housing Counseling Agency (LHCA) to indicate that an LHCA has only one location or a main office with one or more branch offices within the same state or no more than two contiguous states.

HUD response: HUD agrees with the commenter and has revised the definition of LHCA so that it reflects that an LHCA may have a main office, and one or more branch offices, in no more than two contiguous states. Moreover, a recent trend in the industry is for agencies to merge in order to enjoy economies of scale regarding accounting and other costs. Accordingly, in order to accommodate this new model of agency, and support the cost savings associated with them, HUD added a definition in § 214.3 for "multi-state organizations."

Comment: In the final rule, HUD should provide additional guidance around acceptable forms of outreach and marketing activities.

HUD response: The final rule now has been revised by adding a definition at § 214.3 of "marketing and outreach" (see also § 214.300(c)(2)). Under this definition, marketing and outreach mean the provision of information to raise awareness about critical housing topics, such as predatory lending or fair housing issues, and the availability of housing counseling and other forms of assistance, including, but not limited to: Distributing materials; presenting at community events; conducting informational campaigns such as public service announcements (PSAs), advertisements, or other forms of media campaigns; and advocating with lenders and other industry partners.

B. Approval Criteria

1. One Year in Operation

Comment: HUD should clarify whether agencies certified by HUD-approved intermediaries are subject to the provision that an agency must have been in operation for at least one year before it can be considered for HUD certification.

HUD response: To be considered as part of an intermediary's approval application, and to be eligible to receive HUD housing counseling sub-grant funding from an intermediary, MSO, or SHFA, affiliates and branches must be in operation for at least one year. To clarify this requirement, HUD revised § 214.103 to provide that the criteria for approval apply to all agencies, including, for SHFAs and intermediaries, the branches and affiliates in the HUD portion of their Housing Counseling program. In addition, an intermediary must have operated in an intermediary capacity for at least one year. To be considered part of an intermediary's approval application, and to participate in the HUD-approved portion of the intermediary's Housing Counseling program, affiliates and branches must have successfully administered a Housing Counseling program for at least one year. HUD has established this criterion in order to ensure that any entity that is listed on HUD's Web site has at least one year of experience administering a Housing Counseling program that demonstrates at least a basic level of knowledge, capacity, and experience in providing these services. However, this does not prohibit SHFAs and intermediaries from developing the capacity of new organizations, with the intention of including them in the HUD portion of their program once they meet the experience requirement and other requirements.

2. Ineligible Participants

Comment: In the final rule, HUD should provide an explanation about what constitutes "offenses that reflect upon the responsibility, integrity, or ability of a housing counseling agency to participate in housing counseling activities."

HUD response: At § 214.103(c)(2), the final rule clarifies that offenses that reflect upon the responsibility, integrity, or ability of housing counseling agencies to participate in housing counseling activities refers to a criminal offense that can be prosecuted at a local, state, or federal level. An example of such an offense would be if a member of the board of directors, the executive director, or an employee has been indicted or convicted of embezzling city, state, or federal funds.

Comment: The provision at § 214.103(c)(3), which prohibits an agency from being "subject to unresolved findings as a result of HUD or other government audit or investigation," is too broad and should

be narrowed or eliminated in the final rule. One commenter suggested the provision could result in government agencies prolonging their findings and appeals process, resulting in denying a program participant timely due process and effectively eliminating a counseling agency from the program, thus creating harm to the agency and clients. The commenter recommended that HUD provide all audit or investigation findings to all applicable parties within 90 days of initiating the investigation, with the counseling agency having 30 days to respond to HUD and or the government agency filing the findings having 30 days to issue its final ruling.

HUD response: HUD disagrees. HUD undertakes considerable effort to complete an audit or investigation in a timely manner to avoid undue disruption to agency operations or services being provided to clients. However, the length of an audit or an investigation varies because of the nature, complexity, and individual circumstances related to a specific audit or investigation.

Comment: The term "generally-accepted practices of prudent agencies" is ambiguous and could lead to uneven and inconsistent determinations by reviewers of how a counseling agency conducts its operations, even though the agencies are operating within the guidelines of the HUD handbook and regulations.

HUD response: HUD agrees that this provision may elicit confusion and it has been removed.

3. Six Months Experience as a Counselor

Comment: This requirement that a counselor must have at least 6 months of previous experience as a housing counselor should be removed because it is too narrow. Two commenters stated that HUD certification should depend on the agency and not the individual counselor, since it is the agency's responsibility to hire capable staff. It may be advantageous for an agency to hire staff from other fields, because they bring additional skills to the position.

HUD response: HUD agrees with the commenter that it is the agency's responsibility to hire capable staff. HUD also agrees that it may be difficult to hire and maintain an entire staff with at least 6 months of experience per person. In response to these comments, HUD has revised the requirement that all housing counseling agency staff must have a minimum of 6 months of experience as a housing counselor. The revised provision at § 214.103(g)(2) requires that one-half of an agency's counselors must have the minimum of 6 months of experience.

Comment: The 6-month housing counselor experience requirement should be extended 6 months to one year for agencies that are seeking HUD approval for the first time. This commenter further stated that the counselor experience requirement should be limited to obtaining HUD approval and not be required in order to maintain HUD approval. The commenter suggested that every HUD-approved agency should have experienced staff, but this should not inhibit them from hiring and training staff new to the housing counseling field.

HUD response: HUD agrees with the commenter that every HUD-approved agency should have experienced housing counselors. Agencies are encouraged to hire and train new staff. It is essential, however, for new housing counseling agencies that are seeking HUD approval and for all participating agencies to maintain approval, to have at least half of its housing counselors with at least 6 months of experience.

4. Contracts or Agreements To Provide Eligible Housing Counseling Services

Comment: In the final rule, HUD should allow sub-grantees and affiliates of intermediaries to contract part or all of their counseling services, if there is not another HUD-approved local agency serving the geographic area. This commenter stated that to reach a rural or underserved area, reach particular subpopulations, and contract for services not currently offered by the affiliate, each requires a contract with a sub-grantee to provide part or all of that counseling service.

HUD response: HUD disagrees. The rule as proposed would allow housing counseling agencies or intermediary housing counseling organizations to contract with housing counseling services in geographic areas where a need for housing counseling services is demonstrated and no HUD-approved housing counseling agency or branch, affiliate, or sub-grantee exists.

Comment: One commenter suggested that HUD revise the final rule to provide that, in the event that HUD determines a geographic area of the country is not served or underserved by an LHCA, or a regional or national intermediary, HUD will contract with a national intermediary to provide counseling services through their existing network of branches, affiliates, and sub-grantees. In this case, the commenter suggested it is permissible for a national intermediary to offer housing counseling services exclusively by telephone or the Internet.

HUD response: HUD agrees. No change in the rule is necessary. The rule as proposed and as adopted in this final rule would allow housing counseling agencies or intermediary housing counseling organizations to contract out housing counseling services in geographic areas where a need for housing counseling services is demonstrated and where no HUD-approved housing counseling agency, or its branches or affiliates, exists.

Comment: HUD should identify which Office of Management and Budget (OMB) Circulars and regulations are applicable.

HUD response: HUD agrees and has revised this provision to refer to 24 CFR parts 84 and 85. Parts 84 and 85 contain the uniform grant requirements for nonprofit organizations and states, respectively, and describe in detail the applicable OMB Circulars.

5. Facilities

Comment: The final rule should include more flexibility than "agencies must be located in communities they serve." One commenter stated that their agency covers a broad area and the clients and counselors meet "mid-point."

HUD response: HUD agrees with this commenter that the proposed regulation necessitated additional flexibility and has revised § 214.103(l). The revised regulation recognizes the expansion that has taken place among participating agencies and that the proposed requirement for facilities to be located in the communities they serve may unduly limit an agency's ability to serve its clients. Therefore, in this final rule, HUD has removed this requirement.

Comment: The final rule should include a provision at § 214.103 that states, "an agency may provide more than housing counseling services in the same office space." This commenter stated that many HUD-approved housing counseling agencies are multi-purpose agencies operating out of one location. It is an unreasonable burden to require separate facilities or portions of a building when one part-time counselor can easily meet the HUD minimum workload requirement.

HUD response: HUD believes that it is important for agencies to provide office space that is dedicated to the provision of housing counseling to clients. HUD acknowledges, however, that office space may need to be used for multiple purposes. Therefore, HUD has revised § 214.103(l) to provide that agencies must make space available to provide housing counseling services, but is not

requiring them to limit the use of the space solely for the purpose of providing housing counseling services.

Comment: To ensure client privacy, a provision should be added in this final rule stating that housing counselors should have access to private offices or meeting facilities that allow for an uninterrupted and confidential meeting between counselor and client. This commenter stated that hard copies of client files should be kept in locked filing cabinets and that electronic client files should be kept secure and accessible only by authorized employees.

HUD response: It is important for housing counseling agencies to provide an environment that provides privacy for in-person counseling and confidentiality of client records. Section 214.103(l) requires that housing counseling agencies provide such a space. In response to the request to maintain the privacy and confidentiality of electronic files, HUD has revised § 214.103(e) in this final rule to require that HUD-approved agencies maintain the confidentiality of each client's file, both electronic and paper, in accordance with safeguards for client files at § 214.315.

6. Housing Counseling Work Plan

Comment: If an agency does not provide in-person counseling beyond its primary education services, it should only be required to provide referrals to an affiliate or partner that can provide more specialized in-person services.

HUD response: HUD disagrees, because it considers in-person counseling a key component to the work of a HUD-approved counseling agency.

C. Termination of HUD-Approved Status

Comment: The final rule should explain what is meant by "best interests of the Department."

HUD response: HUD believes that "best interests of the Department" may not appropriately describe HUD's actions and has revised the final rule to provide that HUD-approved status, and participating agencies, may be terminated for good cause. The provision is designed to account for unforeseen circumstances or conditions that might warrant termination of HUD approval.

Comment: HUD should create an exception for staff turnover within the agency in the "lack of capacity" provision, as long as new staff is hired within a reasonable time.

HUD response: Agency "inactive status" that HUD has added to the final rule addresses this type of situation. An agency placed in inactive status because of lack of sufficient and experienced staff would not be listed on HUD's Web site until adequate staffing and capacity is restored. As discussed in section II, HUD has added new provisions in this final rule in response to these comments.

D. Counseling Services

1. Basic Requirements—In-Person Counseling

Comment: In-person counseling is an important aspect of the Housing Counseling program. One commenter recommended that this provision be preserved in the final rule. Alternatively, four commenters stated that the requirement for "in-person" counseling is outdated and not in the best interest of the client.

HUD response: While in-person counseling between the counselor and the client is the form of counseling preferred by HUD, HUD recognizes that in many cases in-person counseling is not practical due to distance, health, transportation, crisis situations, and other issues. In addition, there may be circumstances where a person with a disability needs to receive counseling in an alternative setting or format as a reasonable accommodation to that person's disability. Therefore, if the one-on-one counseling setting is not practical, the housing counseling work plan should describe the housing counseling agency's plans to provide counseling in alternative settings where needed. Consequently, HUD revised § 214.300(a) and § 214.103(m) to allow for alternatives to in-person counseling where the counseling agency and the client mutually agree to an alternative setting.

Comment: Provisions in the final rule should acknowledge that it is often impossible for housing counselors to follow up with clients, especially when they are homeless.

HUD response: HUD understands that many factors may make it impossible for counselors to reach clients. The regulatory provision, as proposed, required that the agency "follow-up" with clients. HUD believes that agencies should continue to make reasonable efforts to reach clients, when possible, to assure that the client is progressing toward his or her housing goal, to modify or terminate housing counseling, and to learn and report outcomes.

2. Approved Housing Counseling Activities

Comment: The final rule should present a clear distinction between counseling "activities and topics."

HUD response: In this final rule, HUD revised § 214.300 to better clarify housing counseling services. The basic requirement is for agencies to provide counseling to current and potential homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of homeownership or tenancy. Section 214.300(c) has been revised to better illustrate approved housing counseling education and outreach topics.

Comment: The final rule should more broadly define housing counseling activities. Activities limited to single-family houses, condominiums, and cooperatives are too narrow to meet the existing housing opportunities. One commenter suggested that manufactured homes should be added to the list.

HUD response: HUD agrees that the universe of housing opportunities is broad and not exhaustively covered by the examples in the regulations. HUD points out, however, that the list of education and outreach topics is not intended to cover every housing opportunity. Housing counseling agencies are encouraged to tailor housing counseling activities to the needs of the individual client.

E. Performance Criteria

1. Workload

Comment: The final rule should clarify what is meant by the client base as "determined by HUD." One commenter recommended that this provision be revised and published for additional public comment, because the methodology for determining measures of success is crucial to intermediaries' and agencies' ability to compete for funding.

HUD response: Consistent with the requirements for HUD approval, HUD has revised the performance criteria workload requirement at § 214.303(b) to clarify that the minimum workload in order to maintain HUD approval is 30 clients annually.

2. Client Referrals

Comment: Three commenters stated that the requirement that all HUD-approved agencies must accept all referrals from HUD and HUD-approved agencies is too broad. One commenter suggested that agencies can only serve as many clients as possible and that workloads may vary. Another commenter suggested adding a provision that the agency must accept the referral if it has the resources to do so.

In addition, another commenter recommended that the language of the proposed rule could lead to a circle of

inappropriate referrals and discourage use of community-based resources that are not HUD-approved. This commenter suggested the language be modified, as follows: "If an agency does not have the experience or skills to meet the needs of a client, it must refer the client to another appropriate HUD-approved agency or other appropriate nonprofit organization."

HUD response: HUD understands that agencies often have limited resources; however, it is important that all clients are served. In cases where the agency does not offer the unique services requested by the client or does not have sufficient resources, the agency must refer the client to another HUD-approved housing counseling agency, preferably in the area. If a HUD-approved agency is not available in the client's area, the client should be referred to another HUD-approved agency outside the client's area that can help the client meet his or her needs.

3. Conflicts of Interest

Comment: The final rule should be revised to account for unique challenges of providing HECM counseling. One commenter presented a description of its own unique conflict-of-interest challenges that require solutions that may not fit other types of housing counseling. This commenter noted that lenders often provide donations or other monetary compensation to counseling agencies. The commenter cautioned that agencies that accept closing-payments from lenders must choose between serving client interests and serving lender interests (and, by association, the counseling agency's interests).

HUD response: HUD believes that counseling agencies should not have to choose between serving client interests and serving lender interests. Whether the agency is counseling potential HECM borrowers or a homeowner facing foreclosure, the counseling agency must be careful to follow the program regulations, and, in particular, the conflicts-of-interest requirements. These requirements are designed to preserve and protect the relationship between the client and the agency. In response to this and other comments concerning conflicts of interest, HUD has revised § 214.303(f) in order to allow for additional flexibility. See section II.G for a detailed description of the revised conflicts-of-interest requirements.

Comment: Many agencies have sought lender support, because of insufficient funding from HUD, and because such support would create conflicts of interest. One commenter suggested that charging a fee to the client would remove the reliance on lenders for support and therefore remove a potential conflict of interest.

HUD response: HUD has revised the conflicts-of-interest provision in § 214.303 so that accepting resources from lenders, within certain circumstances, would not create a conflict. Under the revised regulations, individuals who are directors or employees, or their family members, of a housing counseling agency may not accept a fee or any other consideration for referring a client to mortgage lenders, brokers, builders, or real estate sales agents or brokers. Further, the regulations require the agency, its staff, or any member of their immediate family to avoid any action that might result in, or create the appearance of, administering the housing counseling operation for personal or private gain; providing preferential treatment to any organization or person; or undertaking any action that might compromise the agency's ability to ensure compliance with the requirements of this part and to serve the best interests of its clients. Accordingly, within these parameters, as well as the requirements of § 214.313(e), an agency may accept fees from lenders.

Comment: The definition of a conflict of interest should not prevent housing counseling agencies from providing opportunities in mortgage underwriting, pricing, houses, or services to its clients because those opportunities are provided by the same agency as the housing counseling.

HUD response: The agency must maintain the ability to represent fully the best interests of the client and the conflicts-of-interest requirements are in place to protect both the agency and the client. HUD believes, however, that the conflicts-of-interest requirements should not limit the housing counseling agency from providing additional, related services. Therefore, as discussed above, HUD has revised the conflicts-of-interest provision to allow for additional flexibility in agency activities.

4. Disclosure Requirements

Comment: A commenter stated that agencies receive hundreds of inquiry calls on a daily basis, and that providing full disclosure statements to all clients is an "incredible burden." This commenter added that providing clients with a list of "alternative services, programs, and products" defeats the purpose of being a HUD-approved housing counseling agency.

HUD response: HUD believes that the need for adequate disclosure far outweighs the corresponding burden, but acknowledges the challenges faced by agencies. Accordingly, to minimize the burden on agencies, HUD has removed from § 214.303(f) the reference to "potential clients."

Comment: HUD's proposed disclosure provision is too broad and vague to make complete compliance possible. The commenter recommended that agencies be required to disclose only relationships that are likely to have a significant impact on the specific client. Disclosing exclusive partnerships not relevant to a particular client or of minimal impact serve no practical purpose and may confuse clients.

HUD response: HUD believes that full disclosure of relationships is good business practice and promotes the highest ethical standards in these agencies supported by federal funds. Because not every potential conflict is foreseeable, the disclosures described in the proposed rule have been preserved in this final rule.

Comment: In the final rule, HUD should address lender fee-for-service relationships with housing counseling agencies. These are common relationships and HUD should address and provide guidance for lender and housing counseling agency fee-for-service relationships.

HUD response: HUD agrees with the commenter. As discussed in section II of this preamble, HUD has revised the funding provisions at § 214.313 to allow for alternative funding sources, including charging fees to clients and accepting fees from lenders.

5. Staff

Comment: HUD should define the monitoring activities expected to be utilized for staff supervision, as well as the basic requirements of how those monitoring activities should be documented.

HUD response: HUD has revised the regulation to provide that housing counseling agencies must monitor their staff on an annual basis. HUD believes that housing counseling agencies should adequately supervise their staff. It is within the individual counseling agency's discretion to determine the manner in which to monitor its staff.

F. Funding

Comment: The final rule should be revised to allow for additional flexibility in the funding provision. This commenter explained that most affiliates in their network have the resources to meet the requirement. This commenter stated, however, that in some cases, a national organization has been involved that allows some outside match of other agencies, which in turn allows participation of other affiliates of national organizations that would not

have otherwise been able to participate because they have no or very limited resources.

HUD response: HUD has revised § 214.303(i) in order to improve clarity and compliance. In the final rule, HUD removed the provision that would have required agencies to maintain a level of funds that enable an agency to serve a minimum of 50 clients each year. HUD recognized that a minimum workload of 50 clients each year raised compliance concerns among small agencies. Therefore, the revised § 214.303(i) requires that a participating agency maintain a level of funds that enables it to provide housing counseling to at least 30 clients every year, whether or not the agency receives HUD funding. The required workload is consistent with § 214.303(b).

Comment: HUD should provide additional explanation about how the required workload of "fifty clients every year whether or not the agency receives HUD funding" was deemed appropriate.

HUD response: The 50-client workload requirement was originally instituted to help ensure that HUD-approved agencies had sufficient resources to handle referrals through HUD's Web site and interactive voice response (IVR) system. HUD agrees with the commenter that this provision may disqualify small agencies that provide intensive services to a relatively small number of individuals. Therefore, HUD has revised the funding workload requirement to make it consistent with the workload requirement of § 214.303(b). This provision provides that the minimum workload is 30 clients annually. Previously, the requirement served to help ensure that agencies had the capacity to handle referrals through HUD's Web site and the IVR system. However, the alternative funding opportunities created by this regulation help ensure that agencies will have the necessary resources, and assuages these concerns.

G. Agency Profile Changes

Comment: One commenter stated that HUD should limit the requirement to report agency changes to include phone number and location. The commenter explained that in a national network, it is difficult to monitor staff changes.

HUD response: HUD disagrees. HUD needs to be notified of staff changes to ensure that agencies have the capacity to adequately serve the individuals that may contact them through HUD's Web site and the IVR system. The process and systems through which these changes occur are undergoing significant changes. It is imperative that agencies update and verify agency profile information in a timely manner, whenever this information is posted on HUD's Web site and communicated through the IVR.

Comment: HUD should require, in the final rule, agencies to update profiles during the biannual submission of form HUD–9902 data. One commenter suggested the omission of "within 15 days" and replacing with "biannually."

HUD response: HUD disagrees that these changes only be made at the time of HUD–9902 submission, which is quarterly. Since agency profile information is posted on HUD's Web site of HUD-approved agencies, changes to an agency's profile must be made by the agency immediately. However, HUD agrees that while submitting the form HUD–9902, and at other times during the year, agencies should periodically verify and validate that their profile information is accurately displayed in the system and on HUD's Web site.

Comment: Two commenters recommended that the final rule require only changes in management to be reported to HUD. The commenters recommended that agencies not be required to report every staffing change.

HUD response: HUD disagrees. As noted in the response to an earlier comment, HUD needs to be apprised of staff changes to ensure that agencies have the capacity to adequately serve the individuals that may contact them through HUD's Web site and the IVR system.

H. Performance Review

Comment: HUD should provide meaningful and clear language that all HUD reviewers and monitors use consistent monitoring guidelines. The commenter recommended that when matters of interpretation arise as to whether an agency is in compliance or not, HUD Headquarters provide the final determination.

HUD response: HUD agrees with the commenter that all reviewers should use consistent monitoring guidelines. HUD disagrees that the language in this section be revised as the commenter proposes. HUD will continue to work with field staff so that monitoring procedures are administered consistently across the country. HUD Headquarters makes the final determination when policy-related issues arise.

I. Fees

Comment: Three commenters suggested that HUD-approved fee schedules are unreasonable and unnecessary. One commenter asked how HUD will determine what fee is "reasonable." Another commenter recommended removing this provision, because the rule otherwise provides clear guidance for establishing a fee schedule; the approval process is burdensome and would likely cause a delay in implementation; HUD would have an opportunity to review and approve a fee schedule during the performance review; and it is unclear how this procedure would translate to intermediaries. Another commenter suggested that the fee schedule be made part of the housing counseling plan and that any changes should be reported to HUD for review. A different commenter opined that agencies should be required to submit fee schedules to HUD for review, but not for approval.

HUD response: HUD agrees that HUD approval of fee schedules from the rule is unnecessary, and has revised § 214.313 accordingly. As described in section II, HUD removed the requirement that agencies must submit fee schedules for HUD approval. HUD will review fee schedules during a review of an agency's application for approval or a performance review, in order to ensure that the fees are consistent with fees charged by similar agencies providing similar services.

Comment: The final regulations should be clear that housing counseling agencies are not prohibited from charging fees based on value of their services on a loan-by-loan basis. HUD should add a provision that would allow lenders to cover the client's fee when the client is unable to pay.

HUD response: HUD encourages housing counseling agencies to seek local funding, including lending or real estate organizations, in addition to units of local government. Agencies must assure that any arrangements do not violate the conflicts-of-interest provisions in § 214.303(e). In addition, HUD has revised § 214.313(e) to allow for lender payments, provided that the relationship with the lender is disclosed to the client and that the arrangement does not violate the provisions regarding conflict of interest.

Comment: To ensure quality, availability, and independence of consumer HECM counseling, agencies should be able to charge a fee to borrowers. One commenter suggested financing the fee by dedicating a small part of the HECM mortgage insurance premium; capping the lender origination fee in a way that frees up an amount equal to a borrower counseling fee; or instituting a separate "stand alone" fee paid at closing out of loan proceeds, if statutory prohibitions bar the first two options.

HUD response: HUD agrees with the commenter that agencies should be able

to charge a fee to HECM borrowers, if the cost does not create a financial hardship. However, the Department is not prepared to institute the financing of the fee by either of the first two methods proposed by the commenter. The first method has financial implications on the Federal Housing Administration's (FHA) capital ratio, and further analysis would be necessary to determine if this is a financially viable option. The second method has broader implications on an FHA-approved lender's fee structure.

However, instituting a separate "stand alone" fee paid at closing out of loan proceeds may provide a solution for clients that choose to move forward and obtain a HECM, but this solution does not cover the costs of counseling for those clients that decide not to obtain a HECM. HUD continues to work in conjunction with industry partners to solve this funding gap and ensure adequate funding for HECM counseling.

Comment: A counseling fee should be instituted only if it is linked to specific steps to improve the quality and independence of HECM counseling.

HUD response: HUD is taking significant steps to improve the quality of reverse mortgage counseling. For example, an existing $7.75 million training grant is delivering quality reverse mortgage counseling training to many counselors from HUD-approved agencies. HUD will undertake additional measures as it determines is appropriate to improve the effectiveness and quality of counseling provided to homeowners, including HECM borrowers.

Comment: HUD must ensure that agencies will be paid for HECM counseling regardless of whether their clients take out a loan. This commenter suggested that to eliminate any incentive for a counselor to limit, downplay, or omit information, HUD must institute a borrower counseling fee if it also provides a way to pay these agencies for HECM counseling that does not result in a HECM closing. This commenter also stated that HUD should prohibit lenders from paying a counseling fee on behalf of their HECM borrowers.

HUD response: HUD has not revised the rule in response to this comment, but will take the commenter's suggestion under further consideration. For clients who decide not to obtain a HECM, the Department continues to work in conjunction with industry partners to solve this funding gap and ensure adequate funding for HECM counseling.

Comment: One commenter recommended that the provision concerning approval of agency reimbursement for the cost of credit reports, as long as it is not a hardship to the client, should be preserved in the final rule. In contrast, two commenters stated that the credit report is a service to the client, but that it is not education or housing counseling service, and recommended removing the provision.

HUD response: This final rule adopts the provision in the proposed rule regarding credit reports. HUD believes it is appropriate to address the issue of fees related to the provision of credit reports to clients.

Comment: In setting housing counseling fees, the crucial factors are a client's need and ability to pay, and not merely his or her income.

HUD response: HUD agrees and has revised § 214.313. HUD has removed from the final rule the proposed requirement that agencies charge fees on a sliding scale based on the client's income. Accordingly, agencies may charge fees to clients, as long as the fees do not create a financial hardship for the client, and the agency must provide services at no cost to those clients who cannot afford to pay.

Comment: Charging fees may have unforeseen, negative impacts on client counseling by increasing or decreasing client interest depending on whether an agency charges a fee. One commenter suggested that HUD assess the ability of housing counseling agencies to create additional revenue building services by engaging in fee-generating services, such as allowing agencies to originate loans, including lending incentives.

HUD response: HUD encourages agencies to develop a diversified funding base. To facilitate this, the final rule permits the charging of fees, but also explicitly states that agencies must provide counseling without charge to persons who cannot afford the fees. However, the rule does not require that the agency charge fees. HUD does not oppose counseling agencies getting involved in other revenue-generating activities, including loan origination, provided all requirements regarding conflict of interest and disclosure are adhered to and the agency's activities are in the best interest of the client.

J. Recordkeeping

Comment: Three commenters stated that the Client Action Plan is an important document, but it is unnecessary and expensive to require the plan to be signed by both the client and counselor and maintained on file for 3 years. Two of these commenters explained that a signed copy does not obligate the client to adhere to any counseling suggestions and merely creates additional paperwork for the file.

HUD response: HUD agrees with the commenters and has removed the client and counselor signature requirement from § 214.315.

Comment: HUD should expand the term "hardship" to allow for "client preference." This commenter stated that, especially with possible foreclosure, a client may seek and prefer help over the telephone. Another commenter stated that this section's use of "hardship" is inconsistent with the provisions proposed at § 214.300.

HUD response: HUD agrees with the commenters. Clients may prefer help by the telephone, particularly in the case of foreclosure prevention counseling when time is a critical factor. In addition, some individuals may request counseling over the telephone as an accommodation to their disabilities. Consequently, HUD removed the in-person counseling requirement from the client file provision at § 214.315(e).

Comment: Two commenters recommended the addition of "unable to contact" to the list of reasons to terminate client services, since clients often change addresses without providing their forwarding information.

HUD response: HUD agrees and has revised § 214.315(g) accordingly.

Comment: The final rule should expand the provision so that the client file can be a paper file, an electronic file, or a combination of the two. Currently, some documents are kept in paper files and others are retained electronically (e.g., credit reports and client logs).

HUD response: As housing counseling agencies increasingly utilize client management systems, HUD expects client files to be a combination of electronic and paper. The regulations have been revised accordingly.

Comment: HUD should not require that the initial intake be in the form of an interview or that the intake has to be at the office of the agency. One commenter described his or her agency's model for initial interviews as including a group intake and educational workshop during which counselors explain homebuying, housing counseling, and dangers of predatory lending. Following that, clients complete forms that include demographics and permission for a credit report. The commenter believes that this model is extremely effective.

HUD response: While in-person counseling is the form of counseling preferred by HUD, HUD recognizes that in many cases in-person counseling is not practical due to distance, health, transportation, crisis situations, and

other issues. HUD has removed the intake requirements from the recordkeeping requirements in § 214.315.

K. Client Management System

Comment: In the final rule or in some other form, HUD should publish criteria for a Client Management System (CMS), rather than requiring costly and difficult transitions from existing systems.

HUD response: HUD has developed the criteria for a CMS to interface with HUD's Client Activity Reporting Systems (CARS), and has shared this information with CMS vendors and is working with them to understand and comply with these requirements. CMS vendors will be required to meet these criteria in order to interface with HUD's system. Housing counseling agencies will have to report required information to HUD through a CMS vendor that meet's HUD's criteria. The criteria are available upon request.

Comment: Will HUD develop a methodology to accept data from Fannie Mae's Home Counselor Online system to avoid duplication of data input?

HUD response: HUD has invited all CMS vendors to develop an interface with HUD's CARS.

L. Other Matters

Comment: The requirement that "all clients must be served" is too broad, because agencies have limited resources and occasionally have to refer clients elsewhere.

HUD response: All clients who contact the agency as a result of referrals must be served. As noted in a response to an earlier comment, in cases where the agency does not offer the unique services requested by the client or does not have sufficient resources, the agency must refer the client to another HUD-approved housing counseling agency. The referral should be made to an agency in the geographic area, or, failing the availability of a HUD-approved agency, to another agency that can help the client meet their needs.

Comment: In the final rule, HUD should include provisions that require counseling about home energy costs and home energy billing. Specifically, one commenter suggested the addition of a new paragraph (8) at § 214.300(c) that would read as follows: "(8) Home energy budget counseling, including providing information to help clients understand the utility costs within a home, controlling utility costs within the home and managing the utility bill within the home." This commenter stated that utility bills can account for 20 to 25 percent of total shelter costs and can be volatile. The commenter suggested a relationship between an increase in home heating fuel prices and potential mortgage defaults.

HUD response: HUD disagrees that the final rule should require home energy budget counseling. Through its Housing Counseling Notice of Funding Availability (NOFA), HUD encourages and rewards agencies that provide this type of counseling and promote energy-efficient housing and products.

Comment: The proposed rule fails to address certification of housing counselors. This commenter stated that there are no standards in place to guarantee that the counselors employed by HUD-approved agencies have the necessary training to effectively perform the tasks required of them.

HUD response: The proposed rule specified the criteria for the approval of housing counseling agencies. HUD does not certify individual counselors at this time. Regarding training, HUD is taking significant steps to standardize and improve the quality of counseling offered by counselors employed by HUD-approved agencies. An existing $7.75 million training grant to Neighborworks America is delivering quality counseling training to counselors from HUD-approved agencies. Additionally, HUD is engaged in an evaluative study of the Housing Counseling program. HUD is considering using the results of the study to help formulate standards for housing counselors.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review.

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not an economically significant action, as provided under section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule establishes regulations for the Department's Housing Counseling program, a voluntary program through which housing counseling agencies may obtain HUD-approved status and become eligible for grant funding on a competitive basis. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0261. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number is 14.169.

List of Subjects in 24 CFR Part 214

Administrative practice and procedure; Loan program-housing and community development; Organization and functions (government agencies); Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends title 24 of the Code of Federal Regulations, as follows:

■ 1. Add part 214 to read as follows:

PART 214—HOUSING COUNSELING PROGRAM

Subpart A—General Program Requirements

Sec.
214.1 Purpose.
214.3 Definitions.

Subpart B—Approval and Disapproval of Housing Counseling Agencies

214.100 General.
214.103 Approval criteria.
214.105 Preliminary application process.
214.107 Approval by HUD.
214.109 Disapproval by HUD.

Subpart C—Inactive Status, Termination, and Appeals

214.200 Inactive status.
214.201 Termination of HUD-approved status and grant agreements.
214.203 Re-approval or removal as a result of a performance review.
214.205 Appeals.

Subpart D—Program Administration

214.300 Counseling services.
214.303 Performance criteria.
214.305 Agency profile changes.
214.307 Performance review.
214.309 Reapproval and disapproval based on performance review.
214.311 Funding.
214.313 Housing counseling fees.
214.315 Recordkeeping.
214.317 Reporting.

Subpart E—Other Federal Requirements

214.500 Audit.
214.503 Other requirements.

Authority: 12 U.S.C. 1701(x); 42 U.S.C. 3535(d).

Subpart A—General Program Requirements

§ 214.1 Purpose.

This part implements the Housing Counseling program authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). Section 106 authorizes HUD to provide, make grants to, or contract with public or private organizations to provide a broad range of housing counseling services to homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership. The regulations contained in this part prescribe the procedures and requirements by which the Housing Counseling program will be administered. These regulations apply to all agencies participating in HUD's Housing Counseling program.

§ 214.3 Definitions.

The following definitions apply throughout this part:

Action plan. A plan that outlines what the housing counseling agency and the client will do in order to meet the client's housing goals and, when appropriate, addresses the client's housing problem(s).

Affiliate. A nonprofit organization participating in the HUD-related Housing Counseling program of a regional or national intermediary, or state housing finance agency. The affiliate organization is incorporated separately from the regional or national intermediary or state housing finance agency. An affiliate is:

(1) Duly organized and existing as a tax-exempt nonprofit organization;

(2) In good standing under the laws of the state of the organization; and

(3) Authorized to do business in the states where it proposes to provide housing counseling services.

Branch or branch office. An organizational and subordinate unit of a local housing counseling agency, multi-state organization, regional or national intermediary, or state housing finance agency not separately incorporated or organized, that participates in HUD's Housing Counseling program. A branch or branch office must be in good standing under the laws of the state where it proposes to provide housing counseling services. A branch or branch office cannot be a subgrantee or affiliate.

Clients. Individuals or households who seek the assistance of an agency participating in HUD's Housing Counseling program to meet a housing need or resolve a housing problem.

Counseling. Counselor to client assistance that addresses unique financial circumstances or housing issues and focuses on ways of overcoming specific obstacles to achieving a housing goal such as repairing credit, addressing a rental dispute, purchasing a home, locating cash for a down payment, being informed of fair housing and fair lending requirements of the Fair Housing Act, finding units accessible to persons with disabilities, avoiding foreclosure, or resolving a financial crisis. Except for reverse mortgage counseling, all counseling shall involve the creation of an action plan.

Education. Formal classes, with established curriculum and instructional goals provided in a group or classroom setting, covering topics applicable to groups of people such as, but not limited to:

(1) Renter rights;
(2) The homebuying process;
(3) How to maintain a home;
(4) Budgeting;
(5) Fair housing;
(6) Identifying and reporting predatory lending practices;
(7) Rights for persons with disabilities; and
(8) The importance of good credit.

Housing counseling work plan. A participating agency's plan to provide housing counseling activities and services in a specified geographic area to resolve or mitigate identified community needs and problems. The plan will also describe the objectives of the agency and the resources available to meet those objectives. An intermediary's state housing finance agency's (SHFA) or multistate organization's (MSO) plan includes similar information regarding the services they propose to provide to the network of affiliated agencies or branches participating in their HUD-related Housing Counseling program.

Housing goal. A realistic, short- or long-term objective set by the client, with advice from a housing counselor.

HUD-approved housing counseling agencies. Private and public nonprofit organizations that are exempt from taxation under section 501(a), pursuant to section 501(c) of the Internal Revenue Code of 1996, 26 U.S.C. 501(a) and 501(c) and approved by HUD, in accordance with this part, to provide housing counseling services to clients directly, or through their affiliates or branches, and which meet the requirements set forth in this part.

Intermediary. A HUD-approved organization that provides housing counseling services indirectly through its branches or affiliates, for whom it exercises control over the quality and type of housing counseling services

rendered. The Housing Counseling program recognizes two types of intermediaries, which include:

(1) *National intermediary.* A national intermediary provides, in multiple regions of the United States:

(i) Housing counseling services through its branches or affiliates or both; and

(ii) Administrative and supportive services to its network of affiliates or branches, including, but not limited to, pass-through funding, training, and technical assistance.

(2) *Regional intermediary.* A regional intermediary provides in a generally recognized region within the United States, such as the Southwest, Mid-Atlantic, New England:

(i) Housing counseling services through its branches or affiliates or both; and

(ii) Administrative and supportive services to its network of affiliates, or branches, including, but not limited to, pass-through funding, training, and technical assistance.

Local housing counseling agency (LHCA). A housing counseling agency that directly provides housing counseling services. An LHCA may have a main office, and one or more branch offices, in no more than two contiguous states.

Multi-state organization (MSO). A multi-state organization provides housing counseling services through a main office and branches in two or more states.

Participating agency. Participating agencies are all housing counseling and intermediary organizations participating in HUD's Housing Counseling program, including HUD-approved agencies, and affiliates and branches of HUD-approved intermediaries, HUD-approved MSOs, and state housing finance agencies.

Reverse mortgage. A mortgage that pays a homeowner loan proceeds drawn from accumulated home equity and that requires no repayment until a future time.

State housing finance agency (SHFA). Any public body, agency, or instrumentality created by a specific act of a state legislature empowered to finance activities designed to provide housing and related facilities through land acquisition, construction, or rehabilitation throughout an entire state. SHFAs may provide direct counseling services or subgrant housing counseling funds, or both, to affiliated housing counseling agencies within the SHFA's state. "State" includes the several states, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands.

Subgrantee. An affiliate of a HUD-approved intermediary or SHFA that receives a subgrant of housing counseling funds provided under a HUD grant.

Subpart B—Approval and Disapproval of Housing Counseling Agencies

§ 214.100 General.

An organization may be approved by HUD as a HUD-approved housing counseling agency upon meeting the requirements of § 214.103 and upon completing the application procedures set forth in this subpart B.

(a) The approval of a counseling agency does not create or imply a warranty or endorsement by HUD of the listed agency, or their employees, including counselors, to a prospective client or to any other organization or individual, nor does it represent a warranty of any counseling provided by the agency. Approval means only that the agency has met the qualifications and conditions prescribed by HUD.

(b) *Effective date.* Agencies approved by HUD on or before October 29, 2007 and agencies that have submitted applications to HUD on or before September 28, 2007 and that are subsequently approved, are required to be in full compliance with the requirements in this part on October 1, 2007. Agencies approved after October 29, 2007 must comply with this part.

§ 214.103 Approval criteria.

The following criteria for approval apply to all agencies, MSOs, and intermediaries, including all local housing counseling agencies, branches, and affiliates that are included in one application:

(a) *Nonprofit and tax-exempt status.* A housing counseling agency must function as a private or public nonprofit organization, or be a unit of local, county, or state government. The agency must submit evidence of nonprofit status and tax-exempt status under section 501(a), pursuant to section 501(c) of the Internal Revenue Code of 1996 (26 U.S.C. 501(a) and (c)). Units of local, county, or state government must submit proof of their authorization to provide housing counseling services.

(b) *Experience.* An agency must have successfully administered a Housing Counseling program for at least one year. An intermediary must have operated in an intermediary capacity for at least one year. To be considered part of an LHCA's, MSO's, or intermediary's approval application, and to participate in the HUD-approved portion of the intermediary's, SHFA's, or MSO's Housing Counseling program, affiliates and branches must have successfully administered a Housing Counseling program for at least one year.

(c) *Ineligible participants.* An agency, including any of the agency's directors, partners, officers, principals, or employees, must not be:

(1) Suspended, debarred, or otherwise restricted under the Department's, or any other federal regulations;

(2) Indicted for, or convicted of, a criminal offense that reflects upon the responsibility, integrity, or ability of the agency to participate in housing counseling activities. These offenses include criminal offenses that can be prosecuted at a local, state, or federal level;

(3) Subject to unresolved findings as a result of HUD or other government audit or investigations.

(d) *Community base.* A housing counseling agency and its HUD Program branches and affiliates must have functioned for at least one year in the geographical area(s) the agency set forth in its housing counseling work plan.

(e) *Recordkeeping and reporting.* The agency must have an established system of recordkeeping so that client files, electronic and paper, can be reviewed and annual activity data for the agency can be verified, reported, and analyzed. Client files, both electronic and paper, must be kept confidential, in accordance with § 214.315. This system must meet the requirements of 24 CFR 1.6, 24 CFR 84.21, and 24 CFR 121 and can be easily accessible to HUD for all monitoring and audit purposes.

(f) *Client management system.* All participating agencies shall utilize an automated housing counseling client management system for the collection and reporting of client-level information, including, but not limited to, financial and demographic data, counseling services provided, and outcomes data. The system used must provide the counseling agency with the tools necessary to track and manage all counseling and educational activities associated with each client. Agencies must utilize a Client Management System that satisfies HUD's requirements and interfaces with HUD's databases.

(g) *Housing counseling resources.* The agency must have the following resources sufficient to implement the proposed housing counseling work plan no later than the date of HUD approval:

(1) *Funding.* The application for approval must provide evidence of funds immediately available, or written commitment for funds to cover the cost of operating the housing counseling

work plan during the initial 12-month period of HUD approval.

(2) *Staff.* The agency must employ staff trained in housing counseling, and at least half the counselors must have at least 6 months of experience in the job they will perform in the agency's Housing Counseling program.

(3) *Language skills.* The agency must have housing counselor(s) who are fluent in the language of the clients they serve, or the housing counseling agency must use the services of an interpreter, or the agency must refer the client to another agency that can meet the client's needs.

(h) *Knowledge of HUD programs and local housing market.* The agency's housing counseling staff must possess a working knowledge of HUD's housing and single-family mortgage insurance programs, other state and local housing programs available in the community, consolidated plans, and the local housing market. The staff should be familiar with housing programs offered by conventional mortgage lenders and other housing or related programs that may assist their clients.

(i) *Contracts or agreements to provide eligible housing counseling services.* An agency and its branches or subgrantees or affiliates must deliver all of the housing counseling activities set forth in the agency's housing counseling work plan. It is not permissible to contract out housing counseling services, except:

(1) In geographic areas where a need for housing counseling services is demonstrated and no HUD-approved housing counseling agency or its branches, affiliates, or subgrantees exists. Under this exception, the contract must delineate the respective Housing Counseling program responsibilities of the contracting parties, the agency providing services (contractor) must meet the HUD approval eligibility standards, and the contracting agency must receive prior written approval from HUD.

(2) Intermediaries and SHFAs may enter into agreements with affiliates to provide housing counseling services. The agreements with affiliates may be in the form of an exchange of letters that delineate the respective Housing Counseling program responsibilities of the parties. Agreements must be sufficiently detailed to establish accountability and allow for adequate monitoring in accordance with 24 CFR part 84 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to States, Local and Federally Recognized Indian Tribal Governments), as applicable, and with the OMB Circulars described therein.

(3) With prior approval from HUD, and at HUD's discretion, intermediary organizations may operate a Housing Counseling program with a network of affiliated counselors, rather than affiliated counseling agencies, if the structure is designed to meet a special housing counseling need identified by HUD.

(j) *Community resources.* The housing counseling agency must have established working relationships with private and public community resources to which it can refer clients who need help the agency cannot offer, including agencies offering similar or related services to non-English speaking clients.

(k) *State and local requirements.* An agency and its branches and affiliates must meet all state and local requirements for its operation.

(l) *Facilities.* All housing counseling facilities of the agency and its branches, affiliates, and subgrantees must meet the following criteria:

(1) Have a clearly identified office, with space available for the provision of housing counseling services. The office should operate during normal business hours and offer extended hours when necessary;

(2) Provide privacy for in-person counseling and confidentiality of client records;

(3) Provide accessibility features or make alternate accommodations for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

(m) *Housing counseling work plan.* (1) The agency must submit a detailed yet concise housing counseling plan that explains: The needs and problems of the target population; how the agency will address one or more of these needs and problems with its available resources; the type of housing counseling services offered; fee structure, if applicable; the geographic service area to be served; and the anticipated results (outcomes) to be achieved within the period of approval.

(2) The plan must be periodically reviewed and, when changed or amended, the agency must notify and provide a copy to HUD.

(3) The plan must meet the basic requirements described in § 214.300.

(4) An agency's housing counseling work plan must also address, if appropriate, alternative settings and formats for the provision of housing counseling services.

§ 214.105 Preliminary application process.

(a) *Submission.* All agencies must complete the forms prescribed by HUD and submit the application and all supporting documentation to HUD. Agencies with branches or affiliates for which the parent entity exercises control over the quality and type of housing counseling services rendered must submit a single application for approval.

(b) Notwithstanding paragraph (a), SHFAs are not required to submit an application for HUD approval. However, to participate in HUD's Housing Counseling program, SHFAs must either submit a request and provide HUD with a list of affiliates, if applicable, and assure that they meet all program requirements, or submit a request through such other application procedure as HUD may periodically announce in the **Federal Register** or other informational sources.

§ 214.107 Approval by HUD.

(a) *Notice of approval.* If an application package meets all requirements outlined in § 214.103, HUD will approve an agency for a period of up to 3 years. HUD will advise the agency of its approval in the form of an approval letter to the agency's main office.

(b) *Certificate of Approval.* HUD will issue a "Certificate of Approval" to the approved agency. The certificate will show the period of approval.

(c) *Appearance on list of HUD-approved and participating housing counseling agencies.* For purposes of client referrals, participating agencies that provide housing counseling services directly to clients must provide HUD with the agency name and contact information, which may appear on HUD's Web site. In addition, names and addresses of all participating agencies that provide housing counseling services directly may be made available to the public through HUD's toll-free housing counseling hotline.

§ 214.109 Disapproval by HUD.

If an application package does not meet all requirements in § 214.103, HUD will provide the agency with the reasons for the denial in writing. Within 30 calendar days of the written notice of denial, the agency may submit a revised application, or appeal HUD's decision in writing to HUD, as provided in § 214.205. If an agency decides to submit a revised application, the agency may consult HUD, to determine the

specific actions needed to resolve the deficiencies.

Subpart C—Inactive Status, Termination, and Appeals

§ 214.200 Inactive status.

(a) HUD may change a participating agency's status to inactive, in lieu of terminations of HUD-approved status or removals from the list of HUD-approved agencies, under certain circumstances that may temporarily impair an agency from complying with its housing counseling plan. An agency's status may be changed to inactive on a case-by-case basis for a period not to exceed 6 months, unless an extension is provided by HUD under paragraph (d) of this section. HUD may change an agency's status through either a request submitted to HUD or as a result of information obtained by the Department. Some of the conditions under which inactive status may be considered include, but are not limited to:

(1) Loss of counselor(s);

(2) Damage to facilities by natural disasters that renders the agency unable to function properly;

(3) Loss of funds;

(4) Relocation;

(5) Other circumstances caused by reasons beyond the agency's control; or

(6) Results of performance review.

(b) Agencies that seek temporary inactive status must submit a request to HUD in writing. Documentation or evidence of the condition(s) that rendered the agency incapable of carrying out its housing counseling plan must be submitted along with the request, if possible. Upon receipt of the request, HUD will review and notify the agency of approval or rejection, in writing. If approved, the agency's name and contact information will be temporarily removed from the HUD-approved Web list of agencies and the telephone referral system.

(c) The agency must notify HUD in writing and provide supporting documentation or evidence when it is ready to resume operation, or no later than the end of the inactive period. After review and acceptance by HUD, the agency's contact information may be restored to the Web list of HUD-approved and participating agencies and the telephone referral system.

(d) At HUD's discretion, if the condition(s) still exists, an extension of the inactive period may be considered or the agency may be terminated or removed from the Housing Counseling program. HUD will notify the agency in writing of its decision.

§ 214.201 Termination of HUD-approved status and grant agreements.

(a) *Cause for termination by HUD.* HUD may terminate an agency's approval; remove an SHFA; remove one or more branches or affiliates from the HUD portion of an intermediary's, MSO's, or SHFA's counseling program; and terminate any grant agreements (if applicable) upon confirmation of any of the following reasons:

(1) Noncompliance with program requirements;

(2) Failure to implement in whole or in part the agency's approved housing counseling work plan or failure to notify HUD of changes in the agency's housing counseling work plan;

(3) Lack of the capacity to deliver the housing counseling activities described in its approved housing counseling work plan;

(4) Failure to achieve outcomes described in the work plan;

(5) Misuse of grant funds; or

(6) HUD determines that there is good cause.

(b) *Agency withdrawal.* The participating agency may withdraw from the Housing Counseling program at any time.

(c) *Post-termination, post-withdrawal requirements.* All terminations by HUD, or an agency's withdrawal, must be in writing. When a termination or withdrawal occurs, the agency must return to HUD any unexpired "Certificate of Approval." A terminated or inactive agency cannot continue to display the certificate. If HUD has determined that an agency will be terminated from participating in the Housing Counseling program, and an agency does not voluntarily withdraw, then HUD may follow the provisions found in 24 CFR part 24.

§ 214.203 Re-approval or removal as a result of a performance review.

HUD may conduct a periodic performance review for all agencies participating in the Housing Counseling program. The performance review and the terms of re-approval or removal of a participating agency are described in § 214.307 and § 214.309. At the end of the approval period, and upon completion of a successful performance review, if conducted, HUD will reapprove agencies.

§ 214.205 Appeals.

An agency making an application for approval, or an approved agency seeking reapproval, shall have the right to appeal any adverse decisions rendered by HUD under this part:

(a) *Appeal must be in writing.* An agency may make a formal written appeal to HUD.

(b) *Timeliness.* HUD must receive an appeal within 30 days of the date of the HUD decision letter to the applicant agency. HUD is not bound to review appeals received after this 30-calendar day period.

(c) *Other action.* Nothing in this section prohibits HUD from taking such other action against an agency as provided in 24 CFR part 24, or from seeking any other remedy against an agency available to HUD by statute or otherwise.

Subpart D—Program Administration

§ 214.300 Counseling services.

(a) *Basic requirements.* (1) Agencies must provide counseling to current and potential homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of homeownership or tenancy.

(2) Except for reverse mortgage counseling, housing counselors and clients must establish an action plan for each counseling client.

(3) Counseling may take place in the office of the housing counseling agency, at an alternate location, or by telephone, as long as mutually acceptable to the housing counselor and client. All agencies participating in HUD's Housing Counseling program that provide services directly to clients must provide in-person counseling to clients that prefer this format.

(4) Regardless of setting or format, counseling activities must be limited to the geographic area specified in the agency's approved housing counseling work plan.

(5) With prior approval from HUD, a network of affiliated counselors or a HUD roster of counselors, designed to meet a special housing counseling need, may be permitted to provide specified types of counseling nationally.

(6) All participating agencies that offer group educational sessions must also offer individual counseling on the same topics covered in the group educational sessions.

(b) *Counseling services.* For each client, all agencies participating in HUD's Housing Counseling program shall offer the following basic services:

(1) Housing counseling, on at least one of the topics described in paragraph (d) of this section, that enables a client to make informed and reasonable decisions to achieve his or her housing goal.

(2) Referrals to local, state, and federal resources.

(c) *Follow-up.* Make a reasonable effort to have follow-up communication with the client, when possible, to assure

that the client is progressing toward his or her housing goal, to modify or terminate housing counseling, and to learn and report outcomes.

(d) *Agency's housing counseling work plan.* (1) A participating agency shall deliver housing counseling services consistent with the agency's housing counseling work plan. The work plan should identify housing counseling services to be provided in response to one or more of the needs in targeted communities and geographic areas where the agency and its branches and affiliates provide their housing counseling services.

(2) Participating agencies may also conduct marketing and outreach, including, but not limited to, providing general information about housing opportunities, conducting information campaigns, and raising awareness about critical housing topics such as predatory lending and fair housing topics.

(e) *Approved housing counseling, education, and outreach topics.* The following are examples of approved housing counseling, education, and outreach topics that participating agencies may provide to and discuss with clients:

(1) Prepurchase/homebuying, including, but not limited to: Advice regarding readiness and preparation, Federal Housing Administration-insured financing, housing selection and mobility, search assistance, fair housing and predatory lending, budgeting and credit, loan product comparison, purchase procedures, and closing costs;

(2) Resolving or preventing mortgage delinquency, including, but not limited to: Default and foreclosure, loss mitigation, budgeting, and credit;

(3) Home maintenance and financial management for homeowners, including, but not limited to: Escrow funds, budgeting, refinancing, home equity, home improvement, utility costs, energy efficiency, rights and responsibilities of home owners, and reverse mortgages;

(4) Rental topics, including, but not limited to: HUD rental and rent subsidy programs; other federal, state or local assistance; fair housing; housing search assistance; landlord tenant laws; lease terms; rent delinquency; and

(5) Homeless assistance, including, but not limited to: Information regarding emergency shelter, other emergency services, and transitional housing.

§ 214.303 Performance criteria.

To maintain HUD-approved status, a participating agency must meet the following requirements:

(a) *Approval status.* Agencies must continue to comply with approval requirements in § 214.103.

(b) *Workload.* During each 12-month period, the participating agency must provide housing counseling to at least 30 clients. Agencies that offer only housing counseling services limited to reverse mortgages, including home equity conversion mortgages (HECMs), are exempt from this requirement.

(c) *Reporting.* The agency must submit to HUD complete, accurate, and timely activity reports, as described in § 214.317.

(d) *Agency's housing counseling work plan.* The agency must implement the housing counseling work plan and demonstrate reasonable achievement of the outcome objectives approved by HUD, as described in § 214.103(k).

(e) *Client referrals from HUD and other participating agencies.* Except as described in this paragraph, all clients who contact the agency as a result of these referrals must be served. In cases where the agency does not offer the unique services requested by the client or does not have sufficient resources, the agency must refer the client to another participating agency, preferably in the area, or, failing the availability of a participating agency, must make a reasonable effort to refer the client to another agency, that can help the client meet his or her needs.

(f) *Conflicts of interest.* (1) A director, employee, officer, contractor, or agent of a participating agency shall not engage in activities that create a real or apparent conflict of interest. Such a conflict would arise if the director, employee, officer, contractor, agent, his or her spouse, child, general partner, or organization in which he or she serves as employee (other than with the participating counseling agency), or with whom he or she is negotiating future employment, has a direct interest in the client as a landlord, broker, or creditor, or originates, has a financial interest in, services, or underwrites a mortgage on the client's property, owns or purchases a property that the client seeks to rent or purchase, or serves as a collection agent for the client's mortgage lender, landlord, or creditor.

(2) A director, employee, officer, contractor, or agent of a participating agency shall not refer clients to mortgage lenders, brokers, builders, or real estate sales agents or brokers in which the officer, employee, director, his or her spouse, child, or general partner has a financial interest, neither may they acquire the client's property from the trustee in bankruptcy or accept a fee or any other consideration for referring a client to mortgage lenders, brokers, builders, or real estate sales agents or brokers.

(3) A director, employee, officer, contractor, or agent of a participating agency or any member of his or her immediate family shall avoid any action that might result in, or create the appearance of, administering the housing counseling operation for personal or private gain; providing preferential treatment to any organization or person; or undertaking any action that might compromise the agency's ability to ensure compliance with the requirements of this part and to serve the best interests of its clients.

(4) HUD may investigate agency practices and may take action to inactivate or terminate the agency's approval or participation in the Housing Counseling program.

(5) Participating agencies must notify HUD of conflicts of interest not later than 15 calendar days after the conflict occurred and report to HUD on the corrective action taken to cure the immediate, and avoid future, conflicts.

(g) *Disclosure requirements.* A participating agency must provide to all clients a disclosure statement that explicitly describes the various types of services provided by the agency and any financial relationships between this agency and any other industry partners. The disclosure must clearly state that the client is not obligated to receive any other services offered by the organization or its exclusive partners. Furthermore, the agency must provide information on alternative services, programs, and products.

(h) *Staff and supervision.* The agency must employ staff trained in housing counseling, and at least half the counselors must have at least 6 months of experience in the job they will perform in the agency's Housing Counseling program. Supervisors of the housing counselors must periodically monitor the work of the housing counselors by reviewing client files with the housing counselor to determine the adequacy and effectiveness of the housing counseling. The agency must document these monitoring activities and make the documentation available to HUD upon request.

(i) *Funding.* The agency must maintain a level of funds that enables it to provide housing counseling to at least the required workload of clients every year, whether or not the agency receives HUD funding.

§ 214.305 Agency profile changes.

Participating agencies must notify HUD within 15 days when any of the following occurs:

(a) The agency loses or changes its tax-exempt, nonprofit status.

(b) The agency no longer complies with local and state requirements.

(c) Changes occur in any of the items below:

(1) Address(es) of the agency's main office and the address(es) of its branches and affiliates;

(2) Staff personnel responsible for the Housing Counseling program, such as the housing counselors and management staff;

(3) Telephone numbers of the main office, affiliates, and branches; or

(4) Any other aspect of the agency's purpose or functions that may impair its ability to comply with these regulations or the applicable grant agreement (e.g., lack of qualified housing counselors).

§ 214.307 Performance review.

(a) HUD may conduct periodic on-site or desk performance reviews of all participating agencies.

(b) The performance review will consist of a review of the participating agency's compliance with all program requirements, including applicable civil rights requirements, and the agency's level of success in delivering counseling services.

§ 214.309 Reapproval and disapproval based on performance review.

Based on the performance review, HUD may determine whether to renew the approval unconditionally or conditionally, temporarily change status to inactive, or terminate approval or participation of the agency.

(a) *Unconditional Reapproval.* If the agency is in full compliance with the performance criteria of this part, HUD may reapprove the agency unconditionally for up to 3 years.

(b) *Conditional Reapproval.* If the agency fails to meet the performance criteria, but the failure does not seriously impair the agency's counseling capability as required in this part, HUD may extend the agency's approval or participation for up to 120 calendar days.

(c) *Inactive status.* HUD may temporarily change an agency's status to inactive, as provided in § 214.200.

(d) *Follow-up Review.* HUD may conduct a follow-up review to determine if the deficiencies have been corrected.

(e) *Termination of HUD Approval.* When HUD determines that the agency's program deficiencies seriously impair the agency's ability to comply with this part, HUD may terminate approval or participation of the agency immediately.

(f) *Appeal.* If HUD does not reinstate the approval, or terminates participation, the agency may file an appeal, as prescribed under § 214.205.

§ 214.311 Funding.

(a) *HUD funding.* HUD approval or program participation does not guarantee funding from HUD. Funding for the Housing Counseling program depends on appropriations from Congress and are awarded competitively under federal and HUD regulations and policies governing assistance programs, including the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545 *et seq.*). If funds become available that are to be competitively awarded, HUD will notify the public through a Notice of Funding Availability (NOFA) in the **Federal Register** and via the Internet or other electronic media.

(b) *Local funding sources.* HUD recommends that approved agencies seek and secure funding from funding sources that may include local and state governments, private foundations, and lending or real estate organizations. Agencies must assure that such arrangements do not violate the provisions regarding conflicts of interest described in § 214.303(e).

§ 214.313 Housing counseling fees.

(a) Participating agencies may charge reasonable and customary fees for housing education and counseling services, as long as the cost does not create a financial hardship for the client. An agency's fee schedule must be posted in a prominent place that is easily viewed by clients, and be available to HUD for review.

(b) Agencies must inform clients of the fee structure in advance of providing services. Clients cannot be charged for client intake.

(c) If any agency chooses to charge fees, the agency must conform to the following guidelines:

(1) Provide counseling without charge to persons who cannot afford the fees;

(2) Fees must be commensurate with the level of services provided;

(3) Agencies may not impose fees upon clients for the same portion of or for an entire service that is already funded with HUD grant funds.

(d) The agency may also be reimbursed from clients for the direct cost of obtaining copies of clients' credit reports from credit reporting bureaus if this does not cause a hardship for the client. In cases where the participating agency receives a discount for the cost of credit reports, this discount must be passed on to the client.

(e) Lenders may pay agencies for counseling services, through a lump sum or on a case-by-case basis, provided the level of payment does not exceed a level that is commensurate with the services provided, and is reasonable and customary for the area, and does not violate requirements under the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*). These transactions and relationships must be disclosed to the client as required in § 214.303(g).

§ 214.315 Recordkeeping.

(a) *Recordkeeping system.* Each participating housing counseling agency must maintain a recordkeeping system. The system must permit HUD to easily access all information needed for a performance review. This system must meet the requirements of 24 CFR 1.6, 24 CFR 84.21, and 24 CFR part 121.

(b) *File retention requirements.* Financial records, supporting documents, statistical records and all other pertinent records, both electronic and on paper, shall be retained for a period of 3 years from the date the case file was terminated for housing counseling. If the housing counseling agency is a recipient of a HUD housing counseling grant, then the client files for the housing counseling grant year must be retained for 3 years from the date the final grant invoice was paid by HUD.

(c) *Grant activities.* Recipients of HUD housing counseling grants are required to report activities under the grant in a format acceptable to HUD and within the designated time frames required by the applicable grant agreement.

(d) *Race, ethnicity, and income data.* Participating agencies must maintain current and accurate data on the race, ethnicity, and income of their counseling clients and education participants.

(e) *Client file.* The housing counseling agency must maintain a separate confidential file for each counseling client to document the action plan and the services provided to the client, as described in § 214.300. For all counseling, except for HECM counseling, the client file must include an action plan. The client file may be for an individual or household or for a group of clients with the same housing need.

(f) *Group education file.* The housing counseling agency must maintain a separate confidential file for each course provided. This file must contain a list of all participants, their race, ethnicity and income data, course title, course outline, instructors, and date of each course.

(g) *Confidentiality.* Participating agencies must ensure the confidentiality of each client's personal and financial information, including credit reports, whether the information is received from the client or from another source.

Failure to maintain the confidentiality of, or improper use of, credit reports may subject the agency to penalties under the Fair Credit Reporting Act (14 U.S.C. 1681 *et seq.*).

(h) *Termination of services.* The housing counseling agency must document in the client's file termination of housing counseling. Termination occurs or may occur under any of these conditions:

(1) The client meets his or her housing need or resolves the housing problem;

(2) The agency determines that further housing counseling will not meet the client's housing need or resolve the client's housing problem;

(3) The agency attempts to, but is unable to, locate the client;

(4) The client does not follow the agreed-upon action plan;

(5) The client otherwise terminates housing counseling; or

(6) The client fails to appear for housing counseling appointments.

§ 214.317 Reporting.

All participating agencies shall submit to HUD activity reports, which may be required up to quarterly. The reports must be submitted in the format, by the deadline, and in the manner prescribed by HUD. Participating agencies that are also recipients of HUD grants or subgrants may be required to submit additional reports, as described in their grant agreements and prescribed by HUD.

Subpart E—Other Federal Requirements

§ 214.500 Audit.

Housing counseling grant recipients and subrecipients shall be subject to the audit requirements contained in 24 CFR parts 84 and 85. HUD must be provided a copy of the audit report within 30 days of completion.

§ 214.503 Other requirements.

In addition to the requirements of this part, the Housing Counseling program is subject to applicable federal requirements in 24 CFR 5.105.

Dated: September 21, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–19166 Filed 9–27–07; 8:45 am]

BILLING CODE 4210–67–P

Reader Aids

Federal Register

Vol. 72, No. 188

Friday, September 28, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

50643–50868 4
50869–51158 5
51159–51352 6
51353–51554 7
51555–51696 10
51697–51974 11
51975–52280 12
52281–52466 13
52467–52748 14
52749–53100 17
53101–53410 18
53411–53672 19
53673–53912 20
53913–54206 21
54207–54340 24
54341–54518 25
54519–54812 26
54813–55010 27
55011–55654 28

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of September 12, 2007) 52465
8170 51155
8171 51157
8172 51549
8173 51551
8174 51553
8175 53097
8176 53099
8177 54807
8178 54809
8179 54811

Executive Orders:
13224 (See Notice of September 20, 2007) 54205
13444 52747

Administrative Orders:
Memorandums:
Memorandum of September 8, 2007 52279
Notices:
Notice of September 12, 2007 52465
Notice of September 20, 2007 54205
Presidential Determinations:
No. 2006-23 of September 13, 2006 (See No. 2007-32 of September 13, 2007) 53409
No. 2007-29 of August 27, 2007 51351
No. 2007-30 of August 31, 2007 52749
No. 2007-31 of September 8, 2007 52751
No. 2007-32 of September 13, 2007 53409

4 CFR

81 50643

5 CFR

551 52753
553 53411
1600 53413
1605 53413
1630 51353
1631 53413
1640 51353
1651 53413
1653 51353
1655 53413
1690 53413

Proposed Rules:
591 51200

7 CFR

6 53913
301 ..... 51975, 52281, 54207
305 ..... 51975, 52776
457 54519
770 51988
981 51990
987 51354
989 ..... 54341, 54343
1205 51159
1739 52779
1782 55011
1951 55011
1955 55011
1956 55011

Proposed Rules:
59 ..... 51378, 52956
301 53171
305 53171
718 55105
983 51378
993 51381
1412 55105
1427 55105
1779 52618
3575 52618
4279 52618
4280 52618
5001 52618

8 CFR

103 ..... 53014, 54813
212 53014
214 ..... 53014, 54813
248 53014
274a 53014
299 53014
1003 53673
1240 53673

9 CFR

93 53314
94 ..... 53101, 53314
95 53314
96 53314

10 CFR

2 55019
32 54207
35 54207
171 55019

Proposed Rules:
490 52496
1017 52506

12 CFR

4 54347
201 54813

202.....55020
208.....54347
211.....54347
227.....55020
337.....54347
347.....54347
563.....54347
585.....50644
627.....54525, 54527

Proposed Rules:
327.....53181
652.....52301

14 CFR

23.....51992
25.....54529, 54531
33.....50856, 50864
39.....51161, 51164, 51167, 51697, 51994, 51996, 51997, 53102, 53104, 53106, 53108, 53110, 53112, 53915, 53918, 53920, 53923, 53925, 53927, 53928, 53933, 53935, 53937, 53939, 54533, 54535, 54536
43.....53678
45.....52467
61.....55021
63.....55021
65.....55021
71.....51358, 51359, 51360, 51361, 51362, 51363, 54815
97.....51169, 51171, 53680, 53682
119.....54815
135.....53114
187.....55021

Proposed Rules:
23.....53196
33.....51314
39.....50648, 51201, 51384, 51386, 51388, 51719, 51722, 51725, 52309, 52311, 52314, 52519, 53488, 53489, 53491, 53493, 53495, 53498, 53501, 53699, 53701, 53704, 53706, 53709, 55108, 55111, 55113, 55116, 55118, 55120, 55122, 55124
71.....51203, 51391, 53201
153.....53504

15 CFR

730.....50869
732.....50869
734.....50869
736.....50869
738.....50869, 52000
740.....50869, 52000
742.....50869
743.....50869
744.....50869
745.....50869, 52000
746.....50869
747.....50869
748.....50869
750.....50869
752.....50869
754.....50869
756.....50869
758.....50869
760.....50869
762.....50869
764.....50869
766.....50869
768.....50869
770.....50869
772.....50869, 52000
774.....50869, 52000
902.....51699, 52668, 53942

Proposed Rules:
Ch. VII.....50912
806.....52316, 53970

16 CFR

1211.....54816

Proposed Rules:
435.....51728

17 CFR

30.....50645
275.....55022

Proposed Rules:
210.....53509
228.....53509
229.....53509
230.....53509
239.....53509
240.....53509
249.....53509
275.....55126

18 CFR

157.....54818

Proposed Rules:
158.....54860
260.....54860
1301.....51572

19 CFR

12.....53414, 54538
103.....52780
178.....52780
181.....52780

Proposed Rules:
122.....51730, 53394

20 CFR

404.....51173
405.....51173
416.....50871, 51173, 54349

21 CFR

101.....52783
111.....52790
522.....51364, 51365, 54539
610.....54208
1308.....54208

Proposed Rules:
2.....53711
610.....54226
1301.....53734
1310.....53973
1308.....54226

23 CFR

637.....54210

Proposed Rules:
950.....53736

24 CFR

14.....53876
15.....53876
17.....53876
20.....53876
24.....53876
25.....53876
26.....53876
180.....53876
200.....54516
214.....55638

Proposed Rules:
50.....52206
51.....52206
55.....52206
58.....52206
91.....52206

25 CFR

900.....52790

26 CFR

1.....51703, 52003, 52470, 53684, 54350, 54351, 54820
54.....54351
602.....54351, 54820

Proposed Rules:
1.....51009, 52319, 53742, 53977, 54606, 54614, 54615, 55132, 55139
53.....51009
54.....51009
301.....51009, 54615, 54618

27 CFR

24.....51707
53.....51710

Proposed Rules:
4.....51732, 53742
5.....51732, 53742
7.....51732, 53742
24.....53742

28 CFR

2.....53114, 53116
16.....54825

29 CFR

1926.....54826
2509.....52004
4022.....52471
4044.....52471

Proposed Rules:
215.....52521
1910.....51735, 54619
2520.....52527
2550.....52021

30 CFR

924.....54830

Proposed Rules:
49.....51338, 51320
75.....51320

31 CFR

1.....54352
10.....54540

Proposed Rules:
10.....54621

32 CFR

199.....53685, 54212, 54353
750.....53417
751.....53421
756.....53424
757.....53427

33 CFR

100.....53118, 54355, 54357, 54832
101.....55043
105.....55043
106.....55043
117.....50875, 51179, 52006, 52007, 53430, 54359, 54835
165.....50877, 51555, 51557, 51711, 52281, 54214, 54837, 54839

Proposed Rules:
117.....53202
165.....52534

34 CFR

674.....55049
682.....55049
685.....55049

36 CFR

7.....54841

Proposed Rules:
1193.....53509
1194.....53509
1250.....51744

37 CFR

1.....51559, 55055

Proposed Rules:
381.....54622

38 CFR

38.....53430

Proposed Rules:
5.....54776

39 CFR

111.....54360, 55055

Proposed Rules:
111.....52025
3001.....50744
3010.....50744
3015.....50744
3020.....50744

40 CFR

6.....53652
9.....53118
30.....55058
31.....55058
40.....52008
52.....50879, 51564, 51567, 51713, 52010, 52282, 52285, 52286, 52289, 52472, 52791, 53432, 53686, 54361, 54556, 54562, 54844, 55064
60.....51365, 51494, 55278
72.....51494
75.....51494, 55278
81.....53432, 53952, 54361
89.....53118
97.....52289, 55064
180.....51180, 52013, 53134, 53436, 53440, 53445, 53449, 53455, 54564, 54569, 54574, 54579, 54584, 55068, 55073, 55078
247.....52475
300.....53151, 53463
721.....53470
761.....53152
1039.....53118

Proposed Rules:
9.....53204
49.....51204
51.....52264, 54112
52.....50650, 51574, 51747, 52027, 52028, 52031, 52038, 52264, 52319, 52320, 52325, 52828, 53743, 54112, 54385, 54390, 54623, 54624, 54872
60.....51392, 51394
62.....50913, 52325, 54872
63.....50716, 52958, 52984, 53814, 53838, 54875

70.....52264
71.....52264
72.....51394
75.....51394
81 .....51747, 53743, 54390
82.....52332
89.....53204
97.....52038, 52325
300 .....51758, 53509, 54230
1039.....53204

41 CFR

300-80.....51373

42 CFR

409.....55085
411.....51012
424.....51012, 53628
488.....53628
489.....53628

Proposed Rules:

406.....55152
407.....55152
408.....55152
431.....51397
433.....51397
440.....51397, 55158
447.....55158

43 CFR

3000.....50882
3100.....50882
3150.....50882
3200.....50882
3500.....50882
3580.....50882
3600.....50882
3730.....50882
3810.....50882
3830.....50882

44 CFR

64 .....52793, 54588, 54591, 55089
65.....53955
67.....52796, 52820

Proposed Rules:

67 .....51762, 52833, 54624, 54631

45 CFR

98.....50889
1626.....52488
2551.....51009

46 CFR

10.....53961
14.....53961
15.....53961
25.....53961
31.....53961
39.....53961
44.....53961
50.....53961
54.....53961
63.....53961
69.....53961
71.....53961
91.....53961
107.....53961
110.....53961
116.....53961
125.....53961
127.....53961
134.....53961
151.....53961
153.....53961
154.....53961
161.....53961
162.....53961
170.....53961
171.....53961
172.....53961
175.....53961
177.....53961
189.....53961
401.....53158

Proposed Rules:

10.....52841
15.....52841

47 CFR

0.....54847, 55089
1.....54363
54.....54214
63.....54363
73 .....52827, 53687, 53688, 54720
90.....51374, 54847

Proposed Rules:

73 .....51208, 51575, 52337, 52338, 54774

48 CFR

Ch. 1.....51187, 51310
4.....51306
12.....51306
52.....51306, 55089
Ch. 2.....51187
202.....51187
207.....51188
211.....52293
212.....51189
216.....51189
227.....51188
234.....51189
236.....51191
237.....51192, 51193
245.....52293
252 .....51187, 51189, 51194, 52293
639.....51568
652.....51568
727.....53161
742.....53161
752.....53161
1807.....55090
1817.....55090

Proposed Rules:

215.....51209
252.....51209

49 CFR

40.....54600
71.....54367
171.....55090
173.....55091
175.....55091
178.....55091
209.....51194
213.....51194
214.....51194
215.....51194
216.....51194
217.....51194
218.....51194
219.....51194
220.....51194
221.....51194
222.....51194
223.....51194
224.....51194
225.....51194
228.....51194
229.....51194
230.....51194
231.....51194
232.....51194
233.....51194
234.....51194
235.....51194
236.....51194
238.....51194
239.....51194
240.....51194
241.....51194
244.....51194
386.....55100
541.....54600
571.....50900, 51908
585.....51908
593.....54847
661.....53688, 55102
1002.....51375
1111.....51375
1114.....51375
1115.....51375
1572.....55043

Proposed Rules:

171.....53744
173.....53744
175.....53744
229.....50820, 52536
232.....50820, 52536
238.....50820, 52536
571.....54402
578.....54635
1540.....50916
1544.....50916
1560.....50916

50 CFR

17 .....51102, 52434, 54377, 54984
20.....53882, 54158
32.....51534, 54602
600.....54219
622.....54223, 55103
648.....51699, 53969
660.....50906, 53165
679 .....50788, 51570, 51716, 51717, 51718, 52299, 52491, 52492, 52493, 52494, 52668, 53169, 54603, 54604, 55104

Proposed Rules:

17 .....50918, 50929, 51766, 51770, 53211, 53749, 54411
216.....52339
648 .....53751, 53942, 55166
660.....55170
679.....53516
697.....53978

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 28, 2007

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Indiana; published 7-30-07
- Louisiana; published 9-28-07
- Texas; published 7-30-07

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Florasulam; published 9-28-07
- Quinclorac; published 9-28-07
- Tembotrione, et al.; published 9-28-07

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Satellite communications—
  - Broadcasting-satellite service; policies and service rules; published 8-29-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Connecticut; published 9-27-07

Transportation Worker Identification Credential Program; maritime sector implementation:
- Commercial driver's license; hazardous materials endorsement; published 9-28-07

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Transportation Worker Identification Credential Program; maritime sector implementation:
- Commercial driver's license; hazardous materials endorsement; published 9-28-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Pratt & Whitney; published 8-24-07

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:
- Civil penalties; inflation adjustment; published 9-28-07

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Hazardous materials:
- International transport standards and regulations use; authorization requirements
  - Correction; published 9-28-07

RULES GOING INTO EFFECT SEPTEMBER 29, 2007

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Merchandise, special classes:
- Import restrictions—
  - Guatemala; archaeological and ethnological materials; published 9-26-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Regattas and marine parades:
- Sunset Lake Hydrofest; published 9-18-07
- Wilmington YMCA Triathlon; published 8-15-07

TREASURY DEPARTMENT

Merchandise, special classes:
- Import restrictions—
  - Guatemala; archaeological and ethnological materials; published 9-26-07

RULES GOING INTO EFFECT SEPTEMBER 30, 2007

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; published 9-24-07

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:
- Fee revisions (2007 FY); published 8-22-07
- Correction; published 9-28-07

SECURITIES AND EXCHANGE COMMISSION

Securities and investment advisers:
- Principal trades with certain advisory clients; temporary rule; published 9-28-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Noncompetitive entertainment horses from countries affected with contagious equine metritis; temporary importation; comments due by 10-1-07; published 8-2-07 [FR E7-14994]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:
- Cost-reimbursement contracts for services; payments; comments due by 10-1-07; published 8-2-07 [FR E7-14921]
- Item identification and valuation clause update; comments due by 10-1-07; published 8-2-07 [FR E7-14896]

DEFENSE DEPARTMENT

Engineers Corps

Danger zones and restricted areas:
- Marine Corps Base Hawaii, Kaneohe Bay, Oahu, HI; comments due by 10-1-07; published 8-31-07 [FR E7-17155]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
- Critical infrastructure protection; mandatory reliability standards; comments due by 10-5-07; published 8-6-07 [FR E7-14710]

Practice and procedure:
- Filing via Internet; comments due by 10-1-07; published 8-2-07 [FR E7-14724]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Connecticut; comments due by 10-1-07; published 8-30-07 [FR E7-17002]
- Iowa; comments due by 10-5-07; published 9-5-07 [FR E7-17414]
- New Jersey; comments due by 10-4-07; published 9-4-07 [FR E7-17411]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Bromoxynil, diclofop-methyl, etc.; comments due by 10-1-07; published 8-1-07 [FR E7-14895]
- Quillaja saponaria extract; exemption; comments due by 10-1-07; published 8-1-07 [FR E7-14894]
- Rimsulfuron; comments due by 10-1-07; published 8-1-07 [FR E7-14543]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Arizona; comments due by 10-1-07; published 8-29-07 [FR E7-17014]
- Colorado; comments due by 10-1-07; published 8-22-07 [FR E7-16568]
- Texas; comments due by 10-1-07; published 9-22-07 [FR E7-16566]

Television broadcasting:
- Telecommunications Act of 1996; implementation—
  - Broadcast ownership rules; 2006 quadrennial regulatory review; minority and female ownership, etc.; comments due by 10-1-07; published 8-8-07 [FR E7-15456]

FEDERAL ELECTION COMMISSION

Corporate and labor organization activity:
- Electioneering communications; comments due by 10-1-07; published 8-31-07 [FR E7-17184]

FEDERAL MEDIATION AND CONCILIATION SERVICE

Freedom of Information Act; implementation; comments due by 10-2-07; published 8-3-07 [FR E7-14818]

GENERAL SERVICES ADMINISTRATION

Federal travel:
- Relocation allowances; Governmentwide Relocation Advisory

Board; recommendations; comments due by 10-2-07; published 8-3-07 [FR E7-15156]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Durable medical equipment, prosthetics, orthotics, and supplies; surety bond requirements for suppliers; comments due by 10-1-07; published 8-1-07 [FR 07-03746]

HEALTH AND HUMAN SERVICES DEPARTMENT
Quarantine, inspection, and licensing:
Dogs and cats importation regulations extended to cover domesticated ferrets; comments due by 10-1-07; published 7-31-07 [FR E7-14623]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat and designations—
Devils River minnow; comments due by 10-1-07; published 7-31-07 [FR 07-03678]
Critical habitat designations—
Marbled murrelet and northern spotted owl; recovery plan; comments due by 10-5-07; published 9-5-07 [FR E7-17236]
Findings on petitons, etc.—
Polar bear; comments due by 10-5-07; published 9-20-07 [FR 07-04652]

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Sexually dangerous person; civil commitment; comments due by 10-2-07; published 8-3-07 [FR E7-14943]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Company proxy materials; shareholder proposals; comments due by 10-2-07; published 8-3-07 [FR E7-14954]
Election of directors; shareholder proposals; comments due by 10-2-07; published 8-3-07 [FR E7-14955]

SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Compassionate allowances made by quickly identifying individuals with obvious disabilities; comments due by 10-1-07; published 7-31-07 [FR E7-14686]
Social security benefits:
Federal old age, survivors, and disability insurance—
Government Pension Offset exemption; sixty-month period of employment requirement; comments due by 10-2-07; published 8-3-07 [FR E7-15057]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 10-1-07; published 8-16-07 [FR E7-16104]
Bombardier; comments due by 10-1-07; published 8-31-07 [FR E7-17282]
Fokker; comments due by 10-1-07; published 8-31-07 [FR E7-17296]
Class D airspace; comments due by 10-1-07; published 8-15-07 [FR 07-03963]
Class E airspace; comments due by 10-1-07; published 8-10-07 [FR 07-03882]

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad safety:
Passenger equipment safety standards—
Front-end strength of cab cars and multiple-unit locomotives; comments due by 10-1-07; published 8-1-07 [FR 07-03736]

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Prohibited tax shelter transactions; disclosure requirements; comments due by 10-4-07; published 7-6-07 [FR E7-12902]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 2358/P.L. 110–82

Native American $1 Coin Act (Sept. 20, 2007; 121 Stat. 777)

S. 377/P.L. 110–83

United States-Poland Parliamentary Youth Exchange Program Act of 2007 (Sept. 20, 2007; 121 Stat. 781)

Last List September 18, 2007

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Contents

Federal Register

Vol. 72, No. 187

Thursday, September 27, 2007

Editorial Note: In the printed version of the **Federal Register** for Thursday, September 27, 2007, a technical error resulted in an incomplete listing of documents in the Table of Contents. A corrected Table of Contents appears as follows:

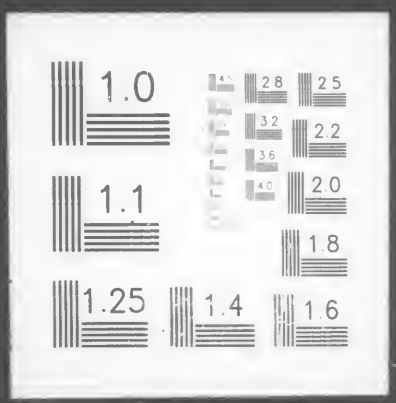
Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

Printed on recycled paper


1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0